TEXAS REGISTER

IN THIS ISSUE

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Part II - Volume 20, Number 92

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Texas Register

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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date

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

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

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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

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

In Addition Sections

State Auditor's Office

Texas Commission for the Blind

Office of Consumer Credit Commissioner

Texas Court Reporters Certification Board

Texas Department of Criminal Justice

General Land Office

Texas Department of Health

Texas Natural Resource Conservation Commission

The University of Texas System

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement–Specific Substantive Rules

• 22 TAC §§203.1, 203.7-203.11

The Texas Funeral Service Commission has withdrawn from consideration for permanent adoption a proposed repeals to §§203.1, 203.7-203.11, which appeared in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9367). The effective date of this withdrawal is December 5, 1995.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515848 Marc Allen Connelly
General Counsel
Texas Funeral Service Commission

Effective date: December 5, 1995

For further information, please call: (512) 834-9992

♦ ♦ ♦

The Texas Funeral Service Commission has withdrawn from consideration for permanent adoption a proposed new §§203.1, 203.7-203.11, which appeared in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9367). The effective date of this withdrawal is December 5, 1995.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515837 Marc Allen Connelly
General Counsel
Texas Funeral Service Commission

Effective date: December 5, 1995

For further information, please call: (512) 834-9992

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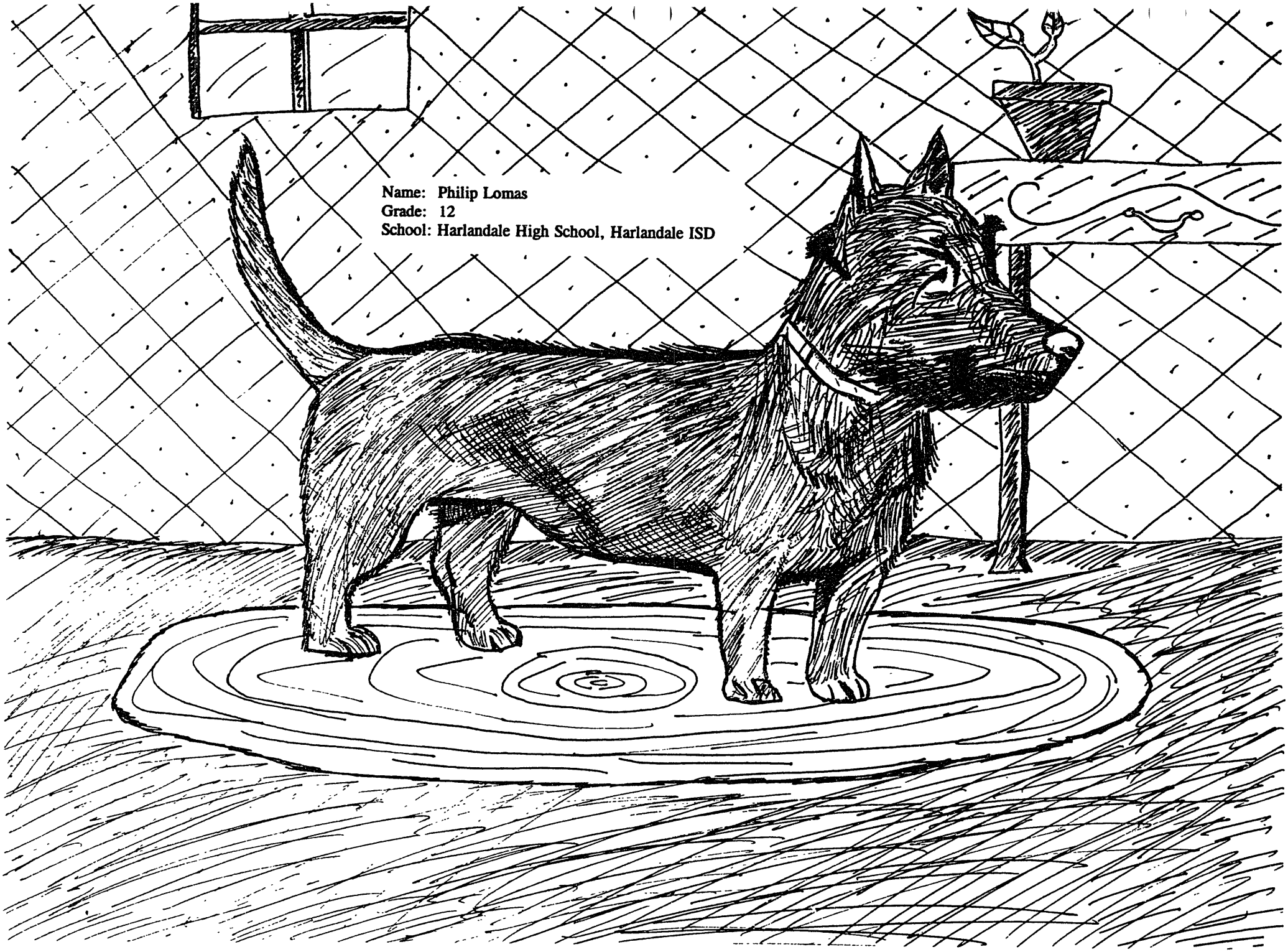

Name: Philip Lomas
Grade: 12
School: Harlandale High School, Harlandale ISD

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part 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 adopts an amendment to §61.41, concerning Inspection, Sampling and Analysis, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9107).

This rule is being amended 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.

No comments were received regarding adoption of the amendment.

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

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 College Station, Texas, on December 6, 1995.

TRD-9515887 Dr. George W. Latimer, Jr.
State Chemist, Office of the Texas State Chemist
Texas Feed and Fertilizer Control Service

Effective date: January 1, 1996

Proposal publication date: November 3, 1995

For further information, please call: (409) 845-1121

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TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 139. Exemptions by Rule or Order

• 7 TAC §139.11

The State Securities Board adopts new §139.11, concerning an exemption for transactions involving United States Savings Bonds, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7151).

The section was adopted in response to public inquiry concerning promotions and other transactions involving U.S. Savings Bonds.

The new section will assure certain persons engaging in the sale of U.S. Savings Bonds in accordance with its terms that they are complying with the requirements of The Securities Act.

No comments were received regarding adoption of the new section.

The section is adopted under Texas Civil Statutes, Article 581, §§28-1, 5. T, and 12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T and §12.B, respectively, provide that the Board may prescribe transactional and dealer/agent registration exemptions by rule.

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 December 6, 1995.

TRD-9515881 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 27, 1995

Proposal publication date: September 12, 1995

For further information, please call: (512) 305-8300

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• 7 TAC §139.16

The State Securities Board adopts an amendment to §139.16, concerning an exemption from securities registration for sales to individual accredited investors, with two nonsubstantive grammatical changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7152). The first change relocates the closing parenthesis in the second sentence of subsection (e)(1)(D). The second change, to the last sentence of subsection (h), relocates the phrase, "within six months of the last sale made under this section," to clarify its referent.

The amendment clarifies that limited use advertisements may be disseminated by any means, expands the statement contained in limited use advertisements, imposes record retention requirements, and provides a safe harbor for sales, made more than six months after the use of a limited use advertisement, under other exemptions which prohibit public solicitation or advertisements.

The section as amended will further facilitate capital raising.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1 and §5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

§139.16. Sales to Individual Accredited Investors.

(a)-(d) (No change.)

(e) Limited use advertisements. Any limited use advertisement used in connection with an offering under this section must be filed with the Securities Commissioner ten days prior to use in this state. A

limited use advertisement may be disseminated by any means, direct or indirect. A limited use advertisement shall contain only the statements required or permitted to be included therein by this subsection.

(1) A limited use advertisement shall contain the following items of information:

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

(D) the following statement: "The securities have not been registered with or approved by the Texas Securities Commissioner and are being offered and sold pursuant to the exemption provided by §139.16 of the Rules and Regulations of the State Securities Board. This advertisement was filed with the Texas Securities Commissioner on or about (fill in date). The securities are being offered to, and may be purchased by, only those natural persons whose individual net worth, or joint net worth with that person's spouse, at the time of purchase of the securities, exceeds $1 million or natural persons who have an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000 in each of those years, and who have a reasonable expectation of reaching that same income level in the current year."

(2) (No change.)

(f) Any issuer relying on this exemption shall, upon written request, furnish to the Securities Commissioner the information furnished by the issuer or registered dealer to offerees. Any issuer relying on this exemption must maintain, for a period of at least three years, evidence of the basis for its belief that all purchasers were accredited investors at the time of purchase.

(g) Transactions exempt under this section may be combined with offers and sales exempt under The Securities Act, §5.H, and §109.3(c) of this title (relating to Sales to Financial Institutions and Certain Institutional Investors under The Securities Act, §5.H). In this event, the statement required by subsection (e)(1)(D) may be modified to indicate that the securities are also being offered to eligible purchasers under §5.H and §109.3(c) of this title (relating to Sales to Financial Institutions and Certain Institutional Investors under The Securities Act, §5.H).

(h) Because this exemption permits limited use advertisements, use of this exemption under certain circumstances could result in other exemptions not being available for other sales due to prohibitions in such exemptions against public solicitation and advertisements. Therefore, issuers or registered dealers who use this exemption should take all necessary steps to document that any sales to persons who are not individual accredited investors, as defined, were not made in response to a limited use advertisement. Users of this section should consult with experienced securities counsel, especially if they anticipate selling, within six months of the last sale made under this section, to any persons who are not individual accredited investors.

(i) The use of a limited use advertisement in compliance with this section and in connection with sales under this section will not render exemptions that prohibit public solicitation or advertisements unavailable to sales that are made more than six months after the use of the limited use advertisement.

(j) Should the offer and sale of securities fail, for any reason, to comply with all the terms and conditions for use of this section, the issuer may claim the availability of any other applicable exemption. A limited use advertisement that results in an offer to a person who is not an individual accredited investor within the meaning of this section does not alone result in loss of the exemption.

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 December 6, 1995.

TRD-9515882 Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: December 27, 1995

Proposal publication date: September 12, 1995

For further information, please call: (512) 305-8300

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 9. Public Junior Colleges

Subchapter I. Contractual Agreements

- **19 TAC §9.194**

The Texas Higher Education Coordinating Board adopts an amendment to §9. 194, concerning Contractual Agreements (Contract Instruction), with changes to the proposed text as published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6578).

The amendment is being made to update a policy that was no longer useful. The rule creates more incentive for offering continuing education courses because of stronger reimbursement from the state. Higher standards that will be monitored are being introduced. There is likely to be more meaningful workforce development that will assist in the economic development of Texas. The president's association supports the change.

There were no comments received regarding the proposed amendment.

The amendment is adopted under Texas Education Code, §130.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Contractual Agreements (Contract Instruction).

§9.194. Continuing Education. Continuing education is a public service component of an institution that provides life-long learning opportunities. These opportunities may be referred to as adult vocational education, workforce education, public or community service programs or extension services. The Coordinating Board recognizes that in order to prepare a literate and trained workforce to be available for economic stability and development requires a true joint partnership between private and public sectors. Accordingly, the Board encourages contractual agreements between postsecondary institutions, business, industry, and other government agencies in order to forge a common partnership of joint planning, facilities, laboratories, delivery systems, and evaluation efforts. The Board policy intends to provide institutional incentives for colleges to work with business, industry, and government in the development of an educated workforce for Texas.

(1) Each community and technical college may classify workforce continuing education and other courses as earning semester/quarter credit hours or continuing education units (CEUs). Contact hours reported for courses which result in either credit hours or CEUs will be eligible for formula funding. A course or program that exceeds 360 hours in length must be approved as a technical certificate program except by special justification and approval by the Coordinating Board staff. A course or program that meets or exceeds 780 hours in length must result in the award of appropriate semester/quarter credit hours and in most cases be applicable to an associate degree program.

(2) General enrollment or contact training courses that are non-credit and do not result in the award of CEUs are not eligible for any state apportionment funding, but a community and technical college is free to market such non-credit or non CEU training to business, industry and government at whatever rate can be negotiated with the contracting organization. (Exceptions to rules, tchis paragraph and paragraph (1) of this paragraph regarding programs serving incarcerated students must be submitted to the Coordinating Board staff for review and approval).

(3) Courses earning CEUs will be subject to the guidelines published by the Southern Association of Colleges and Schools as a condition of eligibility for formula funding.

(4) All student enrollments for credit are subject to the provisions of the Texas Academic Skills Program as applicable.

(5) Institutions providing courses to organizations for which credits or CEUs are earned and for which tuition is charged must charge out-of-state tuition to non-resident students who are brought from out-of-state for such contract courses.

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 December 4, 1995.

TRD-9515785 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 25, 1995

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

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Chapter 21. Student Services

Subchapter A. General Provisions

• 19 TAC §21.2

The Texas Higher Education Coordinating Board adopts amendments to §21. 2, concerning Determination of Tuition Rate for Non-resident and Foreign Students without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6055).

The amendments are being made to implement provisions of House Bill 1792. The rules change the method for calculating nonresident tuition.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

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 December 4, 1995.

TRD-9515781 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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• 19 TAC §21.5

The Texas Higher Education Coordinating Board adopts new §21.5 concerning Refund of Tuition and Fees at Public Community/Junior and Technical Colleges without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6055).

The amendments are being made to implement changes mandated by passage of House Bill 2640. The rules will require community/junior and technical colleges to refund tuition and fees on a consistent basis.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 2640, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

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 December 4, 1995.

TRD-9515784 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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Subchapter B. Determining Residence Status

• 19 TAC §§21.21, 21.26, 21.31, 21.32

The Texas Higher Education Coordinating Board adopts amendments to §§21. 21, 21.26, 21.31, and 21.32, concerning Determining Residence Status without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6055).

The amendments are being made to improve clarity of rules and to implement changes mandated by House Bill 1792 and House Bill 1836. The rules are used to guide decisions regarding admission of students and their classification for tuition determination purposes.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

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 December 4, 1995.

TRD-9515779 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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Subchapter J. Physician Education Loan Repayment Program

• 19 TAC §§21.258, 21.259, 21.261, 21.263

The Texas Higher Education Coordinating Board adopts amendments to §§21. 258, 21.259, 21.261, and 21.263, concerning Physician Education Loan Repayment Program without changes to the proposed text as published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6579).

The amendments are being made to implement changes required by Senate Bill 979. The rules will change eligibility requirements for the Physician's Education Loan Repayment Program.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Senate Bill 979, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Physician Education Loan Repayment Program.

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

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

TRD-9515780 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 25, 1995

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

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Subchapter BB. Pilot Program for Enrolling Students from Mexico

• 19 TAC §21.938

The Texas Higher Education Coordinating Board adopts amendments to §21. 938 concerning Numbers of Students Eligible to Participate in the Pilot Program without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6057).

The amendments are being made to guide program operation. Program is scheduled by legislation to start operating in January 1996. The amendments will provide a framework for program operations.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Pilot Program for Enrolling Students from Mexico.

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 December 4, 1995.

TRD-9515776 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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The Texas Higher Education Coordinating Board adopts the repeal of Subchapter CC, §§21.950-21.959 concerning Tuition Credit Program without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6058).

The rules are being repealed to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide $1,000 state scholarships to students graduating high school in no more than 36 months.

There were no comments received regarding the proposed amendments.

The repeal to the rules is adopted under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

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 December 4, 1995.

TRD-9515778 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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Subchapter CC. Early High School Graduation Scholarship Program

• 19 TAC §§21.950-21.959

The Texas Higher Education Coordinating Board adopts new Subchapter CC, §§21.950-21.959 concerning Early High School Graduation Scholarship Program without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6058).

The new rules are being made to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide $1,000 state scholarships to students graduating high school in no more than 36 months.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

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 December 4, 1995.

TRD-9515777 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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Subchapter FF. State Scholarship Program for Ethnic Recruitment

• 19 TAC §§21.1010-21.1020

The Texas Higher Education Coordinating Board adopts new Subchapter FF, §§21.1010-21.1020 concerning State Scholarship Program for Ethnic Recruitment without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6059).

The new rules are being made because program funding for this program received a 200% increase therefore rules for the administration of the program are necessary. There are several differences in the eligibility of students to participate in the program.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Scholarship Program for Ethnic Recruitment.

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 December 4, 1995.

TRD-9515782 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: August 11, 1995

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

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Subchapter GG. Fifth-Year Accounting Student Scholarship Program

• 19 TAC §§21.1030-21.1042

The Texas Higher Education Coordinating Board adopts new Subchapter GG, §§21.1030-21.1042 concerning Fifth-Year Accounting Student Scholarship Program without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6785).

The program is scheduled by legislation to start operating in January 1996. The new rules are needed to guide the program operation. They will provide a framework for program operations.

There were no comments received regarding the proposed amendments.

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

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 December 4, 1995.

TRD-9515783 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: December 26, 1995

Proposal publication date: September 1, 1995

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

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

• 25 TAC §401.47

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §401.47, concerning memorandum of understanding: continuity of care for mentally ill and mentally retarded offenders, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8063).

The statutory authority for the section was repealed in Senate Bill 252, Acts 1993, 73rd Legislature, Chapter 488, §3. The same bill created the Texas Health and Safety Code, §614.013, which mandated a memorandum of understanding (MOU) relating to similar matters; that MOU was adopted in §401.59, concerning continuity of care for offenders with mental impairments. The adoption was published in the February 17, 1995, issue of the *Texas Register* (20 TexReg 1140).

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with Senate Bill 252, Acts 1993, 73rd Legislature, Chapter 488, §3, which repealed the statute mandating the MOU be adopted by rule.

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 December 4, 1995.

TRD-9515595 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 25, 1995

Proposal publication date: October 3, 1995

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

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Subchapter E. Contracts Management

• 25 TAC §§401.371-401.393

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on a regular basis the repeal of §§409.371-401.393, concerning contracts management, without changes to the proposed text as published in the September 22, 1995, issue of the *Texas Register* (20 TexReg 7557). New sections are contemporaneously adopted in this issue of the *Texas Register.*

The subchapter is repealed to allow for the adoption of new sections which enable the department to act expeditiously and effectively in remedying contractual problems that may affect the life, health, welfare, or safety of people receiving mental health and mental retardation services funded by TDMHMR.

The repeals are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §15, which provide the Health and Human Services Commission with authority over TDMHMR rules.

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

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

TRD-9515608 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 25, 1995

Proposal publication date: September 22, 1995

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

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• 25 TAC §§401.371-401.399

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on a regular basis new §§401.371-401.399, concerning contracts management. Sections 401.373, 401.375-401.377, 401.381, 401.384, 401.388, 401. 390-401.393, 401.396, and 401.398 are adopted with changes to the proposed text as published in the September 22, 1995, issue of the *Texas Register* (20 TexReg 7558). Sections 401.371, 401.372, 401.374, 401.378-401. 380, 401.382, 401.383, 401.385-401.387, 401.389, 401.394, 401.395, 401.397, and 401.399 are adopted without changes and will not be republished. The existing Chapter 401, Subchapter E, also concerning contracts management, is contemporaneously repealed in this issue of the *Texas Register.*

Language was changed in the definition of "local authority" for consistency and language was added to the definitions of "performance contract" and "priority population" for clarification. A portion of the reference in the definition of "professional services" was deleted. The term "consumers" was changed to "persons served" for consistency in §401.375(b). Language was added to §401.375(d) and §401.376(a)(2) for clarification. In §401.377(e) (8) and (g), the term "individuals to be served" was changed to "persons to be served" for consistency. Section 401.377(f) was deleted and subsequent subsections redesignated. The second sentence of §401.381(c) was deleted because periodic program reviews and management audits are not government by the "Guidelines for Annual Fiscal Audits of Community MHMR Centers." A portion of the language in §401.384(a)(12) was deleted for clarity. Language was added as §401.384(a)(16), requiring compliance with the Texas Family Code, §231.006.

Language was added to the title of Part II and to §401.388(k) for clarification. In §401.388(b), the word "individuals" was changed to "persons" for consistency and the title of the reference in subsection (i) of the same section was corrected. Language throughout §§401.390-401.393 referring to contracts exceeding two years was modified for clarity. Section 401.391(c) was deleted. The language "to persons served" in §401.396(c)(2)(A) (iv) was deleted. Language identifying the commissioner was added to §401. 396(c)(4) for clarification. In §401.398, two references were deleted, one corrected, and one clarified.

A public hearing was held on October 16, 1995; no oral or written testimony was offered. Public comment was received from the Texas Council of Community Mental Health and Mental Retardation Centers, Austin; Burke Center, Lufkin: and a private citizen.

One commenter supported the requirement of fund accounting.

Another commenter objected to the requirement of fund accounting. The commenter cited prior experience with fund accounting as extremely cumbersome, labor-intensive, and expensive. The commenter also stated that engaging a new accounting firm to perform annual fiscal audits every six years may be adversely impacted by the requirement for fund accounting because the "learning curve" for the new firm would increase. The commenter suggested that, until a more stable environment evolves regarding managed care, project accounting may be more appropriate and easier accomplished. The department acknowledges that initial implementation of fund accounting will require financial resources; however, requiring fund accounting by September 1, 1996, one year in advance, local authorities will have the opportunity to arrange for resources in preparation of implementation. The department does not agree with the commenter that accounting firms will be adversely impacted and their "learning curve" increased; structured accounts *decrease* the learning curve for audit firms. Regarding waiting until a more stable environment evolves, fund accounting (the accounting of funds by source) will accommodate whatever environment evolves. Financial accountability of state contracts is a major issue in state government and the de-

partment is responsible for ensuring the integrity of public funds. Fund accounting accomplishes this goal.

The department further responds that it is not familiar with "project accounting" as suggested by the commenter; however, the description provided by the commenter indicates that it could accomplish the same objectives as fund accounting.

The new sections are adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers, and §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

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

Acceptable bid or acceptable offer-A bid or offer which has been prepared and submitted according to the timeframes, procedures, and format specified in the procurement package; which indicates the offeror can meet the minimum requirements specified in the procurement package; and which is made by an offeror who is legally eligible to receive state and/or federal funds.

Amendment-An attachment to a contract legally executed by authorized parties prior to the expiration of the contract term that alters, deletes, or adds provisions.

Board-The Texas Board of Mental Health and Mental Retardation.

Commissioner-The commissioner of the Texas Department of Mental Health and Mental Retardation or designee.

Community-based services-Mental health and/or mental retardation services provided in the community that are designated in the performance contract, performance memorandum, performance subcontract, designated provider contract, or contracts for community-based residential or nonresidential mental health and mental retardation services.

Community center-A community mental health and/or mental retardation center established pursuant to the Texas Health and Safety Code, Chapter 534, Subchapter A.

Consultant contract-A contract to retain the services of an individual or organization to study an existing or proposed operation or project, or to provide advice with regard to the operation or project consistent with Texas Government Code, Subchapter B, §§2254.021 et seq, to exclude engaging registered professional engineers or registered architects for the design or construction of state facilities; private legal counsel; investment counselors; actuaries; or physicians, dentists, or their medical or dental services providers.

Contract-Any written document (or series of documents) that obligates a party to pay money to a person or organization in exchange for goods or services from that person or organization or that obligates a party to provide goods or services in exchange for money.

Contracting entity-The entity which provides the funds for services pursuant to a contract.

Contractor-An entity that provides services for funds pursuant to a contract.

Department-A facility or the Central Office of the Texas Department of Mental Health and Mental Retardation.

Designated provider-Pursuant to the Texas Health and Safety Code, §534.054, a service provider with whom the department contracts for the delivery of a specific community-based mental health or mental retardation service in a specified local service area of the state. The term does not include a local authority.

Emergency-A state of imminent peril to the health, safety, or welfare of employees, persons served, or the general public.

Employee education and training contract-A contract to acquire professional expertise for in-facility or other in-house training of employees. The term does not refer to training sponsored by another organization at conferences, seminars, or training sessions.

Facility-Any state hospital, state school, state center, or other entity which is now or hereafter is made a part of the Texas Department of Mental Health and Mental Retardation.

Financial or other interest-The condition that exists when an employee or officer of TDMHMR or a local authority who initiates or approves contracts has or intends employment with a contractor; paid consultation with a contractor; membership on a contractor's board of directors; or ownership of stock, partnership, or other substantial interest in a contractor, as defined in Local Government Code, §171.002. The term also applies to the condition that exists when a person related within the second degree of consanguinity or affinity (as described in §401.397 of this title (relating to Exhibits) as Exhibit A) to such an employee or officer participates in such activities.

Foster or family home placement-A residential placement where the caregiver or caregivers have no more than three unrelated persons with disabilities in their home at any given time and the caregiver or caregivers are providing this service in their primary residence.

Fund accounting-Method of accounting in which accounts are established which segregate revenues and other resources, together with all related liabilities, obligations, and reserves, for the purpose of carrying on specific activities or attaining certain objectives in accordance with specific contractual and regulatory requirements.

Historically underutilized business (HUB)-A for-profit corporation, sole proprietorship, partnership, or joint venture in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized (socially disadvantaged) because of their identification as members of the following groups: Black American, Hispanic American, Asian Pacific American, Native American, and Women. These persons must have a proportionate interest and demonstrate active participation in the control, operation, and management of the business.

Local authority-An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas pursuant to a performance contract.

Local service area-A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local authority.

Offeror-An entity that submits to a contracting entity a proposal to be considered for a contract.

Performance contract-The contract between the state authority and a local authority in which the state authority agrees to pay the local authority a specified sum for ensuring the provision of specified mental health and/or mental retardation services in a local service area. The term includes a performance memorandum.

Persons with a mental disability-Persons with mental illness, mental retardation, or a related condition, or a pervasive developmental disorder, and persons younger than four years of age who are eligible for Early Childhood Intervention services.

Plan of service-The systematic, organized compilation of information relevant to the services provided to an individual admitted for services provided using funds received from or through TDMHMR.

Priority population-Groups of persons with a mental disability identified in the performance contract or subcontract for whom the department purchases mental health and/or mental retardation services.

Procurement package-The invitation for bids or request for proposals and any other associated documentation that serves to describe the requirements of the contract.

Professional services-Those services within the scope of the practice of accounting, architecture, optometry, medicine, or professional engineering as defined by state

law, or services performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, or professional engineer in connection with his professional employment or practice, as specified in the Texas Government Code, Subchapter A, §§2254. 001 et seq.

Proposal-Documents prepared by an offeror which are submitted to a contracting entity in response to a procurement package provided by the contracting entity.

Prospective payment funds-Money which the state authority prospectively provides to a local authority to provide community-based services to certain persons with a mental disability. Such funds are provided through programs including, but not limited to, the Prospective Payment Program (PPP) and the Companion Program.

Small business-A corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated and has either fewer than 100 employees or less than $1 million in annual gross receipts.

Start-up costs-Costs associated with the development of one or more community-based services.

State authority-The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Subcontract-A contract between the party contracting with the department and the subcontractor which is paid for with funds from the contract with the department.

Support services contract-A contract between the department and a contractor to provide specified ancillary and support services for a designated sum in areas including, but not limited to, laundry, housekeeping, grounds maintenance, plant maintenance, food service, vehicle maintenance, and technical services in radiology, laboratory services, and pharmacy.

Term-The period of time during which a contract is in effect and which is identified by starting and ending dates.

§401.375. Accountability.

(a) Procurement by government agencies must be conducted so as to obtain the most effective use of public monies. Contracting is the preferred alternative to direct provision of government services when contracting obtains the same or higher quality of services at a lower cost than possible through governmental provision. The department conducts and regulates all procurements using TDMHMR funds to promote maximum free and open competition whenever feasible.

(b) The state authority may terminate a contract immediately or remove persons served when the life, health, welfare, or safety of persons served is endangered or could be endangered either directly or through the contractor's willful or negligent discharge of duties under the contract, including failure to deliver services in accordance with the terms and conditions of the contract, or if the department has reason to believe that the contractor has engaged in the misuse of state or federal funds, fraud, or illegal acts.

(c) In a cost reimbursement contract, the contractor/subcontractor must substantiate all claims.

(d) The department recovers improper payments when it is verified that contractors/subcontractors have been overpaid because of improper billing or accounting practices or failure to comply with the contract terms, e.g., the department will not pay for contracted services not received by the department, and repayment will be claimed, at the proportional rate of payment, for such services. The determination of impropriety is based on federal, state, and local laws and rules; department procedures; contract provisions; or statistical data on program use compiled from paid claims and other sources of data.

(e) At the end of each contract period, the contractor must return to the department any state or federal funds received from or through TDMHMR which have not been encumbered.

(f) The department may make advance payments to a contractor provided that the contractor is a community center or governmental entity. The purpose of the advance payment must meet a public purpose and sufficient controls must be in place to ensure accomplishment of the public purpose.

(g) Equipment and furniture are defined as nonconsumable property having a value of at least $500 and a useful life of more than one year. Equipment and furniture specifically purchased under a contract budget by a governmental entity, a private non-profit entity, or private for-profit entity are subject to an equitable claim by state and federal government as follows:

(1) Disposition of property purchased by governmental and private non-profit entities.

(A) Control of equipment and furniture. A control system must be maintained by the contractor to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated. The control system must indicate the source of funds (state, federal, other) used in the purchase of the equipment and furniture.

(B) Disposition of property. Equipment and furniture purchased with state funds by a designated provider and/or other governmental entities become the property of the designated provider and/or other governmental entity. Disposition of equipment and furniture purchased with federal funds by a designated provider and/or other governmental entity must be made according to the provision of federal OMB A-102, A-87, and any other applicable federal regulations. Any real or personal property purchased by a private non-profit provider which are purchased with funds provided by or through TDMHMR belong to the department and cannot be disposed without approval from the department.

(2) Disposition of property purchased by private for-profit entities. The purchase of equipment and furniture by private for-profit entities under a specific contract budget should not be approved but such entity should include the depreciation of furniture and equipment as costs of providing the services under the contract.

§401.376. Methods of Procurement.

(a) Criteria for sealed bids. In competitive sealed bids, the contracting entity publicly solicits sealed bids from interested bidders through an invitation for bids (IFB). This method of procurement is used for contracts including, but not limited to, support services contracts. The contracting entity awards a firm fixed-price contract (lump sum or unit price) to the lowest and best bidder whose bid conforms with all terms and conditions of the invitation for bids. Sealed bids are used when the following conditions exist:

(1) the exact specification for the service or product to be purchased is available;

(2) following solicitation as described in §401.377(b)(2)(A) of this title (relating to Sealed Bid and Request for Proposal), two or more responsible bidders are willing and able to compete for the contract;

(3) the procurement lends itself to a firm fixed-price contract (unit rate or cost reimbursement with a maximum not to exceed the reimbursable amount);

(4) the contract can appropriately be awarded to a responsible bidder on the basis of the lowest and best price; and

(5) sufficient time is available for the contracting entity to prepare specifications on which it can purchase the service and for bidders to prepare and submit bids.

(b) Criteria for request for proposal. The contracting entity requests proposals from a number of sources by soliciting responses to a request for proposal (RFP) for contracts including, but not

limited to, consultant contracts, service contracts, and employee education and training contracts if:

(1) the service cannot be quantified and specified in terms of price alone; or

(2) negotiation is authorized by applicable law or rule, e. g., the Texas Mental Health and Mental Retardation Act, Texas Health and Safety Code, §533.034.

(c) Criteria for sole source contracting. The contracting entity solicits an offer from only one source only when the award of a contract is not feasible under sealed bids or RFP procedures. This method of procurement is always used for professional services contracts and contracts for foster or family home placements, and may be used for other types of contracts that meet one or more of the following criteria:

(1) noncompetitive negotiation is authorized or required by law or rule, e.g., Texas Government Code, Chapter 2254, Subchapter A prohibits contracting for professional services on a competitive bid basis;

(2) the contract is between governmental entities, e.g., a community center and a state facility;

(3) in an emergency, it is necessary to proceed without formal advertising because of the delay it causes;

(4) the material or service to be procured is available from only one source;

(5) no acceptable bids or offers, as defined in §401.373 of this title (relating to Definitions) are received; or

(6) the purchases are for highly perishable material or medical supplies; or for services for which the prices are established by law; or for experimental, developmental, or research work.

§401.377. Sealed Bid and Request for Proposal.

(a) The provisions of this section apply to both sealed bids and RFPs.

(1) Additional requirements relative to sealed bids are contained in §401. 378 of this title (relating to Additional Requirements for Sealed Bid).

(2) Additional requirements relative to RFPs are contained in §401. 379 of this title (relating to Additional Requirements for Request for Proposal).

(b) The contracting entity must formally advertise procurements by publishing a notice of the intent to contract when the contract is to be awarded by sealed bid or RFP.

(1) Staff must ensure that all solicitations (notice of intent to contract) contain the following minimum information:

(A) the service to be purchased;

(B) the geographic area to be served;

(C) funding limitations;

(D) method of payment;

(E) the beginning through the ending date of the contract;

(F) any limitations on who may submit an offer and any limitations in the services or products to be provided; and

(G) the place and method of obtaining a procurement package and the deadlines for obtaining and submitting it.

(2) Staff must attempt to reach as many potential contractors as possible.

(A) The contracting entity must publicize a solicitation in one or more of the following ways:

(i) advertisement in local newspapers;

(ii) publication in the *Texas Register* for contracting entity consultant contracts as required in §401.390 (relating to Consultant Contracts);

(iii) announcements in professional association newsletters.

(B) The contracting entity may additionally solicit offers through announcements by direct mail to all known potential contractors.

(C) The contracting entity shall document all transactions concerning contracts.

(c) Persons who have questions about a procurement package must request the information according to the instructions in the package. Oral answers to questions about a procurement package are nonbinding. They are not official until released in writing.

(d) Unless information is exempted by the Texas Open Records Act, i.e., information which, if released, would give advantage to competitors or bidders, all information in an offer is confidential only until:

(1) bid opening; or

(2) the contracting entity sends both written notification to the successful offeror(s) and written notification of nonselection to the unsuccessful offeror(s) concerning requests for proposal.

(e) The contracting entity has the right to reject all bids/offers submitted in response to a solicitation. The contracting entity may cancel a solicitation for any of the following reasons:

(1) funds to purchase goods or services are not available;

(2) the supplies or services are no longer required;

(3) the bids/offers received indicated that the services requested can be purchased by a different, less expensive method;

(4) all otherwise acceptable bids/offers received are for unreasonable prices;

(5) staff have reason to believe during the course of the procurement that the bids/offers were collusive or were submitted in bad faith;

(6) none of the bids/offers is acceptable;

(7) the specifications and costs given in the IFB/RFP were inadequate, ambiguous, or otherwise deficient; or

(8) the responsible contracting entity determines cancellation is in the best interest of the department and the persons to be served.

(f) The contracting entity has the right to issue addenda prior to the closing date for bids/offers provided all bidders/offerors are provided fair opportunity to respond. All such addenda become, upon issuance, an inseparable part of the specifications which must be met for the bid/offer to be considered.

(g) A solicitation suspended because of uncertainty in federal or state regulations, departmental policy or similar requirements may nevertheless be processed if the procurement is still in the best interest of the department and the persons to be served, and uncertainties about purchasability are amenably resolved.

(h) The contracting entity develops procurement packages based on a clear and accurate description of the services to be purchased. The contracting entity must include in the package all requirements the offeror must fulfill for the proposals to be evaluated. The contracting entity may not include in the service descriptions any requirement which unduly restricts competition by eliminating or limiting potential contractors' participation in the procurement process.

(i) When responding to a solicitation, offerors must respond to all items,

including those about financial ability to perform.

(j) Upon written request, an unsuccessful offeror is entitled to receive information from the contracting entity concerning why its offer was not accepted.

(k) Corrections, deletions, or additions to offers may be made prior to the closing date for solicitations or the date for opening of bids. No oral, telephone, telegraphic, fax, E-mail, or other electronically transmitted corrections, deletions, or additions will be accepted. The offeror must submit either a comprehensive form for this purpose, if provided, or substitute pages in the appropriate number of copies with a letter documenting the changes and the specific pages for substitution. The signatures on the form or the letter must be original and must be of equal authority as the signatures on the offer.

(l) For withdrawals, the offeror must submit a letter prior to the closing date. The signature on the letter must be original and must be of equal authority as the signature on the offer.

(m) The contracting entity must establish mechanisms beforehand for evaluating the offers including ways of determining responsible offerors, providing information for debriefings, and selecting successful offeror(s) for contract award(s).

(n) If a procurement package is to be considered by the contracting entity, the offeror must meet the contracting entity requirements, demonstrate the ability to perform successfully and responsibly under the terms of the prospective contract, and submit the completed offer according to the timeframes, procedures, and format stipulated by the contracting entity in the solicitation.

(o) The contracting entity may validate any information in a bid or offer by using outside sources or materials.

(1) If the contracting entity validates the information in one offer or application for a specific program site or project, it must apply the process without providing unfair advantage to any offer or range of offers for that site or project.

(2) If validation discloses that information provided by an offeror is deliberately false, the offer will be ineligible for consideration.

(p) When the purpose of the procurement is to obtain community-based residential or nonresidential services for persons with mental illness or mental retardation (direct services contracts), the determination of the lowest and best bid or offer must address the offerors' response to the procurement package, including:

(1) price;

(2) the ability of the offeror to perform the contract and to provide the required services;

(3) whether the offeror can perform the contract or provide the services within the period required, without delay or interference;

(4) the offeror's history of compliance with the laws relating to the offeror's business operations and the affected services and whether the offeror is currently in compliance;

(5) whether the offeror's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the offeror;

(7) the character, responsibility, integrity, reputation, and experience of the offeror;

(8) the quality of the facilities and equipment available to or proposed by the offeror;

(9) the ability of the offeror to provide continuity of services; and

(10) the ability of the offeror to meet all applicable written departmental policies, principles, and regulations.

(q) Each offeror whose offer meets the screening requirements but is not selected for a contract is entitled to timely notification in writing that the offer is no longer being considered.

§401.381. Fiscal Requirements.

(a) Every effort should be made to contract with contractors who will not require the department to provide start-up funds. As a last resort, contractors who are expanding into a new service area or are just beginning to provide services may, if allowed by program-specific policy and with appropriate TDMHMR approvals, budget and bill for start-up funds. Start-up funds shall be used for operating costs, such as hiring and training staff, purchasing supplies, utilities, maintenance and repairs, and recruiting eligible persons with mental illness or mental retardation.

(1) A contractor who requires start-up funds must receive required licensure, accreditation and/or certification to provide contracted services within the timeframe designated in the contract.

(2) The contractor shall not provide start-up funding using TDMHMR funds to subcontractors.

(3) The contractor will provide documentation to support the amount of start-up funds requested. Justification should be adequately documented to include a projected cash flow analysis.

(4) The repayment of the start-up funds must be completed within five years from the date of the payment of the start-up funds. The amount to be repaid is the principal amount with interest equal to the U.S. Treasury commercial paper rate on the date that the start-up funds payment is approved by the Texas Board of Mental Health and Mental Retardation. Payments will be withheld from the contractor's quarterly allocation and transferred to the department for a period of five years.

(b) Effective September 1, 1996, local authorities must use fund accounting.

(c) In accordance with Texas Health and Safety Code, §534.035, periodic program reviews and management audits will be conducted in sufficient quantity and type to provide reasonable assurance that adequate and appropriate fiscal controls exist in community centers.

(d) When the local authority provides or subcontracts programs for which there is a matching funds requirement, the local authority is accountable for certifying to the state authority on a quarterly basis that it has sufficient local revenues to meet the requirements for matching funds that exceed state-certified matching funds necessary to meet performance targets specified in the performance contract.

§401.384. Provisions for Performance Subcontracts and Designated Provider Contracts.

(a) Performance subcontracts and designated provider contracts must be consistent with the terms and provisions of the performance contract. Performance subcontracts and designated provider contracts must contain, but are not limited to, provisions stating:

(1) the beginning and ending date of the contract;

(2) the method of payment and maximum amount payable under the contract;

(3) that no person will be excluded from participation in, denied the benefits of, or discriminated against, in any program or activity funded by the contract on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation;

(4) that all records pertinent to the contract, including appropriate plans of service, will be retained by the provider for a period of five years;

(5) that all client-identifying information will be maintained by the provider as confidential, in accordance with applicable law and department rules;

(6) that the provider is not held in abeyance or barred from the award of a federal or state contract at the time of executing the contract;

(7) that any allegation of abuse, neglect, or exploitation of persons served under the contract will be reported in accordance with applicable law, including department rules, rules of the Texas Department of Protective and Regulatory Services, and rules of the Texas Department of Health;

(8) that AIDS/HIV workplace guidelines, similar to those adopted by the department, and AIDS/HIV confidentiality guidelines, consistent with state and federal law, will be adopted and implemented by the provider;

(9) that if, as a result of a change to a department rule, state or federal law, or community standard, the contractual obligations of the provider are materially changed or a significant financial burden is placed on the provider, the parties may renegotiate in good faith to amend the contract;

(10) that the provider will comply with relevant department rules and community standards, certifications, accreditations, and licenses, as specified in the contract;

(11) that services will be provided in accordance with the plans of service of persons served;

(12) that pursuant to Texas Health and Safety Code, §534.060, the state authority and/or local authority and their representatives, including independent financial auditors, shall have unrestricted access to all facilities, records, data, and other information under the control of the local authority or its subcontractors as necessary to enable the state authority and/or local authority to audit, monitor, and review all financial and programmatic activities and services associated with the contract;

(13) that the provider shall provide sufficient information to the contracting entity to enable the contracting entity to receive criminal history record information on the provider's applicants or employees, pursuant to the Texas Health and Safety Code, §533.007 and the Texas Government Code, §411.115;

(14) that if an applicant or employee of the provider has a criminal history relevant to his or her employment as described in §404.304 of this title (relating to Pre-employment Criminal History Clearance), then the provider will take appropriate action with respect to the applicant or employee, including removing the employee from direct contact with persons with a mental disability served by the provider; and

(15) that if a performance subcontract or designated provider contract is for the provision of residential services in a family home, the home will be used only to house disabled persons and may not be used as a restitution center, a home for substance abusers, or a halfway house. For purposes of this paragraph, "family home" and "disabled persons" are defined as in the Community Homes for Disabled Persons Location Act, Texas Human Resources Code, Chapter 123; and

(16) A provider contract, bid, or application for a provider contract must include a statement that the contractor is not more than 30 days delinquent in child support payments and eligible to receive payments from state funds as required by the Texas Family Code, §231.006.

(b) Contracts which require the provider to assume responsibility for the funds of persons with a mental disability must contain provisions which require the provider to have and abide by a written policy for protecting and accounting for such funds in accordance with generally accepted accounting principles and is subject to approval by the contracting entity.

§401.388. General Requirements for Provider Contractors.

(a) A contractor must comply with all applicable federal and state laws, rules, and regulations, and standards. Unless explicitly stated otherwise in this subchapter, a contractor will not be subject to the general personnel rules and policies which affect the activities of employees of the department with which it contracts.

(b) A contractor must allow the department unrestricted access to all facilities, service providers, persons served, records, data, and other information under the control of the contractor as necessary to enable the department to audit, monitor, and review all financial and programmatic activities and services associated with the contract.

(c) A contractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the department, including plans of service, for a period of five years unless otherwise specified by the department in the provider contract.

(d) For the purpose of confidentiality of records identifying persons served, contractors are subject to the requirements of Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(e) A contractor must disclose to the department if it is currently held in abeyance from or barred from the award of a federal or state contract. A contractor currently held in abeyance from or barred from the award of a federal or state contract may not contract or subcontract with the department.

(f) The department may refuse to enter into a provider contract or may terminate a provider contract if it determines that the contractor did not fully and accurately disclose information concerning persons convicted of crimes. If an applicant or employee of the provider has a criminal history relevant to his or her employment as described in §404.304 of this title (relating to Pre-employment Criminal History Clearance), then the contractor will take appropriate action with respect to the applicant or employee, including but not limited to removing the employee from direct contact with persons with a mental disability served by the contractor;

(g) The contractor operating a Medicaid-contracted facility shall comply with federal regulations relative to supplementation for recipient-residents, as contained in the Social Security Act, §1320a-1 through a-9; Title 42 CFR 447.15; Public Law 95-142 (Medicare-Medicaid Antifraud and Abuse Amendments); and TDHS-TDMHMR-TDH joint agency policy interpretations.

(h) Before a corporation's offer or provider contract renewal can be considered, the corporation must give the department franchise tax certification. For-profit corporations subject to Texas' franchise tax must provide certification that their payments are current. All other corporations must certify that they are not subject to the franchise tax.

(1) If the contractor is or becomes delinquent in the payment of its Texas franchise tax, payment to the contractor may be withheld until such delinquency is remedied.

(2) Making a false certification is a material breach of provider contract and grounds for provider contract termination.

(i) A contractor must report allegations of abuse, neglect, and exploitation in compliance with federal and state law and departmental rules, as applicable, including but not limited to, Chapter 404, Subchapter A (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities).

(j) A contractor must report to the department any allegation that a professional licensed or certified by the State of Texas and employed by the contractor has committed an action that constitutes a grounds for the denial or revocation of the certification or licensure, e.g., physicians, nurses, psychologists, etc., and the department must immediately submit a copy of the report to the appropriate state board.

(k) A provider contract, bid, or application for a provider contract must include a statement that the contractor is not more than 30 days delinquent in child support payments and eligible to receive payments from state funds as required by the Texas Family Code, §231.006.

§401.390. Consultant Contracts.

(a) The term of a consultant contract may not exceed two years without prior approval through the Office of Contracts Support.

(b) Facilities must submit the following contracts and contract amendments to the Office of Contracts Support to be approved by the appropriate Central Office authorities prior to execution:

(1) contracts or contract amendments through which the department will pay the consultant more than $10,000 in a fiscal year;

(2) contracts or contract amendments in which the consultant will be paid more than $65/hour; or

(3) contracts or contract amendments in which the consultant will be paid more than $400 in a 24-hour period.

(c) Central Office staff must submit all consultant contracts and amendments to the Office of Contracts Support to be approved by appropriate Central Office authorities prior to execution.

(d) The Office of Contracts Support must coordinate the *Texas Register* publication of the solicitation, the finding of fact requirements, and the award of the contract for all department contracts and contract amendments in which the consultant will be paid more than $10,000 in a fiscal year. Existing contracts for more than $10,000 may be extended or otherwise amended without advertising if both the department and the contractor agree and the department does not incur additional costs from the contractor.

(e) Verification that contracted services were provided as required must be documented in the contract file. For services provided on an hourly or other unit basis, each consultant and a responsible staff member who can certify to the presence and the duties performed by the consultant will record the information required on the "Contract Log for Consultant Services, Professional Services, Direct Care Services," which is referenced in §401.397 of this title (relating to Exhibits) as Exhibit B. The consultant and responsible staff member must sign the form, which becomes a part of the contract file.

§401.391. Professional Services Contracts.

(a) The term of a professional services contract may not exceed two years without prior approval through the Office of Contracts Support.

(b) Verification that contracted services were provided as required must be documented in the contract file. For services to persons with mental illness or mental retardation provided on an hourly or other unit basis, each contractor and a responsible staff member who can certify to the presence and the duties performed by the contractor will record the information required on a "Contract Log for Consultant Services, Professional Services, Direct Care Services," which is referenced in §401.397 of this title (relating to Exhibits) as Exhibit B.

(1) The contractor and responsible staff member must sign the form, which becomes a part of the contract file.

(2) For contractors who perform services involving large numbers of persons with mental illness or mental retardation, the file and file location of individual case numbers of persons seen may be referenced rather than listed in full. If case numbers are referenced to another file, that file must be readily accessible.

(c) Contracts for professional services may not be procured through the use of bids.

§401.392. Employee Education and Training Contracts.

(a) The term of an employee education and training contract may not exceed two years without prior approval through the Office of Contracts Support.

(b) Employee education and training contracts may be procured using a method other than sealed bid.

§401.393. Community-based Residential and Nonresidential Services Contracts.

(a) The method of procurement of all service contracts must be in compliance with §401.376 of this title (relating to Methods of Procurement).

(1) The term of a residential service contract shall not exceed five years. Department contracts that exceed five years require approval through the Office of Contracts Support.

(2) The term of a nonresidential service contract may not exceed two years without prior approval through the Office of Contracts Support.

(b) The department must require the contractor to:

(1) comply with the person's treatment plan, including ensuring consultants are knowledgeable of the plan at the time of placement and that staff providing direct care have received training necessary to implement the plan in accordance with the terms of the contract; and

(2) comply with specified rules and standards governing services to persons with mental illness or mental retardation.

(c) Contractors for residential services must sign an acknowledgement of awareness of applicable federal and state rules, regulations, laws, and executive orders that govern the provision of services to persons with mental illness or mental retardation using the form referenced in §401.397 of this title (relating to Exhibits) as Exhibit C.

(d) Contractors must provide insurance, including liability coverage, for the residence or other structure and its contents and any vehicles used to transport persons with mental illness or mental retardation.

(e) Contractors providing residential services will assume fiduciary responsibility for trust funds of persons served, unless otherwise specified in the contract requirement. Prior to executing a residential contract, the contractor must submit for Central Office approval a written policy and procedure to protect and account for trust funds according to generally accepted accounting principles and applicable laws, rules, and standards, including, as applicable, §405.625 of this title (relating to Rights of Clients Receiving Residential Mental Retardation Services) and §407.2 of this title (relating to Trust Funds and Personal Effects). Any amendments to the trust fund policy and procedure must be submitted to Central Office for approval prior to implementation.

(f) Quality care must be maintained for all persons served during the transition from one provider to another.

§401.396. Abeyance and Removal of Current or Potential Contractual Rights.

(a) Abeyance is a pending status. It may be imposed immediately, as appropriate, by the department upon a contractor's right to conduct a contract or a potential contractor's right to make an offer or bid for a department contract until an investigation, hearing or trial result is concluded and the department can make a determination about the contractor's or potential contractor's right to contract or subcontract.

(1) The department may withhold payments to a contractor during the abeyance.

(2) If the final determination is favorable to the contractor, the department must, if applicable,

(A) pay the withheld payments for any services that were provided during the abeyance, and

(B) resume contract payments.

(b) Removal of contractual rights by the department is the abrogation of rights to conduct a contract or to make an offer or bid for a department contract. The removal is for a reasonable and specified time and commensurate with the seriousness of the cause for removing contractual rights. Removal of rights may, but does not have to, be limited to those components of the contractor or potential contractor involved in the conduct leading to removal of rights.

(c) The department is authorized to remove contractual rights from an organization or individual for causes including, but not limited to, the following:

(1) pleading guilty or nolo contendere, receiving a deferred adjudication, or being found guilty in a court judgment for a violation relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) the Organized Crime Control Act of 1970, embezzlement, theft, forgery, bribery, falsification or destruction of records, other forms of fraud, receipt of stolen property, moral turpitude, or any other offense indicating a lack of business integrity or honesty that seriously and directly affects the question of responsibility as a contractor with the department;

(C) dangerous drugs, controlled substances, or other drug-related offense;

(D) federal antitrust statutes arising from the submission of bids or proposals.

(2) violating contract provisions including:

(A) failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the contract, including but not limited to the following:

(i) failing to abide by applicable federal and state statutes, such as those regarding handicapped persons and civil rights;

(ii) failing to meet standards that are required by state or federal law, department rule, or department policy concerning contractors;

(iii) failing to execute amendments, if required in the contract;

(iv) billing for services or merchandise not provided;

(v) submitting cost reports containing costs not associated with and/or not covered by the contract;

(vi) submitting a false statement or misrepresentation which, if used, may increase individual or statewide rates or fees;

(vii) charging fees to persons served contrary to TDMHMR rules or policy;

(viii) failing to notify and reimburse the department for services the department paid for when the contractor received reimbursement from a liable third party;

(ix) failing to disclose or make available, upon demand, to the department or representatives (including appropriate federal and state agencies and their representatives, including independent financial auditors) any records the contractor is required to maintain;

(x) failing to provide and maintain services within standards required by statute, regulation, or contract;

(xi) violating the Texas Mental Health and Mental Retardation Act (Texas Health and Safety Code, §§531.001, et seq) provisions applicable to the contract or any rule or regulation issued under the act;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts if that failure or unsatisfactory performance has occurred within five years or two contracting periods (preceding the determination to remove contractual rights) for long-term contracts, with failure to perform or unsatisfactory performance in evidence at time of determination to remove contractual rights. Failure to perform and unsatisfactory performance includes, but is not limited to, the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from the department; and

(ii) failing to repay or make and follow through with arrangements satisfactory to the department to repay identified overpayment or other erroneous payments;

(C) rebating or accepting a fee or part of a fee in violation of contractual provisions.

(3) submitting an offer or bid that contains a false statement or misrepresentation or omits pertinent facts or documents material to the procurement;

(4) any other cause affecting the contractor's or potential contractor's responsibility of such a serious nature that the commissioner of the department or designee determines it to warrant removal of contractual rights. Grounds include, but are not limited to, engaging in any abusive or neglectful practice that results in or could result in death or injury to persons served by the contractor;

(5) removal of contractual rights by some other state or federal agency.

(d) The department may place a contractor's or potential contractor's contractual rights in abeyance whenever the department finds that there is a reasonable basis to believe that grounds for removal of contractual rights exist. In addition, abeyance may be imposed on a potential contractor if he has an outstanding indictment for an offense that is grounds for removal of contractual rights. The following conditions for removal of contractual rights apply:

(1) Violations of contract provisions do not necessarily cause abeyance and/or removal of contractual rights. Depending upon circumstances, the department's options range from a notice to the contractor explaining the violation or cause and requiring corrective actions to the removal of contractual rights. Causes in subsection (c)(1) of this section are established by proof of pleading guilty or nolo contendere, receiving a deferred adjudication of guilt, or being a defendant in a court judgment of guilt for violations relating to charges enumerated in subsection (c)(1) of this section. If an appeal results in a reversal, contractual rights must be restored upon written request, unless another cause for their removal exists.

(2) Removal of contractual rights because another state or federal agency has removed contractual rights is based entirely upon the initial agency's official notice that the rights have been removed.

(e) In addition to the information required in the notice of adverse action, the required content for notices of abeyance and removal of contractual rights includes:

(1) the grounds for the actions. If an indictment filed by the department is underway, the nature of the irregularities is described in general terms without disclosing evidences;

(2) the length of the abeyance or removal of contractual rights;

(3) a statement that responses to RFPs, IFBs, and other proposals will not be accepted or approved; and

(4) a statement of whether the abeyance or removal of contractual rights is in effect throughout the department and for all local authorities.

(f) The department may impose additional program-specific requirements if the requirements do not conflict with the abeyance and removal of contractual rights requirements in this section.

§401.398. References. The following laws and rules are referenced in this subchapter:

(1) Chapter 403, Subchapter K of this title, relating to Client-Identifying Information;

(2) Chapter 404, Subchapter A of this title, relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities;

(3) Chapter 404, Subchapter H of this title, relating to Criminal History Clearances of Applicants for Employment;

(4) Chapter 405, Subchapter Y of this title, relating to Client Rights-Mental Retardation Services;

(5) Chapter 407 of this title, relating to Financial Services;

(6) "Guidelines for Annual Fiscal Audits of Community MHMR Centers," most recent edition, Texas Department of Mental Health and Mental Retardation;

(7) Local Government Code, §171.002;

(8) Organized Crime Control Act of 1970;

(9) Public Law 95-142;

(10) Social Security Act, §§1320a-1 through a-9;

(11) Title 42 CFR 447.15;

(12) Texas Civil Statutes, Article 601b;

(13) Texas Family Code, §231.006;

(14) Uniform Grant and Contract Management Act of 1981, Texas Government Code, Chapter 783;

(15) Texas Government Code, Subchapter A, §§2254.001 et seq; Subchapter B, §§2254.021 et seq; §411.115; and Chapter 572, Subchapter C;

(16) Texas Health and Safety Code, Title 7, Chapters 531, 532, 533, 534, 535, and 551;

(17) Texas Human Resources Code, Chapter 123;

(18) Texas Open Records Act;

(19) TDMHMR Contracts Manual;

(20) TDMHMR Purchasing and Supply Operating Instruction; and

(21) Uniform Grant and Contract Management Standards for State Agencies, Governor's Office of Budget and Planning.

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 December 4, 1995.

TRD-9515607 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 25, 1995

Proposal publication date: September 22, 1995

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

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Chapter 402. Client Assignment and Continuity of Services

Subchapter C. Transfer to Vernon Maximum Security Unit

• 25 TAC §§402.71-402.86

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§402.71-402.86, relating to Transfer to Vernon Maximum Security Unit, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5997). The repeal of the sections is adopted contemporaneously with the adoption of the new sections that would replace them, §§402.71-402.83, relating to Determination of Manifest Dangerousness.

The new sections update procedures to be followed in conducting hearings to determine whether or not an individual is manifestly dangerous. The new sections reflect enhanced emphasis on continuity of care for the individual found to be manifestly dangerous, providing for identifying factors which cause an individual to act in a dangerous way, focusing treatment on those factors, and ensuring that treatment is continued upon the individual's transfer to a less secure facility. The new sections update membership requirements for both the TDMHMR Review Board and the facility review boards. In addition, the new sections include a number of new provisions ensuring due process for the individual being reviewed.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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 December 4, 1995.

TRD-9515600 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 15, 1996

Proposal publication date: August 8, 1995

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

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• 25 TAC §§402.71-402.83

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§402.71-402.83, concerning determination of manifest dangerousness. Sections 402.73, 402.74, 402.76, 402.77, and 402.81 are adopted with changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5998). Sections 402.71, 402.72, 402.75, 402.78-402.80, 402.82, and 402.83 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the adoption of the repeal of the sections that they replace, §§402.71-402.86, concerning Transfer to Vernon Maximum Security Unit.

The new sections update procedures to be followed in conducting hearings to determine whether or not an individual is manifestly dangerous. The new sections reflect enhanced emphasis on continuity of care for the individual found to be manifestly dangerous, providing for identifying factors which cause an individual to act in a dangerous way, focusing treatment on those factors, and ensuring that treatment is continued upon the individual's transfer to a less secure facility. The new sections update membership requirements for both the TDMHMR Review Board and the facility review boards. In addition, the new sections include a number of new provisions ensuring due process for the individual being reviewed.

The definition of independent evaluator is revised in §402.73 to address situations in which an individual is unable to obtain an independent evaluation at his or her expense. The definition of manifestly dangerous is also revised to reflect the need for appropriate treatment targeted to the individual's dangerousness.

Section 402.74(a)(1)(iii) is revised to delete a requirement that a representative of the single portal authority to which the individual being reviewed has been committed be included on the facility review board. Section 402.74(a)(2) is revised to clarify that the facil-

ity CEO must appoint at least two alternates to the facility review board.

Section 402.76(a) is revised to note that, whenever possible, the facility CEO or designee should consult with staff at Vernon State Hospital to discuss issues concerning the appropriateness of transfer to Vernon State Hospital. Section 402.76(b) is revised to require notice of a manifest dangerousness review hearing at least two working days before the hearing and to clarify the parties to whom such notice is sent. Section 402.76(c) is revised to require that background information must be provided to the individual's representative. Section 402.76(c)(1) is revised to clarify that the incident described should be limited to recent incidents. Section 402.76(d) is revised to reflect the correct title of the referenced section. Section 402.76(d)(2) is revised to require that the chair of the review board be responsible for ensuring adequate staff are present to maintain a safe environment during the review board hearing. New language is added to §402.76(h) to require that a copy of the facility review board's written report of the determination be sent to the individual and his or her guardian and/or representative. Section 402.76(j) is revised to clarify that proceedings should be recorded or otherwise transcribed.

Section 402.77(d) is revised to clarify parties to whom notice of a TDMHMR Dangerousness Review Board hearing is sent. Section 402.77(h)(2) is revised to clarify that a copy of the dissent is also sent to the commissioner. Section 402.77(j) is revised to outline procedures for transferring an individual to a less secure mental health facility. Section 402.77(k) is revised to clarify that proceedings should be recorded or otherwise transcribed.

Section 402.79(c) is revised to clarify that the review board will swear or affirm any witnesses it calls.

Section 402.81 is revised to refer to review board members and alternates.

Section 402.82 is revised to add community mental health and mental retardation centers (in their role as single portal authorities) to the subchapter's distribution.

Advocacy, Inc., submitted public comment with concurrence from the Texas Mental Health Consumers. All commenters offered recommendations for changes.

The commenters stated that the TDMHMR system focused on containment rather than treatment. The commenters recommended that the system be structured in such a way that it proactively involves forensics experts to assist in identifying individuals who may become manifestly dangerous and to provide each facility with training on the interventions that assist the individual in achieving and maintaining internal control rather than being subjected to external controls. The department responds that the revised subchapter represents a significant step toward the goals identified by the commenter.

Concerning §402.73, the commenters recommended that the definition of manifestly dangerous be revised to reflect the same language found in §402. 76(f)(1). The department agrees, and the language has been revised.

With regard to §402.74(a), the commenters suggested that the staff of TDMHMR facilities should routinely consult with clinical staff at Vernon (or experts outside the state). The commenters suggested that staff of Vernon should be involved in the determination made by the facility review board. The department responds that consultation with staff at Vernon is not precluded.

Concerning §402.74(a)(1)(A), the commenters recommended adding an individual who has received services in an inpatient setting to the facility review board's membership, at least in a non-voting capacity. The commenter suggested that the additional slot would provide an educational element on issues concerning environmental factors and interactions between staff and clients that create an atmosphere where individuals are incited or provoked into behaving inappropriately. The department responds that such an educational element is more appropriate to training and orientation than the objective review of facts that the review board hearing represents. To this end, the department would welcome recommendations and assistance from consumers and advocates interested in helping to develop a training curricula that addresses this issue.

With regard to §402.74(a)(6), the commenters noted that although there is a requirement that each board member be evaluated annually, no criteria is cited. The department agrees that there are no specific criteria outlined and concedes the difficulty of developing criteria. The department would welcome commenters' suggestions.

Concerning §402.74(c), the commenters highlighted the need for training for staff members and members of the review boards to assist them in determining which individuals truly meet the definition of manifest dangerousness. The commenters expressed concern that some facilities will continue to have a knee-jerk response to unacceptable behaviors and use Vernon as a dumping ground for undesirable individuals who otherwise might be treated in the facility closest to their community and natural support systems.

The department responds that the process of improving staff training is always ongoing and will continue to be reviewed to enhance and refine the quality of staff and the treatment provided by staff. The new subchapter represents a significant step toward improving the process related to making determinations of manifest dangerousness. In addition, the added emphasis on due process for the individual being reviewed indicates the department's interest in ensuring that determinations of manifest dangerousness are made in an appropriate manner.

Regarding §402.74(c)(2), the commenters suggested that training on how to perform risk factor assessments was not enough; the commenters suggested training should also focus on what programs and techniques are utilized at maximum security facilities to modify behaviors. The department responds that an orientation to treatment provided at Vernon State Hospitals is a part of the training process.

The commenters also recommended that the facility review board should be empowered to make treatment recommendations. The department responds that the facility review boards are modeled on the TDMHMR Dangerousness Review Board, which is expressly prohibited from making treatment recommendations by Article 46.02, Section 8, Texas Code of Criminal Procedure.

With regard to §402.76(b), the commenters recommended that the language be revised to allow at least two working days notice. The department agrees, and the language has been revised.

The commenters also suggested that the individual be able to request and access an extension to facilitate the involvement of a chosen representative if one is available but unable to meet within the two day working day timeframe. The department responds that safety interests preclude such an extension. If an individual is unable to obtain outside representation, the department will provide a representative for assistance during the hearing.

Concerning §402.76(d)(1), the commenters noted that the rule and process should differentiate between the assessment needed to make appropriate treatment recommendations and the assessment for the determination of manifest dangerousness in order to determine the least restrictive environment in which treatment should occur. The department responds that the review board does not make treatment recommendations; rather, it considers the appropriateness of the treatment currently being provided and makes a determination whether the individual meets the definition of manifestly dangerous despite the appropriate treatment.

The commenters suggested that although the rules mandate consideration of precipitating factors, insufficient weight is given to the behaviors of staff which incite or provoke individuals. The commenters further suggested that in the event an incident is determined to have occurred as a result of mishandling or provocation by staff, then a transfer should be considered punitive and inappropriate. The department agrees that mishandling or provocation of a situation by staff should not result in a determination of manifest dangerousness. As previously noted, articulating this information and helping review board members to understand these issues is part of the training and orientation that each review board member is required to complete.

Also concerning §402.76(d)(1), the commenters suggested that attachment 3, "Directions for Compiling a Comprehensive Individual Assessment of Risk for the Occurrence of Manifestly Dangerous Behaviors" be used for both review hearings. The department responds that Attachment 3 includes information specific to the needs of the TDMHMR Dangerousness Review Board which is not appropriate to the function of the facility review board (e.g., a section related to transfer of an individual to a less restrictive setting). Instead, facility review boards use an abbreviated version of these directions as outlined in §402.76(d)(1)(B).

With regard to §402.76(g), the commenters recommended that a copy of the review board's written determination should be sent to the individual and any other parties who originally received notice of the hearing. The commenters noted that this information would be useful in the individual's decision about an appeal. The department agrees that a copy of the report should be provided, but disagrees with providing it to everyone who received notice of the hearing. Instead, the department limits its distribution to the individual and his or her legal guardian and/or representative, since these are the individuals who would have attended the hearing.

Concerning §402.77(j), the commenters wondered what recourse would be provided to an individual whose transfer did not occur within 30 days. The department responds that failure to transfer within 30 days would be a violation of a department rule, which could be reported to the facility superintendent and Central Office in the same manner a violation of any other department rule would be reported.

Regarding §402.77(j)(2), the commenters wondered about the criteria used to determine that upon release from Vernon, the original facility is unsuitable for the person's continued treatment needs. The department responds that the issue is county of residence. In some situations, an individual who was committed to Vernon under the Code of Criminal Procedure might face harassment or even hostility from the community for acts which resulted in the commitment, despite having received appropriate treatment. In such a situation, it would be more appropriate therapeutically to move the individual to another county of residence.

Concerning the same section, the commenters noted that it is not clear that the individual ultimately retains the right to choose their county of residence and suggested that it is questionable that the individual could exercise this choice. The commenters noted that although the language of the rule indicates that the decision must be made in agreement with the person served, the environment in which such discussion occurs is coercive. The commenters further noted that the individual will perceive that he/she has no choice but to accept the recommendation if he/she wants to be released, and suggested that some assurances should be in place to protect the individual's right to choose.

The department agrees that a choice of agreeing to a new county of residence or remaining at Vernon State Hospital (although no longer determined to be manifestly dangerous) could potentially lead to a coercive situation. However, this was not the department's intent in this section. If the individual does not agree to a new county of residence, the individual would simply be transferred back to the facility (or community placement) in the individual's existing county of residence. Remaining at Vernon State Hospital is not the outcome of a decision to refuse a new county of residence. Language has been revised to clarify this point.

With regard to §402.78(a)(1)(B), the commenters recommended clarifying whose responsibility it is to initiate contact concerning the characteristics and treatment needs of the individual. The department responds that each facility works with staff at Vernon State Hospital to determine the most effective, efficient means of arranging this important information exchange. Since the arrangements vary from facility to facility, the department elects to refrain from prescribing a particular method.

Concerning §402.79(a), the commenters recommended that the client rights officer should routinely inform the individual of his/her rights with regard to the hearings and offer to act as representative if no one is available. The department responds that the individual's rights relating to the hearing are outlined in the notice that is provided to the individual and several other parties at least two working days before the hearing. The section already provides for representation if the individual does not have a representative. The individual providing the representation will usually be the rights officer, but the department will not prescribe this so that facilities can designate the representative best able to represent the individual's interest.

Regarding §402.80(a), the commenters objected to the language, "may have affected the outcome of the hearing." The commenters noted that it is arguable that any procedural hearing may have affected the outcome of the hearing. The commenters note that in a court of law, a decision regarding the impact of a procedural error is made by an impartial judge and is appealable, but notes that this is not the case in this system. The department responds that since the superintendent was not a part of the review board, he or she is able to make an impartial decision concerning whether or not the error may have affected the outcome of the hearing. If the individual is still not satisfied and believes the decision may have affected the substance of the review, then an appeal to the TDMHMR Dangerousness Review Board is permitted.

Concerning the same section, the commenters also noted that it is not clear from this section under what circumstances the facility review board is reconvened to hold a new hearing as opposed to using the TDMHMR Dangerousness Review Board. The commenters further note that in the case of a rehearing, it should routinely be held before a new review board. The department responds that the facility review board is reconvened when a procedural error has been found; the TDMHMR Dangerousness Review Board reviews substantive issues. If the issue is procedural, the department believes it is appropriate that the same review board consider the issue. If the individual and/or representative are dissatisfied with the hearing and have a substantive issue, however, the department has addressed the need for a new review board by allowing the appeal to be considered by the TDMHMR Dangerousness Review Board. No change to this section is necessary.

With regard to §402.80(b)(3), the commenters noted that since many individuals are unable to afford the use of an independent evaluator, a more acceptable option would be an appeal by the individual to the clinical director at Vernon. The department responds that the former rule did not include the option of an independent evaluator. The addition of this section was in accordance with the new subchapter's general theme to take steps to ensure that due process be afforded all individuals receiving TDMHMR services. The use of an independent evaluator is in accordance with department procedure as outlined in §404.154(11) of Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).

In response to the commenters concern about individuals being unable to afford an independent evaluator, the department has revised the definition of independent evaluator in this subchapter to include the director, TDMHMR State Operations in the event the individual is not able to obtain an independent evaluation at his/her expense. The director, TDMHMR State Operations will obtain clinical consultation before rendering a decision.

The new sections are adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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

Commissioner–The commissioner of the Texas Department of Mental Health and Mental Retardation, or his or her designee.

Department–The Texas Department of Mental Health and Mental Retardation.

Facility chief executive officer (CEO)–The superintendent or director of a state hospital or state center or his or her designee.

Facility review board–A group of mental health professionals at each facility with responsibility for reviewing individuals believed to be manifestly dangerous for possible transfer to Vernon State Hospital.

Independent evaluator–An independent physician who conducts an evaluation or examination of an individual at the individual's own expense. If the individual is unable to obtain an independent evaluation at his or her own expense, the individual may request that the director, TDMHMR State Operations serve as the independent evaluator. The individual's request must be in writing to the director, TDMHMR State Operations and must include the individual's name and the reason for the request. The director, TDMHMR State Operations will obtain clinical consultation when conducting an evaluation.

Individual–A person involuntarily committed to a mental health facility who is being reviewed, scheduled to be reviewed, or has been reviewed for manifest dangerousness.

Manifestly dangerous–The term used to describe an individual who despite having appropriate treatment, including treatment targeted to the individual's dan-

gerousness, remains likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety.

Mental health facility-State hospitals and state centers providing mental health services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, with the exception of Waco Center for Youth.

Mental health professional-Professional staff attending to the needs of persons receiving mental health services who have provided direct contact services to individuals within the last five years and who have at least one year experience in mental health. Categories of mental health professionals include:

(A) licensed physicians;

(B) licensed psychologists and licensed psychological associates;

(C) licensed master social workers with orders of recognition as advanced clinical practitioners; and

(D) master's level registered nurses. Psychiatrist-A physician licensed to practice medicine in Texas who has successfully completed an approved psychiatric residency.

Representative-A lawyer or another person representing the individual at his or her request.

TDMHMR Dangerousness Review Board-The board established to review individuals served at Vernon State Hospital to determine whether they are manifestly dangerous or can be transferred to a less secure mental health facility.

§402.74. Review Boards.

(a) Facility review board. A facility review board will be appointed at each mental health facility to review individuals believed to be manifestly dangerous for possible transfer to Vernon State Hospital.

(1) Membership. Members of facility review boards will be appointed by the commissioner, who will announce appointments for each facility in the form of a letter to the person appointed, the facility CEO, and the respective facility review board chair.

(A) Each board will include five mental health professionals, with the following requirements:

(i) at least one member must be a psychiatrist, preferably with expertise in forensic psychiatry; and

(ii) at least two members must be currently engaged in direct care of persons with mental illness.

(B) The commissioner will designate one member to serve as chair.

(i) If the chair is unable to serve on the facility review board for any reason, he or she will designate another member of the board to act as chair.

(ii) If the chair is unable to make such an appointment, the commissioner will make the appointment.

(2) Alternates. The commissioner will appoint at least two mental health professionals at each facility as alternates, who will serve at the request of the facility review board chair if a facility review board member is not able to attend a meeting. To ensure that a psychiatrist is always part of the facility review board, at least one of the alternates must be a psychiatrist.

(3) Terms. Members and alternates are appointed for a two-year term and may be reappointed. If a vacancy occurs, the commissioner will appoint another mental health professional to serve the remainder of the vacating member's term.

(4) Conflict-of-interest. A member of the facility review board is disqualified from participating in a determination if the member has provided mental health services to the individual within one year of the review, has personal or professional involvement with the behavior or incident which precipitated the review, or has been a member of the individual's treatment team within the current admission. The chair must appoint an alternate to serve during that hearing.

(5) Quorum. Facility review board members may occasionally need to remove themselves from a hearing in the event of an emergency or if a member determines that a conflict-of-interest exists after a hearing has begun. In no case may action be taken or a determination made by a facility review board unless at least four members are participating and voting.

(6) Evaluation of members. The commissioner will evaluate each facility review board member's performance on an annual basis.

(7) Legal assistance. The attorney assigned to the facility from the department's Legal Services Division will provide legal assistance to the review board as needed.

(b) TDMHMR Dangerousness Review Board. The TDMHMR Dangerousness Review Board reviews individuals served at Vernon State Hospital to determine whether or not they are manifestly dangerous or must be transferred to a less secure mental health facility. Reviews are conducted in accordance with a statutorily mandated schedule.

(1) Membership. The TDMHMR Dangerousness Review Board membership consists of five mental health professionals.

(A) At least one member must be a psychiatrist with experience in forensic psychiatry.

(B) At least two members must be currently engaged in direct care of persons with mental illness.

(C) At least one member must have experience evaluating and treating persons with mental retardation.

(2) Member appointments or contracts. The commissioner will appoint or contract with a sufficient number of individuals to comprise a board which is able to meet the statutorily mandated review schedules. Contracts must include provisions which:

(A) ensure that reviews are conducted in accordance with this subchapter;

(B) allow sufficient time to meet the review schedules; and

(C) specify a mechanism for evaluating each board member's performance on an annual basis.

(3) Terms. Board member appointments or contracts will be for two-year terms. If vacancies occur, the commissioner will replace members as needed to maintain a sufficient number of qualified members necessary to accommodate the statutorily mandated review schedule.

(4) Chair. The commissioner will designate the chair of the board, who is responsible for ensuring that appropriate members and alternates to meet membership requirements outlined in paragraph (1) of this subsection are participating in each meeting.

(A) If the chair is unable to serve on the TDMHMR Dangerousness Review Board for any reason, he or she will designate another member of the board to act as chair.

(B) If the chair is unable to make such an appointment, then the commissioner will make the appointment.

(5) Conflict-of-interest. A member of the TDMHMR Dangerousness Review Board is disqualified from participating in a determination if the board

member has provided mental health services to the individual being reviewed, has personal or professional involvement with the behavior or incident which precipitated the transfer of the individual to the Maximum Security Unit at Vernon State Hospital, or has been a member of the individual's treatment team within the current admission.

(6) Quorum. TDMHMR Dangerousness Review Board members may occasionally need to remove themselves from a hearing in the event of an emergency or if a member determines that a conflict-of-interest exists after a hearing has begun. In no case may action be taken or a determination made by the Review Board unless at least four members are participating and voting.

(7) Legal assistance. An attorney assigned from the department's Legal Services Division will provide legal assistance to the board as needed.

(c) Orientation and training. The department will provide a uniform orientation for new members and alternates of all review boards and annual relevant training for all members and alternates.

(1) Training will utilize current professional literature and knowledge and the current Clinical Guidelines for Assessing Individual Risk Factors (Attachment 1), which is maintained by the CEO and clinical director of Vernon State Hospital and periodically updated with relevant clinical information for risk assessment.

(2) Completion of the orientation and annual training is required for continued membership.

§402.76. Procedures for the Determination of Manifest Dangerousness by Facility Review Boards.

(a) If the facility CEO has reason to believe that an individual is manifestly dangerous and in need of transfer to Vernon State Hospital, the facility CEO may request that the facility review board convene to consider the question. The facility CEO or designee will, whenever possible, consult with staff at Vernon State Hospital to consider issues related to the appropriateness of transfer, including treatment attempted at the facility and treatment available at Vernon State Hospital. If consultation is not possible staff will document the reasons why in the individual's record.

(b) At least two working days before the facility review board meets, the chair must provide notice of a manifest dangerousness review hearing using the "Facility Review Board Notice of Hearing" form (Attachment 2), which is herein adopted by reference, copies of which are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. A copy of the form must be filed in the permanent clinical record of the individual. Notice must be sent to:

(1) the individual and/or legal guardian, if any;

(2) the individual's representative, if any; and

(3) with the consent of the individual or his or her legal guardian, the individual's parents, spouse, or other appropriate person.

(c) At least one day before the facility review board meets, board members and the individual's representative must receive any background information pertinent to the case to be reviewed, including:

(1) a full description of the recent alleged incident or incidents believed to indicate manifest dangerousness, including police and/or witness reports, as appropriate and available;

(2) a statement from the individual and his or her representative concerning the alleged incident or incidents believed to indicate manifest dangerousness, unless the individual or his or her representative does not wish to submit a statement; and

(3) information relating to the individual's treatment.

(d) During the hearing, the facility review board must:

(1) consider all pertinent and relevant information regarding the individual, including:

(A) the information outlined in subsection (c) of this section; and

(B) a complete clinical history and assessments which:

(i) identify factors that precipitate or contribute to dangerousness utilizing the current Clinical Guidelines for Assessing Individual Risk Factors, as described in §402.74 of this title (relating to Review Boards);

(ii) review past and current treatment efforts, including all relevant social and legal history, and treatment plan changes that targeted the dangerousness; and

(iii) evaluate the individual's response to treatment efforts to determine whether the individual is currently manifestly dangerous; and

(2) conduct a personal interview of the individual, unless he or she refuses to be interviewed. The chair of the review board will ensure that adequate staff are present to maintain a safe environment.

(e) Only facility review board members and the individual and his or her guardian and/or representative may participate in the hearing or interview, except that at the facility review board's request and with the consent of the individual or his or her legal guardian, professional trainees may attend the hearing or interview as part of their educational training. This does not preclude the review board from requesting that persons attend part of the proceedings to provide testimony or technical assistance.

(f) Only facility review board members may participate in its final deliberations.

(1) If during deliberations the review board determines that it requires additional information, it may cease deliberating and reopen the hearing.

(2) The individual and his or her guardian and/or representative must be allowed to attend and participate in the reopened hearing.

(g) An individual may only be transferred to the Maximum Security Unit of Vernon State Hospital if the facility review board makes a determination that the individual's current behavior is manifestly dangerous. Such a determination may only be made if the evidence indicates that:

(1) the individual is receiving appropriate treatment, including treatment targeted to addressing the individual's dangerousness; and

(2) the individual requires a maximum security environment to continue treatment and ensure public safety.

(h) The facility review board's written report of the determination will be submitted to the facility CEO and a copy filed in the permanent clinical record of the individual. A copy will also be sent to the individual and his/her guardian and/or representative.

(1) A determination that an individual is manifestly dangerous requires a unanimous vote.

(2) If a decision of the facility review board is not unanimous, any member of the facility review board may prepare a written dissent, stating the reason for such dissent. Dissents will be filed in the permanent clinical record of the individual, and a copy will be provided to the facility CEO, the facility review board chair, and the commissioner.

(i) If, while awaiting transfer, it becomes apparent that the individual is no longer manifestly dangerous, the facility review board must be reconvened in accordance with the procedures in this section.

(j) Facility review board hearings, with the exception of final deliberations,

must be tape-recorded or otherwise transcribed, with the recording or transcription made a part of the individual's medical record.

§402.77. Procedures for the Determination of Manifest Dangerousness by the TDMHMR Dangerousness Review Board.

(a) The TDMHMR Dangerousness Review Board must meet at least once each month to conduct reviews as mandated by the Texas Code of Criminal Procedure, Article 46.02, §8(a) and Article 46.03, §4(b). Additional meetings may be requested by the facility CEO.

(1) Within 60 days of admission or transfer to the Maximum Security Unit of Vernon State Hospital, each individual must be reviewed by the Review Board for the determination of manifest dangerousness as required by the Texas Code of Criminal Procedure, Article 46.02, §8(a), and Article 46.03, §4(b).

(2) Each individual must be reviewed at least every six months thereafter.

(3) An individual may be referred for review earlier than that by showing good cause, if approved by the CEO of Vernon State Hospital. For the purposes of this subsection, good cause is defined as sufficient change in condition to be deemed as not manifestly dangerous by the individual's physician and treatment team or by an independent evaluator.

(b) At least fourteen days before a scheduled monthly meeting, the CEO of Vernon State Hospital must provide the chair of the TDMHMR Dangerousness Review Board with:

(1) a list of individuals to be reviewed by the board; and

(2) pertinent clinical, social, and legal data of each individual on the list.

(c) At least seven days before a scheduled monthly meeting, the appropriate physician and treatment team or independent evaluator shall provide to the TDMHMR Dangerousness Review Board for each individual being reviewed a comprehensive individual assessment of risk for the occurrence of manifestly dangerous behaviors utilizing the Directions for Compiling a Comprehensive Individual Assessment of Risk for the Occurrence of Manifestly Dangerous Behaviors (Attachment 3), and other materials as appropriate.

(1) If the physician and treatment team of an individual or an independent evaluator recommend transfer from Vernon State Hospital to a less secure mental health facility because the individual's dangerousness is sufficiently in remission, then the physician and treatment team, independent evaluator, must also provide an assessment and attestation of the availability of effective treatment in a less secured setting.

(2) The assessment must include an analysis of the level of external controls needed to ensure the continuity of safe and effective treatment and the type of mental health commitment needed to support these.

(d) At least seven days before a hearing is held, the TDMHMR Dangerousness Review Board chair must provide notice of a manifest dangerousness review hearing using the "TDMHMR Dangerousness Review Board Notice of Hearing" form (Attachment 4), which is herein adopted by reference, copies of which are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. A copy of the form must be filed in the permanent clinical record of the individual. Notice must be sent to:

(1) the individual and/or legal guardian, if any;

(2) the individual's representative, if any; and

(3) with the consent of the individual or his or her legal guardian, the individual's parents, spouse, or other appropriate person.

(e) During the hearing, the TDMHMR Dangerousness Review Board must:

(1) review all pertinent and relevant information provided about the individual; and

(2) conduct a personal interview of the individual, unless the individual refuses to be interviewed.

(f) Only TDMHMR Dangerousness Review Board members and the individual and his or her guardian and/or representative may participate in the hearing or interview. This does not preclude the Review Board from requesting that persons attend part of the proceedings to provide testimony or technical assistance.

(g) Only TDMHMR Dangerousness Review Board members participate in its final deliberations.

(1) If during deliberations the Review Board determines that it requires additional information, it may cease deliberating and reopen the hearing.

(2) The individual and his or her guardian and/or representative must be allowed to attend and participate in the reopened hearing.

(h) Based upon the information gathered from subsection (e) of this section, the TDMHMR Dangerousness Review Board will determine whether or not each individual reviewed is manifestly dangerous. A written report of each determination, including reasons for the determination, must be submitted to the CEO of Vernon State Hospital and the commissioner and a copy filed in the permanent clinical record of the individual.

(1) A determination that an individual is not manifestly dangerous requires a unanimous vote.

(2) If a decision of the board is not unanimous, any member may prepare a written dissent, stating the reason for such dissent. The dissent must be filed in the permanent clinical record of the individual and a copy provided to the CEO of Vernon State Hospital and the Review Board chair.

(i) If the Review Board determines that an individual is manifestly dangerous, then the individual must remain at the Maximum Security Unit at Vernon State Hospital for continued treatment.

(j) If the Review Board determines that an individual is not manifestly dangerous, then the individual must, within 30 days of the determination, be transferred to a less secure mental health facility recommended by the CEO of Vernon State Hospital in accordance with procedures outlined in §402.78(b). If the less secure mental health facility serving the individual's county of resident is not suitable for the individual's continued treatment needs, the treatment team, with agreement from the individual or and family or legal guardian, may consider transfer to another less restrictive facility. If the individual agrees and the receiving facility CEO agrees, transfer will be arranged. The MHA in the original county of residence will be notified of the transfer. Transfer of responsibility from one MHA to another will occur in accordance with §402.62 (concerning Development of an Interim Plan for Services for Individuals Who Change MHAs) of Chapter 402, Subchapter B (concerning Continuity of Services-Mental Health).

(k) TDMHMR Review Board hearings, with the exception of final deliberations, must be tape-recorded or otherwise transcribed, with the recording or transcription made a part of the individual's medical record.

§402.81. Research Concerning Standards for Manifest Dangerousness.

(a) As a service to review board members and alternates, the CEO of Vernon State Hospital will provide review board members and alternates with a non-inclusive compilation of current clinical or scientific literature that contain information useful to their deliberations.

(b) Review board members and alternates are expected to be informed of modern clinical and scientific information relevant to prediction of violence and determination of manifest dangerousness.

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 December 4, 1995.

TRD-9515599 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 15, 1996

Proposal publication date: August 8, 1995

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

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Chapter 407. Internal Facilities Management

Lease of TDMHMR Surplus Property

• 25 TAC §407.120

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §407.120, governing lease of TDMHMR property of Chapter 407, concerning internal facilities management, with changes to the proposed text as published in the October 27, 1995, issue of the *Texas Register* (20 TexReg 8893).

The amendment implements provisions of House Bill 2377 of the 74th Legislature which created new §533.087 of the Texas Health and Safety Code. The statute authorizes the department to lease real property not designated as "surplus" property; additionally it permits the department to lease real property to certain government agencies, not-for-profit organizations, and entities related to the department by a service contract at less than the prevailing market rate without advertising or competitive bidding if sufficient public benefit is derived.

A hearing was held Thursday, November 16, 1995, to accept public testimony; no testimony was offered. Written comments were received from the parent of a state school resident.

The commenter asked what were the "other factors" described in subsection (d) that could be considered by the board in reviewing bids. The department responds that "other factors" would be anything specific to the particular lease situation that would impact on the department and the people it serves.

The amendment is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with §533.084 and §533.087, which requires the board to adopt rules relating to the lease of real property.

§407.120. Lease of TDMHMR Property.

(a) Leases may only be executed for department property that the Texas Mental Health and Mental Retardation Board has declared to be:

(1) surplus property in accordance with Texas Health and Safety Code, §533.084; or

(2) suitable for lease in accordance with Texas Health and Safety Code, §533. 087.

(b) Proposals to lease surplus property shall be made to the board by the department or by the General Land Office. Except as provided by subsection (c) of this section, all lease proposals shall be advertised at least once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in a paper with statewide circulation. The advertisement shall summarize the lease proposal, provide the name and address of a person to whom interested parties may submit bids for consideration by the department, and state where a copy of the proposal and the board's criteria for awarding the lease can be obtained.

(c) The department may lease real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the board determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The department shall review any bids received based upon the adopted criteria, and may conduct a review of other factors which it deems to be appropriate on any or all bids.

(e) Prior to the award of any lease that will have a term exceeding five years, the board shall be apprised of all bids received.

(f) The department may reject any and all bids.

(g) Proceeds from a lease shall be used and held in accordance with Texas Health and Safety Code, §533. 084(b).

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 December 4, 1995.

TRD-9515597 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 25, 1995

Proposal publication date: October 27, 1995

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

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Chapter 408. Standards and Quality Assurance

Subchapter C. Quality Assurance and Improvement System (QAIS) for Mental Retardation Services and Supports

• 25 TAC §§408.51-408.63

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§408.51-408.63, concerning quality assurance and improvement system (QAIS) for mental retardation services and supports. Section 408.51 and §§408.53-408.59 are adopted with changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8302). Section 408.52 and §§408.60-408.63 are adopted without changes and will not be republished.

QAIS will become the vehicle by which local mental retardation authorities and designated providers assess their performance. QAIS is an outcomes-oriented system which concentrates on measuring desired results as well as the processes by which those results are achieved. An essential feature of this system is a focus on outcomes as defined by the individuals receiving services and supports.

Language is added in §408.51 clarifying that this rule in conjunction with other department rules referenced in the department's performance contracts with authorities implement the board's statutory authority to set standards for community-based mental retardation services.

Language added to the definition of Outcome-based Performance Measures in §408.53 clarifying that the system examines outcome measures for the organization in addition to the outcome measures for people.

A provision is added in §408.54 which exempts services for infants and toddlers provided by a local authority under the purview of the Texas Interagency Council on Early Childhood Intervention from compliance with

this rule as they have been exempted from compliance with the 1988 TDMHMR Community Standards for Individuals with Mental Retardation. In the same section, language has been added which clarifies that this subchapter does not diminish or negate a local authority's responsibility through its contract with the department to comply with other applicable department rules.

Throughout the sections, mandatory language has replaced descriptive language to highlight those provisions for which failure by the local authority or designated provider to comply would constitute a breach of its contract with the department. Such language appears in §§408.55(a) and (e), 408.56(b) and (g), 408.57(b), 408.58(a) and (c), and 408.59(c), (e)-(g), and (i).

To improve the readability of §408.55, language describing the aspects of quality which are to be measured by QAIS was moved from subsection (e) to subsection (a). Language has been added to subsection (e) which emphasizes the local authority's responsibility through its contract with the department to comply with other applicable department rules.

Detailed language in §408.56(a) which described the selection of the random sample of consumers for the self-assessment survey has been deleted. The description was deemed insufficient to capture the many variables between local authorities, including size of the consumer population. Exhibit B provides a clearer description of how to develop a stratified, random sample; in addition, technical assistance will be provided to local authorities through the department's Central Office upon request. Language adopting the exhibit has been moved from subsection (a) to new subsection (c) and subsequent subsections have been re-lettered. In addition, mandatory language has replaced the permissive language in Exhibit B.

A grammatical revision in §408.57(c) changes the singular "area" to the plural "areas."

Language has been added in §408.58(a) clarifying that the local authority is to implement changes described in its plan of improvement. Other language is added in subsections (c) and (d) to improve readability.

Language has been revised in §408.59(a) and (c) to improve readability. Clarifying references to other provisions of the rule and to various exhibits have been added in subsections (b), (e), (f), and (g). The exit conference described in paragraph (b)(3) has been designated as optional at the discretion of the organization's chief executive officer. Confusing language in subsection (g) has been revised to read more clearly. New subsection (h) has been added to clarify that the 18 outcomes for organizations are intended to assess whether the organization has the necessary and appropriate processes in place to support the 30 outcomes for people but are not directly related to the organization's QAIS score. Language added to subsection (j) clarifies that the department, not the Accreditation Council, grants deemed status, and that accreditation by other associations will be considered for deemed status if they meet the QAIS criteria.

Language has been added in §408.61 which clarifies that the members of the external validation teams also will be trained in the application of the Accreditation Council's Outcome Based Performance Measures.

A hearing to accept public testimony regarding the proposal was held on Thursday, October 26, 1995, in Austin, Texas; no testimony was offered. Written comments were received from the parent of a state school resident; Andrews Center, Tyler; Center for Health Care Services, San Antonio; Sabine Valley Center, Longview; and the Texas Interagency Council on Early Childhood Intervention (ECI), Austin.

A commenter stated that the proposed rule represented a significant improvement over the current system and represented a move in a positive direction with a proper focus on outcomes. The department acknowledges the comment.

A commenter recommended that the current agreement with TDMHMR which places responsibility for quality assurance for infant and toddler services with ECI remain in effect and that ECI programs be exempted from these proposed rules. The department agrees QAIS would duplicate the quality standards and compliance processes and procedures that ECI has in place for local programs specific to infant and toddler services. The department has revised language in §408.54 to exempt ECI programs operated by local authorities or designated providers from the provisions of this subchapter.

A commenter suggested that instead of requiring 25% of the self-assessment team members to be replaced each year, as is described in §408.55(b)(3), that one team member should be replaced every two years. The commenter said this would improve continuity and be considerate of the limited resources at smaller centers. The department declines to make the changes, responding that the self-assessment team must maintain a continuously fresh perspective and that if membership does not change annually the team may develop a "team view" that could undermine credibility. The department further noted that only two of the required four team members are staff members of the organization; therefore, it is not expected that this requirement will impose a hardship on small organizations.

A commenter requested that in §408.55(b)(2)(A), the word "or" be deleted, leaving the requirement for the self-assessment team to include both a consumer and a family member. The department responds that the self-assessment team should be both small and well-balanced, and the composition as proposed meets these criteria. Therefore, the department declines to make the change, but notes that the local authority or designated provider can add additional team members at it's own discretion.

A commenter observed that the requirements in §408.56(a) concerning the survey sample are confusing. The department agrees and has clarified the language in the section.

A commenter questioned the language in §408.56(d) which references the "other significant people in the consumer's life," and stated that top priority should always be given to the legal representative or family members. In addition, the commenter noted that the final report of the QAIS project team stated "an outcome can also be met if it is absent but the consumer has determined that it is unimportant to him or her" and recommended that this language be included in §408.56(d) with the addition of "or legal representative" after the term "consumer." The department concurs with the suggestion and has modified the language as requested.

A commenter suggested that the composition of the external validation team as described in §408.59(d) should include no more than two persons from the department's Central Office plus one person from the community center and one person from the Texas Council of Community MHMR Centers. The department responds that external validation is a state authority (i.e., department) function and that the team composition described in the rule appropriately reflects that responsibility; therefore, the department declines to revise the requirement as suggested.

A commenter stated that deemed status as described in §408.59(i) should not be limited only to accreditation by the Accreditation Council and recommended that a menu of additional national accreditations be included. The department responds that only the Accreditation Council's Outcome Based Performance Measures meet the criteria required by the QAIS project team. All existing certification processes currently in use were researched. However, if other processes become available which meet the criteria, they would be considered. Therefore, the rule language has been modified to reflect this possibility. Another commenter questioned what purpose was served by having an external validation function if deemed status is granted by the Accreditation Council. The department responds that deemed status is granted by the department, not by the Accreditation Council; those organizations which will be granted deemed status by the department are those which currently are accredited or which become accredited by the council. The external validation process will be waived for those organizations granted deemed status. The language has been revised to clarify that it is the department and not the Accreditation Council which grants deemed status.

A commenter stated that specifics on training, including costs and dates and locations, are not addressed in §408.61. The department responds that the times, dates, and locations of training will be provided as training sessions are scheduled. The fiscal note in the proposal preamble noted that training costs will be borne by the department. Also regarding training, a commenter commended the department for including consumers, family members, and advocates in the list of persons for which start-up training will be provided, and urged that the training be offered to all family members. The department acknowledges the commendation and notes that the section specifies that training is to be made available to all stakeholders, which includes all family members. A third commenter questioned who would be providing the start-up and continuous training for the self-

assessment teams, and stated that the training should be uniform, consistent, as well as curriculum-based. The commenter further suggested that the Accreditation Council provide training for the external validation team and for stakeholders. The department responds that consultants who meet the Accreditation Council's criteria for training on the council's copyrighted materials will train both the external validation team and each local authority's staff through the initial self-assessment.

Regarding outcome measure #12 in Exhibit A (the Accreditation Council's Outcome Based Performance Measures), a commenter stated that organizations must give top priority to assisting consumers in remaining connected to their natural support networks, and noted that transportation necessary to accomplish this often is not available. The department acknowledges the comment and notes that this outcome is intended to uncover such problems where they exist and that resolution of the issue would be one aspect of the plan of improvement. The same commenter recommended that language be changed throughout the document to reflect that when appropriate, the legal representative speaks for the consumer. The department responds that the document is copyrighted material owned by the Accreditation Council and cannot be changed. However, clarifying language has been added in §408.56 which stresses the involvement of the legally authorized representative where one exists. The commenter noted a typographical error on page 143 of Exhibit A, including a letter from the Accreditation Council acknowledging the error. The department expresses its gratitude to the commenter for bringing the error to its attention and will notify all local authorities of the correction in the cover memo of the final rule upon distribution.

A commenter noted that outcome measure #48, which was added to the list of organizational outcome measures for use in QAIS with the approval of the Accreditation Council, does not acknowledge that the department's priority population is to be served first. The commenter recommended that the outcome measure be revised to define this priority population and to specify that the most intense needs of those consumers are to be served first. The commenter also noted that Exhibits C-E also did not acknowledge the priority population. The department responds that local authorities are required by their performance contracts with the department (performance memorandum where the local authority is the community-based service division of a facility) to serve the priority population. To include the requested language here would be redundant and would serve no purpose.

The new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

§408.51. Purpose. This subchapter describes the quality assurance and improvement system (QAIS) for community-based mental retardation services and supports funded by the Texas Department of Mental Health and Mental Retardation. In addition to applicable department rules as referenced in the organization's contract with the department, QAIS implements the Texas Health and Safety Code, §534.052, concerning standards for community-based mental health and mental retardation services provided through a local mental health or mental retardation authority.

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

CARE-The department's Client Assignment and Registration System, an online data entry system developed to provide demographic and other data about individuals served by the department.

Department-The Texas Department of Mental Health and Mental Retardation.

Designated provider-As defined in the Texas Health and Safety Code, §534.054, a service provider with whom the department contracts for the delivery of a specific community-based mental health or mental retardation service in a specified local service area of the state. The term does not include a local authority.

Local authority-As defined in the Texas Health and Safety Code, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to individuals with mental retardation in one or more local service areas.

Outcome Based Performance Measures-The Accreditation Council's copyrighted system of quality improvement and measurement that emphasizes responsiveness on the part of service organizations to the individual needs of that organization's consumers rather than traditional compliance with established standards. The system:

(A) focuses on outcomes for consumers rather than the organizational processes that contribute to those outcomes but also looks at outcome measures for organizations;

(B) is concise, focusing on those priority outcomes that people with disabilities indicate are most important to them; and

(C) can be used with all services and programs-residential, vocational, social, or residential-and for consumers with different disabilities.

Provider-

(A) Any organization or entity, associated by a contract in a working alliance with a local authority or the department to provide community-based services and supports, including its employees or agents; or

(B) that part of a local authority directly providing services and supports to individuals with mental retardation, including employees or agents.

The Accreditation Council-A national quality enhancement organization representing national consumer and professional organizations and service providers dedicated to providing leadership and improving the quality of services for people with disabilities through the establishment of standards; provision of education, consultation, and training; dissemination of publications, accreditation of organizations and the recognition of excellence.

Quality Assurance and Improvement System (QAIS)-The framework by which local authorities and designated providers measure the quality, efficiency, and effectiveness of their organizations and the services and supports they provide to consumers either directly or by contracting with providers. It is an outcome-oriented system that concentrates on measuring desired results and the processes used to obtain those results, as defined by the consumer. The system is based on The Accreditation Council's Outcome Based Performance Measures and involves three stages:

(A) self-assessment;

(B) plan of improvement; and

(C) external validation.

§408.54. Responsibilities of Local Authorities and Designated Providers.

(a) Through its contract with the department, the local authority or designated provider shall assure its compliance with the provisions of this subchapter.

(b) Through its contract with other providers, the local authority shall require compliance with the provisions of this subchapter as it applies to services and supports provided by the provider which are funded through the department.

(c) Programs under the purview of the Texas Interagency Council on Early Childhood Intervention are not required to be surveyed as a part of QAIS.

(d) Nothing in this subchapter is intended to diminish or negate any contractual requirement on the organization, including a contractual requirement to comply with applicable department rules.

§408.55. Self-assessment by Local Authorities and Designated Providers.

(a) Self-assessment and the subsequent development of a plan of improvement as described in §408.58 of this title (relating to Plan of Improvement) will occur annually beginning with state fiscal year 1996 and is completed before the end of the final quarter of every fiscal year. The self-assessment is based on The Accreditation Council's Outcome Based Performance Measures which are adopted by reference as Exhibit A in §408.60 of this title (relating to Exhibits) and is designed to evaluate two aspects of quality, which are:

(1) outcomes of services that contribute to the quality of life (outcome measures for people); and

(2) the organizational structure and processes that support quality services and supports (outcome measures for organizations).

(b) The self-assessment is conducted by a team comprising at least four people, including the team coordinator.

(1) The chief executive officer (CEO) or designee of the local authority or designated provider names a staff member as team coordinator.

(2) The team coordinator selects other members of the team with consideration given to both the communication needs and the diverse cultural, ethnic, and religious backgrounds of the consumers who receive services and supports from that local authority or designated provider. Recommended team members include:

(A) at least one consumer and/or family member;

(B) one direct care staff person;

(C) one person from the local community who has no affiliation with the organization; and

(D) one administrative staff person.

(3) No team member may serve more than three consecutive years on the team, with at least 25% of the team members being replaced each year.

(c) The local authority or designated provider also may choose to include on the team persons from other local authorities or designated providers of similar size. Having a team member from outside the organization may prove beneficial when reviewing the outcome measures for organizations.

(d) Team members will receive training in the self-assessment process in addition to an orientation which includes an overview of the consumers being reviewed, the importance of confidentiality, scheduling, and team assignments.

(1) The training is based on model curriculum provided by the department, as described in §408.61 of this title (relating to Training.)

(2) Each team member will sign a statement agreeing to respect the confidential nature of the information concerning the consumers being reviewed.

(e) The self assessment will be performed using guidelines provided by the department, applicable department rules, and the organization's contract with the department.

(f) The self-assessment process should take no longer than 15 working days with a formal feedback session immediately following the completion of the self-assessment. This timeframe permits the organization to gain a "snapshot" of itself and maintain the continuity and validity of the self-assessment. The self-assessment is divided into the following key components:

(1) visits to settings where services and supports are provided for:

(A) discussion and interaction with consumers, staff, service coordinators, and other significant people;

(B) observation of the environment; and

(C) review of documentation, when necessary;

(2) the completion of all individual consumer reports;

(3) the team synthesis and consensus process including;

(A) compilation of interview or rating sheets; and

(B) a consensus to generate a summary report of findings; and

(4) feedback session for the CEO and invited staff.

§408.56. Outcome Measures for People.

(a) The outcome measures for people survey is designed to measure the impact of services and supports on the lives of consumers.

(b) The sample will include:

(1) at least one consumer for each type of service recipient (e.g., consumers with challenging behaviors or intensive health care needs);

(2) at least one consumer from each service category including contracted services (e.g. residential, vocational); and

(3) additional stratifications to enhance random sample selection (e.g., funding sources, service sites, and demographics).

(c) Technical assistance regarding the development of a stratified, random sample is provided in Sample Selection and Stratification which is adopted by reference as Exhibit B in §408.60 of this title (relating to Exhibits).

(d) The program coordinator/case manager for each consumer included in the survey will be contacted by the team coordinator or another team member to explain the assessment process and to obtain the written consent of the consumer or the consumer's legally authorized representative as described in Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(e) The presence of each outcome is determined by the consumer or the consumer's legally authorized representative. It is evidenced through the interview process with the consumer and, when appropriate, with the consumer's legally authorized representative and the other significant people in the consumer's life. An outcome also can be met if it is absent but the consumer or legal representative has determined that it is unimportant to the consumer. There should be evidence that the consumer or legally authorized representative has an experiential context for making such a choice.

(f) The interview is supplemented by observations of the consumer's environment and, when necessary, by reviewing documentation to resolve perceived conflicts in information.

(g) Each outcome measure will be addressed with every consumer chosen for the interview process.

(h) The Outcome Measures for People Results Worksheet is adopted by reference as Exhibit C and the Outcomes for People Scoring Grid is adopted by reference as Exhibit D in §408.60 of this title (relating to Exhibits).

§408.57. Outcome Measures for Organizations.

(a) The outcome measures for the organization support the findings of the outcome measures for people. The issues of health, safety, and rights are reviewed through assessment of the supports and services provided by the organization.

(b) The organization's written documentation, together with interviews of designated staff and other stakeholders and the observations of team members, form the basis for reviewing the outcomes for organizations. Documentation of a utilization management process, policies and procedures, and strategic planning will be in evidence.

(c) An organization profile will be generated by the team which identifies the extent to which processes contribute to outcomes, strengths in meeting outcomes, and areas needing improvement.

(d) The Outcomes for Organizations Results Worksheet is adopted by reference as Exhibit E in §408.60 of this title (relating to Exhibits).

§408.58. Plan of Improvement.

(a) The plan of improvement is intended to be a dynamic document that guides the organization in assuring that improvements are made which support consumers in realizing their desired outcomes. Consistent with the plan of improvement, the organization will implement changes which facilitate its achievement of the 18 outcomes for organizations described in Exhibit A.

(b) A team selected by the organization's CEO to coordinate the plan of improvement activities should include a representative from the self-assessment team to ensure the continuity of the process.

(c) The plan of improvement is developed within 30 calendar days of the feedback session described in §408.55(f)(4) of this title (relating to Self-assessment by Local Authorities and Designated Providers) and will be reviewed, amended, and acted upon as determined necessary by a quarterly sampling of the relevant outcomes.

(d) In developing the plan of improvement, the team analyzes the self-assessment data and other relevant information such as the organization's strategic plan or reports of other regulatory entities, develops a concise profile of the strengths and weaknesses evident in critical areas, determines areas for improvement, and arranges these in priorities based upon the organization's mission and its contract with the department.

(1) As part of the analysis, strategies that address high priority issues and barriers to opportunities for improvement are identified and described.

(2) Ultimately, the team consolidates the results of these efforts into a written plan of improvement consistent with any additional strategy or planning done by the organization.

(e) The following should be reflected in the plan of improvement:

(1) the organization's mission statement;

(2) goals essential for the fulfillment of the mission;

(3) action steps which will lead to the accomplishment of goals and which are specific enough to articulate responsibilities across the organization;

(4) a quarterly evaluation process which will document progress towards goals, illuminate areas for further quality enhancement endeavors, and include a sampling of relevant outcomes; and

(5) an evaluation process which describes and assesses leadership and its involvement in setting direction, and developing and maintaining a leadership system that supports the mission.

§408.59. External Validation.

(a) The local authority or designated provider will submit its annual self-assessment results and plan of improvement along with the quarterly updates to the department's Managed Care Administration for the external validation portion of the QAIS. The external validation is intended to:

(1) reassure the public that public funds are being expended prudently for the purpose intended; and

(2) affirm to the administrators of the local authority or designated provider and to the trustees of the local authority that QAIS is being implemented as intended and that data are representative of the organization's performance.

(b) The external validation process consists of three phases:

(1) pre-visit activities including:

(A) desk review of requested documentation;

(B) determination of external validation team composition;

(C) selection of an independent, stratified/random sample of individuals from the CARE system, separate from the sample used by the organization in the self-assessment as described in §408.56 of this title (relating to Outcome Measures for People);

(D) scheduling of on-site external validation process activities: and

(E) coordination of external validation process with organization;

(2) on-site activities intended to confirm the findings and products of the organization's self-assessment and plan of improvement are:

(A) examination of the products of the internal self-assessment through validation of the organization's implementation of the self-assessment instrument and plan of improvement; and

(B) feedback regarding the consumers' responses concerning all outcomes and confirmation of the findings on the health, safety, and rights outcome measures through interviews with the consumers selected in the random sample described in paragraph (1)(C) of this subsection; and

(3) followup reporting activities including:

(A) an optional closed exit conference with key staff, at the discretion of the organization chief executive officer;

(B) an open exit conference for staff, consumers, advocates, parents, and other interested parties; and

(C) provision of information to the department's Managed Care Administration.

(c) The external validation team leader will:

(1) provide information to the department's Managed Care Administration regarding the organization's performance as reflected in the self assessment and the status of the plan of improvement; and

(2) notify the organization's CEO and department's Managed Care Administration of problems in the outcome areas of health, safety, and rights which require immediate action.

(d) The external validation team consists of no more than four people, including a:

(1) team leader from Central Office who has at least five years experience in direct management of or direct delivery of services and supports to individuals with mental retardation;

(2) second person from Central Office with same qualification as the team leader;

(3) peer reviewer from another local authority organization or designated provider; and

(4) representative from the local authority's managed services organization or another person from Central Office with same qualifications as the team leader.

(e) During Fiscal Year 1996, each local authority and designated provider will perform a self-assessment and develop a plan of improvement as described in §408.58 of this title (relating to Plan of Improvement), but the external validation component of QAIS will not be implemented.

(f) The external validation component will be conducted for the Fiscal Year 1997 self-assessment and plan of improvement of each local authority and designated provider. A representative from The Accreditation Council will be present during approximately 25% of the on-site visits to ensure reliability in the application of the Outcome Based Performance Measures described in Exhibit A.

(g) During every fiscal year after Fiscal Year 1997, each local authority and designated provider will conduct a self-assessment and develop a plan of improvement. A desk review will be conducted by the department's Managed Care Administration of the annual self-assessment and plan of improvement submitted by each local authority and designated provider. The frequency of the on-site visit portion of the external validation component, however, will depend upon how many of the 30 outcomes for people described in Exhibit A are confirmed to be present during the previous on-site visit as follows:

(1) up to 19 outcomes present, one year cycle;

(2) 20-23 outcomes present, two year cycle; and

(3) 24 or more outcomes present, three year cycle.

(h) The 18 outcomes for organizations described in Exhibit A assess whether an organization has the necessary and appropriate processes in place to support the 30 outcomes for people; they are not directly related to the organization's score on QAIS.

(i) Information obtained during the review of every organization's self-assessment and plan of improvement will be used by the department's Managed Care Administration for contract enforcement and negotiations and in compiling statewide data related to outcomes for people and organizations.

(j) Deemed status will be granted by the department to those organizations accredited by The Accreditation Council based on evidence presented to the department's Managed Care Administration of continuing accreditation. These organizations will be exempt from the on-site external validation process, but will be required to submit an annual self-assessment and plan of improvement to Central Office for data compilation and further contract negotiation. Deemed status for accreditation by other nationally recognized accreditation associations which meet the requirements of QAIS will be considered by the department's Managed Care Administration upon request by a local authority or designated provider.

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 December 4, 1995.

TRD-9515598 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 1, 1996

Proposal publication date: October 10, 1995

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

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Part XI. Texas Cancer Council

Chapter 701. Policies and Procedures

• 25 TAC §701.9

The Texas Cancer Council adopts a new section of §701.9, concerning policies and procedures, without changes to the proposed text as published in the October 31, 1995 issue of the *Texas Register* (20 TexReg 8964).

The new section is being proposed to add a definition regarding employee training.

This rule defines employee training guidelines.

No comments were received regarding the adoption of the proposed rule.

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

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 December 5, 1995.

TRD-9515842 Emily F. Untermeyer
Executive Director
Texas Cancer Council

Effective date: December 26, 1995

Proposal publication date: October 31, 1995

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 59. Parks

Park Entrance and Park User Fees

• 31 TAC §59.2, §59.3

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, November 3, 1994, adopted amendments to §59.2 and §59.3, concerning Park Entrance and Use Fees. Section 59.2 was adopted with changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 Tex Reg 7955). Section 59.3 was adopted without change and will not be republished.

The amendment to §59.2 sets the fee for an annual park entrance permit at $50 instead of the $25-$75 range as proposed.

The amendments provide consistency and simplification of regulations concerning fees and increase revenue to continue department public lands programs.

The amendments set fees for public lands activities administered by the department.

The department received approximately 100 comments concerning the proposed fee increases and these respondents were generally opposed to the proposed increases in park fees.

There were no groups or organizations speaking in opposition or in support of the proposed amendments.

The department disagrees with comments in opposition to the proposed park fee increases. The increases in park fees are associated with increased costs of state park operations, maintenance and repair, and equipment and capital improvement backlogs. The increases represent additional funding which is necessary to maintain the current level of park services. No changes were made as a result of the comments.

The amendments are adopted under the authority of Parks and Wildlife Code, §13.015, which provides the Parks and Wildlife Commission with authority to set certain park user fees.

§59.2. Park Entrance and Use Fees.

(a) An entrance/use fee will be levied at state parks. The fee will grant entry and presence privileges for a specific 24-hour period or part thereof, regardless of the number of times of entry during the valid period. At the end of each 24-hour period, the fee will become due for the succeeding 24-hour period or part thereof.

(b) An annual $50 entrance permit and use fee may apply at certain state parks where entrance fees are prescribed in lieu of a daily entrance fee. The annual permit will admit the purchaser and all occupants of his private, noncommercial vehicle, but will not apply to commercial, quasi-public, or public buses, or other such vehicles.

(c) Annual entrance permits are not valid for conducted tours, or for fishing privileges on fishing piers.

(d) A Youth Group Annual Entrance Permit may be purchased by youth organizations composed of individuals age 18 and under for an annual fee of $50-$300. The group must have state or national affiliation and be sponsored by a governmental agency or nonprofit organization, as defined under the Internal Revenue Code, §501. The permit is valid for entry at parks with a per vehicle entrance fee and at parks with a historic site tour fee. It is nontransferable and nonrefundable. No more than 50 persons, including adult supervisors will be admitted with each permit. The number of vehicles or the number of individual persons per historic site tour may be limited by the park manager. Additional permit(s) is required if the group exceeds 50 persons. Permit is valid for 12 months from date of purchase. To purchase the group permit, eligible organizations must submit an application along with the required fee to the chief, park operations, or designee, for approval. The permit authorizes entry of vehicles carrying group members provided the adult sponsor presents the permit(s) at the park entrance and identifies each vehicle carrying group members.

(e) An entrance and use fee of $2.00 to $6.00 per motorized vehicle per day will apply at parks designated by the department in lieu of an annual or parklands passport. Where variable entrance and use fees are authorized by the commission, they may be set on an individual park basis.

(f) An entrance fee of $.50-$5.00 will apply on a per person basis at parks designated by the department.

(g) The executive director may, at his discretion, temporarily waive any entrance fees or conditions thereof established in this section at any park when construction activities at the park adversely affect public enjoyment of the recreational opportunities normally available. The executive director may discount or waive entrance fees in order to enhance utilization of existing facilities.

(h) No entrance fee will be charged or collected at parks unless the department deems it feasible to collect the fees.

(i) Persons entering parks by boat, bicycle, or on foot are authorized to use a valid annual park entrance permit receipt in lieu of paying an individual entrance fee. An individual presenting a receipt must be the same person to whom the annual permit was issued or a member of the original permit holder's immediate family. Individuals eligible for park entry as specified herein may be accompanied by as many as three other persons.

(j) Persons whose date of birth is before September 1, 1930 and veterans of the armed services of the United States who, as a result of military service, have a service-oriented disability as defined by the Veterans Administration, consisting of the loss of the use of a lower extremity or of a 60% disability rating and who are receiving compensation from the United States government because of the disability, will not be required to pay an entrance fee at state parks. Residents of this state whose birth date is after August 31, 1930 and who is also a holder and in possession of a valid State Parklands Passport shall pay 50% of the normal entrance fee rounded to the nearest higher whole dollar. Non-residents of this state whose birth date is after August 31, 1930 shall pay the normal entrance fee. State parklands passports will be issued to eligible persons at state parks and the Austin headquarters. A driver's license, birth certificate, military discharge papers, or any other suitable identification considered sufficient proof for establishing the age and identity of an individual must be presented at the time the passport is issued to persons 65 years of age and over. Disabled veterans must establish eligibility by presenting one of the following:

(1) disabled veteran's of Texas license plate receipt;

(2) veteran's award letter (which establishes the degree of service-connected disability);

(3) tax exemption letter for Texas veterans.

(k) All motor vehicles carrying either a person whose date of birth is before September 1, 1930 or other eligible holders of a state parklands passport may enter the park without payment of an entrance fee. All motor vehicles carrying a resident of this state whose date of birth is after August 31, 1930 and who is also the holder and in possession of a state parklands passport may enter a park site upon payment of 50% of the normal entrance fee for that site, rounded to the nearest higher whole dollar. This passport does not exempt the holder from payment of fees for fishing privileges or tour fees required in certain units of the state park system.

(l) A duplicate state parklands passport may be issued for use on additionally owned motor vehicles. A replacement for a state parklands passport may be issued when the original registration or windshield sticker is lost, stolen, damaged, or the motor vehicle is sold, traded, or stolen, or when the motor vehicle windshield is replaced.

(m) Entrance fees established in subsections (b) and (d) of this section will apply to all private aircraft noncommercial motorized vehicles which includes two or more-wheeled vehicles. Commercial, quasi-public, or public buses or other vehicles are excluded.

(n) Persons entering parks by bus, where entrance and use fees are charged on a per-car basis, will be charged as follows: adults, $1.00-$3.00 each, minimum $4.00-$20; children 12 years of age and under, $.50-$1.50 each, minimum $4.00-$20.

(o) Students, teachers, bus drivers, and children on group, school-sponsored visits to historic sites or parks for educational purposes may enter at the rate of $.50-$1.00 per person at historic sites where a tour fee is charged or at a park where entrance and use fees are charged on a per-vehicle basis. The group or class must be accompanied by an adult supervisor(s). The $.50-$1.00 per person fee applies to individuals from all public or private schools, colleges, and universities offering accredited courses.

(p) Students of any age are entitled to the student historic site tour fee. Students 19 and over are required to present a current, valid student identification card.

(q) Persons entering parks on foot, bicycle, or by boat where entrance and use fees are charged on a per-car basis will be charged an individual rate of $1.00-$3.00 for adults and $.50-$1.50 for children 12 years of age and under.

(r) The valid time period for daily entrance fees will be:

(1) for day use, the time period encompassing the day-use opening hours of the park on the date on which admission is paid; and

(2) for overnight use, a 24-hour period beginning at 2 p.m. on the date admission is paid.

(s) At the discretion of the executive director, any person or persons may be exempted from the provisions of this section if the entry of such person or persons to a park or parks is necessary or desirable in order to provide a service for the state. The

executive director is authorized to issue such entrance fee waivers under certain circumstances and conditions.

(t) The executive director is authorized to establish an entrance fee in accordance with these sections at any site hereafter established as a state park when he deems such action is appropriate and in accord with applicable statutes.

(u) When an annual or seasonal permit is offered for entrance in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit.

(v) Any fees established in this section may be waived or reduced at the discretion of the executive director for public use of a park during special events or exhibitions.

(w) The executive director may designate the amount of use fee and entrance fee within the total amount provided for by this section.

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

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

TRD-9515812 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: December 26, 1995

Proposal publication date: September 29, 1995

For further information, please call: (512) 389-4642 or 1-800-792-1112, Ext. 4642

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

• 37 TAC §81.17

The Texas Youth Commission (TYC) adopts an amendment to §81.17, concerning research projects, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9150).

The justification for amending the section is the provision of specific guidelines for TYC staff and research consultants.

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.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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 amendment implements the Human Resource Code, §61.034.

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 December 6, 1995.

TRD-9515879 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 483-5244

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Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.7

The Texas Youth Commission (TYC) adopts the repeal of §85.7, concerning mentally retarded youth, without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8992).

The justification for the repeal of the section is elimination of a rule no longer in effect.

The repeal will eliminate procedures for returning mentally retarded youth to the courts when committed to TYC. The 74th Legislature established new law allowing for mentally retarded youth to be committed to TYC for delinquent acts, thus procedures herein are no longer in effect.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.077, which provides the Texas Youth Commission with the authority to accept a child who is mentally retarded.

The proposed repeal implements the Human Resource Code, §61.034.

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 December 5, 1995.

TRD-9515698 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 483-5244

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Chapter 87. Treatment

Basic Care Services

• 37 TAC §87.73

The Texas Youth Commission (TYC) adopts an amendment to §87.73, concerning clothing for TYC youth, without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8992).

The justification for amending the section will be more efficient use of State resources and increase safety in facility operation.

The amendment provides that uniform type clothing is required for delinquent youth residing in TYC facilities. It eliminates the list of minimum clothing provided by the youth's parent and by TYC since it will no longer be needed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

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 December 5, 1995.

TRD-9515752 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 483-5244

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Chapter 91. Discipline and Control

Due Process Hearings Procedures

• 37 TAC §91.31

The Texas Youth Commission (TYC) adopts an amendment to §91.31, concerning level I hearing procedure, without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8993).

The justification for amending the section is for more efficient use of resources and staff assigned as hearings examiners.

The amendment eliminates requirements that the hearings examiner conducting the level I

hearing to find facts regarding alleged major rule violations be an examiner who has not previously participated in a hearing for the youth. The requirement is that the hearings examiner shall be impartial.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

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 December 5, 1995.

TRD-9515753 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 483-5244

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Control

• 37 TAC §91.69

The Texas Youth Commission (TYC) adopts an amendment to §91.69, concerning detention, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9151).

The justification for amending the section is to ensure protection of the public safety.

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.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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 amendment implements the Human Resource Code, §61.034.

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 December 6, 1995.

TRD-9515878 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Youth Property

• 37 TAC §93.21

The Texas Youth Commission (TYC) adopts an amendment to §93.21, concerning youth personal property, without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8993).

The justification for amending the section is more efficient operation and use of State facilities.

The amendment will eliminate allowing youth to have a liberal amount of their personal property in their living space while in residence at a TYC operated facility. The change will facilitate a more efficient use of resources and eliminate a source of much contention, thus allowing a more controlled setting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

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 December 5, 1995.

TRD-9515751 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 483-5244

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Records, Reports and Forms

• 37 TAC §93.57

The Texas Youth Commission (TYC) adopts an amendment to §93.57, concerning access to youth records, without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8995).

The justification for amending the section is compliance with laws providing sharing of youth files in limited cases.

The amendment provides that files are open to government agencies if the disclosure is required or authorized by law and to whom a child is referred for treatment or services if a written confidentiality agreement has been signed. This amendment complies with changes made by the 74th Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

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 December 5, 1995.

TRD-9515754 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 483-5244

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Part IX. Commission on Jail Standards

Chapter 261. Existing Construction Rules

The Commission on Jail Standards adopts amendments §§261.121, 261.221, and 261.316, concerning Existing Construction Rules, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8318).

The rules function to delete the requirement for providing seating for inmates and the public at visitation areas for jails built prior to 1977.

No comments were received regarding adoption of the amendments.

Existing Jail Design, Construction and Furnishing Requirements

• 37 TAC §261.121

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

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 December 5, 1995.

TRD-9515866 Jack E. Crump
Executive Director
Commission on Jail
• Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Existing Lockup Design, Construction and Furnishing Requirements

• 37 TAC §261.221

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

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 December 5, 1995.

TRD-9515867 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Existing Low-Risk Design, Construction and Furnishing Requirements

• 37 TAC §261.316

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

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 December 5, 1995.

TRD-9515868 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Chapter 269. Records and Procedures

• 37 TAC §269.2

The Commission on Jail Standards adopts an amendment to §269.2, concerning Records and Procedures, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8318).

Adoption of this rule will make administrative rules consistent with statute.

The rule functions to require annual financial audits of the general operations of county jails be submitted to the commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

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 December 5, 1995.

TRD-9515869 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Chapter 271. Classification and Segregation of Inmates

• 37 TAC §271.1

The Commission on Jail Standards adopts the repeal of §271.1, concerning Classification and Segregation of Inmates, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8319).

Adoption of this repeal will facilitate adoption of new classification rules as allowed by statute.

The repeal functions to delete established classification and segregation rules so that an objective classification plan can be adopted.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

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 December 5, 1995.

TRD-9515870 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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• 37 TAC §§271.1-271.6

The Commission on Jail Standards adopts new §§271.1-271.6, concerning Classification and Segregation of Inmates, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8319).

Adoption of the new rules provides new classification guidelines as allowed by statute.

The new rules function to establish objective means of inmate classification and segregation.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

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 December 5, 1995.

TRD-9515871 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Chapter 273. Health Services

• 37 TAC §273.6

The Commission on Jail Standards adopts an amendment to §273.6, concerning Health Services, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8320).

Adoption of the amendment will make rules regarding Tuberculosis Screening Plan current.

The amendment functions to require jail staff to implement tuberculosis screening plans.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

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 December 5, 1995.

TRD-9515872 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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Chapter 281. Food Service

• 37 TAC §281.5

The Commission on Jail Standards adopts an amendment to §281.5, concerning Food Service, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8321).

Adoption of this rule will make standards consistent with the Texas Department of Health rules.

The rule functions to delete the recommendation that inmates who handle food obtain a Doctor's Certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

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 December 5, 1995.

TRD-9515873 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 27, 1995

Proposal publication date: October 10, 1995

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

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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) adopts amendments to §12.3 and §12.25, without changes to the proposed text published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9152).

The justification for 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.

The amendments will function by increasing efficiency in the operation and administration of the program.

No comments were received regarding adoption of the amendments.

The amendments are 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 amendments implement 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 December 6, 1995.

TRD-9515894 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Effective date: December 27, 1995

Proposal publication date: November 3, 1995

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

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Contested Case Procedure

• 43 TAC §§1.21-1.63

The Texas Department of Transportation adopts the repeal of existing §§1.21-1.63, concerning contested case procedure, and adopts new §§1.21-1. 61, concerning contested case procedure with changes to the proposed text as published in the September 8, 1995, issue of the *Texas. Register* (20 TexReg 7040). New §§1.32-1.33 and §1.38 are adopted with changes and §§1. 21-1.31, §§1.34-1.37, and §§1.39-1.61 are adopted without changes and will not be republished.

The repeal and new sections are necessary to: update the applicable rules in accordance with revisions to Government Code, Chapter 2001, the Administrative Procedure Act (APA), and procedures established by the State Office of Administrative Hearings (SOAH); make the contested case procedure clearer and more concise; and provide an efficient process for default judgments that will expedite the resolution of a contested case against a respondent who fails to appear at an administrative hearing.

Existing §§1.21-1.63 described the department's procedures for contested cases.

New §§1.21-1.61 provide updated procedures for contested cases in accordance with recent revisions to the Government Code, Chapter 2001 and the procedures established by SOAH.

On September 8, 1995, the department conducted a public hearing on the proposed new sections and no oral or written comments were received.

In order to provide an effective and efficient process the department has revised: §1.32 to require that a pleading be sent only to the attorney for a party instead of to the party and the party's attorney; §1.33 to allow a filing to be deemed filed when the pleading is received by SOAH or the executive director instead of upon receipt by the hearing officer or the executive director in accordance with SOAH's internal procedures; and §1.38 to remove the requirement for an affidavit in motions for postponement, continuance, withdrawal, or dismissal.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 2001, the Administrative Procedure Act, which provides a minimum standard of uniform practice and procedure for 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 December 5, 1995.

TRD-9515797 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

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• 43 TAC §§1.21-1.61

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 2001, the Administrative Procedure Act, which provides a minimum standard of uniform practice and procedure for state agencies.

§1.32. Service.

(a) A copy of all pleadings in any proceeding shall be sent by mail or otherwise delivered by the party filing the same to every other party of record, except that notice of a hearing will be made by hand delivery, via facsimile, or by certified mail, return receipt requested. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made on such attorney or other representative.

(b) A certificate signed by the person filing the pleading, showing the manner of service, stating that it has been served on the other parties, and identifying those parties shall be contained in or attached to all pleadings. The certificate is prima facie evidence of such service.

(c) If a filing does not conform to the requirements of this section, the hearing officer may:

(1) return the pleading to the filing party;

(2) send a notice to all parties stating that the pleading will not be considered unless and until the office is notified that all parties have been served with the pleading; or

(3) send a copy of the pleading to all parties.

§1.33. Filing. All pleadings, affidavits, or other filings relating to any proceeding pending or to be instituted before the department shall be filed with the State Office of Administrative Hearings or the executive director. Filings shall be deemed filed only when actually received by the State Office of Administrative Hearings or the executive director, accompanied by the fee or deposit, if any, required by statute or department rules.

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

Issued in Austin, Texas, on December 5, 1995.

TRD-9515796 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

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Chapter 15. Transportation Planning and Programming

International Bridges

• 43 TAC §§15.70-15.76

The Texas Department of Transportation adopts new §§15.70-15.76 concerning international bridges without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7047).

Texas Civil Statutes, Article 6674v-8, provide that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval of the Texas Transportation Commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code.

New §15.70 explains that the purpose of the rules is to describe the procedures and conditions by which a political subdivision or private entity may obtain the approval of the commission to provide an international bridge. New §15.71 defines words and terms. New §15.72 requires that in order to obtain approval to construct or finance the construction of a bridge the applicant must submit an application and comply with the requirements of this undesignated head. New §15.73 explains design, financial feasibility, and the social and environmental impact studies which must be conducted prior to submittal of the application. New §15.74 describes the documents that accompany an application. New §15.75 establishes the procedure for coordination with other governmental entities, processing and analyzing the application, a public hearing, and describes the requirements of the report to be submitted to the commission. New §15.76 describes the commission's analysis of the project including consideration of comments of other entities, project requirements, and financial requirements, and provides that the approval or disapproval of the project shall be by written order of the commission.

On September 29, 1995, the department conducted a public hearing on the proposed new sections to receive data, comments, views, and testimony. The department received written comments from the El Paso Metropolitan Planning Organization.

The El Paso MPO asked which study or studies are included in the Texas-Mexico Toll Bridge Study, Research Report Number 1976, which is referenced in the definitions of "study sector" and "Texas-Mexico Toll Bridge Study" of §15.71, Definitions.

The Texas Mexico Toll Bridge Study consists of six volumes with the Summary Report completed in April 1994.

Two related comments were made concerning funding in §15.73, Preliminary Studies. The first comment asked if the department felt that the preliminary studies required by this section qualified for Federal Highway Administration (FHWA) funding, and stated that with denial of FHWA funding the cost to local governments would not be insignificant.

The department believes that the proposed section implements the approval process in the manner least burdensome to the applicant while, at the same time, meeting all state statutory requirements. Most of the information required by these sections is the same information necessary to satisfy the federal requirements. The cost of providing the additional information required is insignificant. The proposed section does not prescribe specific forms for applicants to use in order to maximize the possibility that the same information will suffice for both state and federal requirements. The department normally coordinates activities closely with both FHWA and MPO's and will continue to do so to minimize this section's impact on applicants. The department requested an opinion from FHWA concerning the eligibility of the preliminary study activities for FHWA funding. The FHWA response indicated that the costs of preparing the preliminary studies can be eligible for federal participation funds.

Concerning §15.76, Commission Action, the El Paso MPO asked why the intention to use the Texas Mexico Toll Bridge Study as the basis for evaluating international bridge projects was not more clearly articulated when the study or series of studies was initially issued. The El Paso MPO further stated that it is imperative that the Texas Mexico Toll Bridge Study be updated periodically and suggested every two years or so.

Volume 1 of the research report states, "The final objective is to provide an estimate of the potential demand and revenue at any new toll site along the Texas-New Mexico border. This estimate can be used as a guideline for the potential demand for, and the feasibility of, any new proposed toll sites along the Texas-Mexico border (and thus represents, in effect, a prefeasibility analysis for new sites along the border)." The analysis was intended to be a resource reference which entities, such as proposed bridge sponsors, the Texas Turnpike Authority, and the department, could use for decision making. Although the study is dated, it provides logical parameters to guide decision making. The department is not currently planning to update the study, how-

ever as the need arises in response to the impact of North American Free Trade Agreement (NAFTA) on the transportation infrastructure the department will consider an update.

The El Paso MPO asked which "state transportation plan" the language referred to in §15.76, Commission Action?

The "state transportation plan" is the Texas Transportation Plan. The department intends to update the plan annually, particularly in the border areas as the impact on transportation and commerce by NAFTA is more clearly defined.

The El Paso MPO suggested that a working group of border transportation planners, composed of specific border districts and MPO's, be formed to provide input to the department as it develops evaluation tools for international bridge proposals.

Although forming a working group to provide input to the department may be a good idea, the working group outlined in this recommendation does not represent all the border stakeholders. A more comprehensive representation is already found in the Texas Border Transportation State Technical Advisory Committee (BTSTAC), which was formed to support the Joint Working Committee binational border study. If approved, the BTSTAC can better serve the function suggested by the MPO.

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 Texas Civil Statutes, Article 6674v-8, which provides that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval of the commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code.

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

Issued in Austin, Texas, on December 5, 1995.

TRD-9515799 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

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Chapter 18. Motor Carriers

Subchapter A. General Provisions

- **43 TAC §18.1, §18.2**

The Texas Department of Transportation adopts new §§18.1-18.2, concerning purpose and definitions. Section 18.2 is adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Section 18.1 is adopted without changes and will not be republished.

New §§18.1-18.2, and subchapters B-F, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995, and Texas Civil Statutes, Article, 6687-9a.

Senate Bill 3, 74th Legislature, 1995, added Texas Civil Statutes, Articles 6675c and 6675c-1, which transferred the regulatory authority of the motor carrier industry from the Railroad Commission to the department and provided the department with the authority to register motor carriers, regulate the transportation of household goods, and administer the single state registration system, and added Article 911m, requiring a motor transportation broker to provide a bond to the Texas Department of Transportation. Senate Bill 3 also amended Texas Civil Statutes, Article 6687-9a, which transferred the licensing authority for vehicle storage facilities from the Railroad Commission to the Texas Department of Transportation.

New §18.1 and §18.2 provide for the definitions for rules concerning the regulation of motor carriers, transportation brokers, and vehicle storage facilities.

On September 22, 1995, the department conducted a public hearing to seek comments concerning the proposed adoption of new Subchapter A-General Provisions, §18.1 and §18.2, relating to purpose and definitions. Numerous written comments were received. Southwest Movers Association, Inc. submitted written comments requesting revisions to certain provisions.

Three commenters suggested the definition of "advertisement" be clarified to include telephone directories for listings exceeding a single line. However, they suggested the words "interstate" and "foreign" be excluded from the definition of "advertisement," citing the department's lack of jurisdiction. The department concurs with this comment. The definition is amended to read, "any communication to the public in connection with an offer or sale of intrastate transportation service, except for a single-line listing of a carrier name, address, and telephone number in a directory or similar classification."

The department has added the definition of "certificate of public convenience and necessity" to clarify the term as used in Subchapter B with respect to worker's compensation insurance or accidental insurance. The definition shall read, "Certificate of public convenience and necessity-A certificate issued by the Railroad Commission of Texas under Chapter 270, Acts of the 40th Legislature, Regular Session, 1927, or Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, granting the right to operate in the carriage of persons or goods for hire in intrastate traffic."

Although no comments were received in regards to the definition of collect-on-delivery (COD), the department has determined that the definition must be deleted in order to avoid confusion when used in connection with household goods carriers. The current definition refers to COD as payment for an item at the time of its delivery. However, the term COD is used differently in the household goods industry. COD is used in the household goods industry to refer to the collection of freight charges on delivery rather than the collection of payment for an item on delivery. Since the definition is not appropriate, it is deleted in its entirety.

Numerous commenters recommended the definition of commercial motor vehicle be amended to exclude vehicles transporting school children to and from school in the city of Houston. Commenters indicated this will cause extreme hardship to not only the school bus operators, but also to the parents who cannot afford any increase in price for the service. Commenters indicate this service is provided only because the Houston Independent School District cannot pick up school children if they live within a two mile radius of the school. Commenters also indicated that their vehicles are subject to registration and safety requirements from the city of Houston. Two commenters requested the department amend the definition of commercial motor vehicle to exclude long term care facilities from commercial motor vehicle and insurance registration requirements. They are concerned with the high insurance requirements and suggest there is an exemption under federal statutes. The department concurs with the commenters and shall address their concerns by amending the definitions of commercial motor vehicles.

The definitions of "motor carrier" and "commercial motor vehicle" in Senate Bill 3 appear to have broadened the reach of state regulation to include such vehicles as those operated by governmental entities, vans operated by nursing homes, and buses operated by noncommercial entities-all vehicles not previously regulated by the Railroad Commission of Texas (RRC). Senator Teel Bivins and Representative Curtis L. Seidlets, Jr., sponsors of Senate Bill 3, and Senator Ken Armbrister and Representative Clyde Alexander, chairmen of the legislative committees responsible for Senate Bill 3, submitted letters to the department stating that it was not their intent to extend state regulation to vehicles not previously regulated by the RRC under Texas Civil Statutes, Articles 911a and 911b, unless such regulation was specifically provided for in the legislation. The department has examined the legislative history of Senate Bill 3, and has determined that the intent of the legislation was to: deregulate the trucking industry in accordance with federal law; consolidate the registration of tow trucks, motor buses, and trucks; and transfer the registration of these vehicles to the department. The department, therefore, determines that the extension of state regulation to vehicles not previously regulated by the RRC would be inconsistent with the general purpose of Senate Bill 3. The definition of "commercial motor vehicle" in §18.2 is revised to only include vehicles previously regulated by the RRC, except for vehicles specifically identified in Senate Bill 3.

Two commenters recommended the definition of commercial motor vehicle be amended to clarify the description of a vehicle registered with the Railroad Commission of Texas to transport Lp-gas. The department concurs with this comment. The subsection has been amended to read, "a vehicle registered with the Railroad Commission pursuant to Texas Natural Resource Code, §113.131 and §116.072."

One commenter suggested the definition of "farm vehicle" be amended to avoid confusion with the definition used by the Department of Public Safety. The Department of Public Safety defines farm vehicle in Title 37, Texas Administrative Code, §3.62 (relating to Regulations Governing Transportation Safety). The department concurs with the commenter's suggestion, and the definition has been revised to read, "Farm vehicle-Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch."

Two commenters recommended the definition for "gross weight rating" be redefined. The commenters suggested that the gross weight rating should be the greater of: the manufacturer's specified rating; the actual weight of the equipment and lading; or the maximum lawful weight of the equipment and lading. The department does not concur. This change would have little meaning since the definition for a commercial motor vehicle includes, "a combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 lbs.," which encompasses each of the proposed changes. Thus, the definition is not revised.

Two commenters recommended the definition of "multiple user" be revised to clarify which shipper's are required to be notified of meetings conducted under the carrier's collective bargaining agreements. The first commenter recommended that the definition be amended to classify shippers that have a contract with a carrier and use its services no less than twice per month during the preceding 12 months. The second commenter recommends that the definition be amended to classify shippers that have a contract with a carrier and use its services more than 10 times a year. The department does agree that the definition should be clarified, but does not agree with the first commenter because its definition is too restrictive. Rather, the department agrees with the second commenter's definition with some modifications. The definition is amended to read, "Multiple user-An individual or business who has a contract with a household goods carrier and uses the carrier's services more than 10 times within the preceding 12 months."

Three commenters recommended the definition of "reasonable dispatch" be amended to mirror the federal provisions that include the defense of "force majeure," in that the carriers should not be held responsible for things beyond their control, such as "Acts of God." They cite that the exclusion of this provision is a legal technicality but should be added to the definition. The department concurs and finds that acts of God or war should not come under reasonable dispatch. Additionally, the amended portion of the definition reiterates limitations already found in Subchapter E, §18.54(d)(1)(A)(ii). The definition is amended to read "Reasonable dispatch-The performance of transportation, excluding transportation provided under tariff provision requiring guaranteed service dates, on the date or during the period of time agreed upon by the carrier and the shipper and shown on the shipment documentation; provided, however, that the defenses of force majeure as construed by the courts shall not be denied the carrier."

Two commenters recommended the definition of a "shipper" be amended because the definition does not differentiate between an individual shipper and a commercial shipper. The department does not concur with this comment. The proposed regulations do not have a separate applicability for individuals and businesses. Thus, to distinguish between the two types of shippers would serve no purpose. The definition is not revised.

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 Texas Civil Statutes, Article 6675c, which authorizes the department to adopt rules to administer the regulation of motor carriers, and Texas Civil Statues, Article 6675c-1, which authorizes the department to administer the single state registration system.

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

Advertisement-Any communication to the public in connection with an offer or sale of intrastate transportation service, except for a single-line listing of a carrier name, address, and telephone number in a directory or similar classification.

Approved association-A group of household goods carriers, or its agents, or both, which has an approved collective ratemaking agreement on file with the department pursuant to §18.52 of this title (relating to Rates).

Arbitration-A forum in which each party and counsel for that party present their position before an impartial third party, who renders a specific award. The award is not binding on either party and serves only as a basis for the parties' further settlement negotiations.

Audit-A review of records and source documents of a registrant to determine its compliance with the requirements of subchapter E of this chapter (relating to Enforcement).

Certificate of convenience and necessity-A certificate issued by the Railroad Commission of Texas under Chapter 270, Acts of the 40th Legislature, Regular Session, 1927, or Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, granting the right to operate in the carriage of persons or goods for hire in intrastate traffic.

Certificate of insurance-A certificate prescribed by and filed with the department, in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §18.16 of this title (relating to Insurance Requirements).

Certificate of registration-A certificate issued by the department to a motor carrier, containing a unique number.

Certified scale-Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority; a certified scale may also be a platform or warehouse type scale properly inspected and certified.

Commercial motor vehicle-

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, which is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) all tow trucks, as that term is defined in this section, regardless of the gross weight rating of the tow truck;

(iii) any vehicle, including buses, designed to transport more than 15 passengers, including the driver, operating for compensation or hire, beyond any incorporated town or city and its suburbs; and

(iv) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (Title 49, United States Code, App. §§1801-1813).

(B) Does not include:

(i) a farm vehicle, as defined in this section, with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered in accordance with Transportation Code, §502.277; and

(iii) a vehicle registered with the Railroad Commission pursuant to Texas Natural Resources Code, §113.131 and §116.072.

Commission-The Texas Transportation Commission.

Department-Texas Department of Transportation.

Director-The director of the Motor Carrier Division, Texas Department of Transportation.

Division-The Motor Carrier Division.

Farmer-A person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which are owned by that person or are under the direct control of that person.

Farm vehicle-Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

Gross weight rating-The maximum loaded weight of any combination of truck, tractor, and trailer equipment, as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

Household goods-

(A) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and similar property as the Interstate Commerce Commission (ICC) may provide by regulation, not including property moving from a factory or store, except property the householder has purchased with the intent to use in his or her dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(B) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and similar property as the ICC may provide by regulation, not including the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving the establishment, or a portion of it, from one location to another; and

(C) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and similar articles as the ICC may provide by regulation, not including any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

Household goods carrier-A motor carrier required to register with the department under subchapter B of this chapter (relating to Motor Carrier Registration) who transports household goods.

Independent-An individual who is not an employee of a household goods carrier or a shipper and who is not related by blood or marriage to the household goods carrier or the shipper.

Interstate Commerce Commission (ICC)-A federal agency which regulates interstate commerce.

Insurer-A person, including a surety, authorized in this state to write lines of insurance coverage required by subchapter B of this chapter (relating to Motor Carrier Registration).

Manager-The manager of the department's Motor Carrier Division, Compliance and Enforcement Section.

Mediation-A forum in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding among the participants.

Motor Carrier-An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles which transport persons or cargo over a road or highway in this state.

Motor transportation broker-A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person; or a person who aids and abets a person in performing an activity described in this definition.

Multiple user-An individual or business who has a contract with a household goods carrier and who uses the carrier's services more than 10 times within the preceding 12 months.

Principal place of business-A single location that serves as the motor carrier's headquarters and where it maintains or can make available its operational records.

Public highway-Any publicly owned and maintained street, road, or highway in this state.

Reasonable dispatch-The performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the date or during the period of time agreed upon by the carrier and the shipper and shown on the shipment documentation; provided, however, that the defenses of force majeure as construed by the courts shall not be denied the carrier.

Registration receipt-A receipt issued to the registrant by its registration state after the requirements of 49, Code of Federal Regulation (CFR), Part 1023 have been met.

Registration state-A state where the registrant maintains a valid single state registration as defined in 49 CFR Part 1023.

Revocation-The withdrawal of registration and privileges by the department or a registration state.

Shipper-A person who is the consignor or consignee of a household goods shipment and is identified as such in the bill of lading contract and owns the goods being transported.

Single state registration system-The program established by 49 United States Code §11506.

SOAH-The State Office of Administrative Hearings.

State(s) of travel-The state or states in which a motor carrier or carrier operates motor vehicles subject to the single state registration system.

Suspension-Temporary removal of privileges granted to the registrant by the department or registration state.

Tow truck-A motor vehicle equipped with, or used in combination with, a mechanical device, mini-wrecker, or auto-trailer, and which is adapted or used to tow, winch, or otherwise move another vehicle.

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 December 5, 1995.

TRD-9515795 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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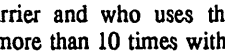
For further information, please call: (512) 463-8630



Subchapter B. Motor Carrier Registration

• 43 TAC §§18.10-18.18

The Texas Department of Transportation adopts new §§18.10-18.18, concerning procedures by which a motor carrier may obtain a certificate of registration, and comply with the minimum insurance requirements, minimum workers' compensation or accident insurance requirements and procedures for registering as a motor carrier under the single state registration system. Sections 18.13, 18.16, and 18.18 are adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Sections 18.10-18.12, 18.14, 18.15, and 18.17 are adopted without changes and will not be republished.

New §§18.10-18.18, and subchapters A and C-G, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995.

Senate Bill 3, 74th Legislature, 1995, added Texas Civil Statutes, Articles 6675c and

6675c-1, which transferred the regulatory authority of the motor carrier industry from the Railroad Commission to the department and provided the department with the authority to register motor carriers, regulate the transportation of goods, and administer the single state registration system.

New §§18.10-18.18 provide for efficient and effective procedures by which a motor carrier may obtain a certificate of registration, comply with the minimum insurance requirements, minimum workers' compensation or accident insurance requirements and procedures for registering as a motor carrier under the single state registration system.

On September 22, 1995, the department conducted a public hearing to seek comments concerning the adoption of new Subchapter B-Motor Carrier Registration, §§18.10-18.18, relating to registration and insurance requirements for motor carriers. Eighteen commenters offered oral testimony at the hearing. Numerous written comments were received by mail. Some comments were submitted by members of the state legislature and various associations. The Texas Motor Transportation Association opposed §18.16, concerning minimum liability insurance requirements and workers' compensation or accidental insurance coverage. The following associations opposed §18.18, concerning the cessation of temporary registration: McAllen Economic Development Corporation, Mexico-Texas Bridge Owners Association, McAllen Produce Terminal Market, Middle Rio Grande Development Council, and the City Council of Del Rio.

Section 18.11, Motor Carrier Registration. Numerous commenters, including Senator Teel Bivins, author of Senate Bill 3, and other legislators requested a revision to the section to allow businesses that were not required to register as private motor carriers prior to August 31, 1995, be allowed to have until September 1, 1997 to comply with the registration and insurance requirements. The department does not concur with this request on the basis that the department does not have the legal authority to suspend state law. Therefore, the commenters' request is not adopted.

Three commenters suggested that the section be revised to clarify the language in the section which could be misconstrued to include trailers. The department does not concur with the suggestion. A similar regulation was in effect prior to September 1, 1995, and there was little or no confusion as to whether or not trailers are required to register. Therefore, the commenters' suggestion is not adopted.

Section 18.13, Application for Motor Carrier Registration, Subsection (c) Disposition of Application, paragraph (1) Approval, subparagraph (B) Registration listing, (i)-(ii).

Three commenters suggested a revision to the subsection to clarify the references to highlighted "registration listings" to be maintained in each vehicle, as well as to clarify that only the pertinent page is needed, not the entire listing. The department concurs with the suggestion. The paragraphs have been changed to read, " (i) A copy of the page of the registration listing on which the power unit is shown shall be maintained in each power unit registered, with the appropriate information concerning that vehicle to be highlighted. The registration listing shall serve as proof of insurance as long as such insurance is in effect and such vehicle is registered with the department. (ii) The highlighted page of the registration listing maintained in the power unit shall, upon demand, be presented by the driver to a department certified inspector or any other authorized government personnel for inspection in accordance with §18.31 of this title (relating to Investigation and Examination of Records)."

Section 18.14, Expiration and Renewal of Commercial Motor Vehicle Registration, Subsection (b) Registration Renewal.

One commenter suggested that the subsection be revised to clarify whether the $10 fee per vehicle covers intrastate or interstate registration. The $10 fee covers the registration of a vehicle operating both interstate or intrastate. A vehicle meeting the definition of a commercial motor vehicle in §18.2 of subchapter A and operated by an interstate motor carrier exempt from regulation by the Interstate Commerce Commission should be registered under this section. However, it does not cover a vehicle that should be registered under the single state registration system in §18.17. Credit will be given to a motor carrier registering vehicles under §18.13 that is already registered under §18.17 if the carrier provides the department with a copy of the single state registration receipt. The commenter's suggestion is not adopted.

Section 18.16, Insurance Requirements, Subsection (a) Minimum requirements.

The Texas Motor Transportation Association, Inc., (TMTA) suggested amending the minimum liability insurance limits on motor carriers with a gross vehicle weight in excess of 26,000 lbs., including tow trucks, to conform with existing federal regulations, applicable on all commercial vehicles engaged in transporting goods for hire. The department does not concur with the suggestion. The federal limit on for-hire carriers is $750,000. The proposed requirement of $500,000 is sufficient to protect the interest of public safety for intrastate transportation. Therefore, the commenter's suggestion is not adopted.

Three commenters requested that the subsection be revised to exclude or exempt non-profit private motor carriers and buses from carrying the minimum liability insurance limits.

One commenter suggested a revision of this subsection which requires all motor bus carriers to comply with the minimum liability insurance levels, with no exemptions for non-profit private motor carriers as set forth by the Federal Motor Carrier Safety Regulations. The department does not have the authority to exempt non-profit organizations. A revision concerning the non-profit organizations shall be addressed in §18.2 of subchapter A.

Several state legislators requested a clarification of the subsection concerning the substantial increase in the minimum insurance requirements for buses designed to transport 26 passengers or more. They question the basis for the increase in liability insurance of ten times the amount of coverage previously required, citing a concern for small businesses and their ability to survive. The department does not concur. The subsection does not make any significant changes to the minimum liability insurance levels previously adopted by the Railroad Commission. Therefore, the legislators' request is not adopted.

The department has revised this subsection to clarify the coverage required and to delineate the type of liability coverage required by the subsection. The department has revised the paragraph to read, " (a) Minimum requirements. A motor carrier registered under this subchapter shall carry at least the minimum amount of liability insurance and file proof of insurance with the department for each vehicle registered under this subchapter. Such insurance must be sufficient to pay not more than the amount of the insurance for each final judgment against the carrier (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both. Minimum insurance levels shall be maintained in at least the amounts indicated in the following table."

Section 18.16, Subsection (a), paragraph (2), (3), (5), (6), and (7).

The department has revised paragraphs (2), (3), (5), (6), and (7) of this table for clarification purposes. Paragraph (2) has been revised to read, "2. Buses designed to transport more than 15 passengers (including the driver), but less than 26 passengers (not including the driver)." Paragraph (3) has been revised to read, "3. Buses designed to transport 26 passengers or more (not including the driver). Paragraph (5) has been revised to read, "5. Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.), including tow trucks." In paragraphs (6) and (7), the term "Motor vehicle carriers" has been changed to "Commercial motor vehicles."

One commenter suggested that the subsection be revised to clarify filing requirements for workers' compensation or accidental insurance coverage. The commenter does not feel the rules are clear whether or not a filing is required on workers' compensation and cargo insurance. The department does not concur with the commenter. This section sets forth the requirements for filing proof of insurance with the department. For the exception of household goods carriers, who are required to file proof of cargo insurance, motor carriers are only required to file proof of liability insurance. Therefore, the commenter's suggestion is not adopted.

Section 18.16, Subsection (b) Cargo insurance.

One commenter suggested that the subsection be revised to include a deductible cargo insurance. The department does not concur with the suggestion. Deductibles are not authorized by Texas Civil Statutes, Article 6675c. Therefore, the commenter's suggestion is not adopted.

Two commenters suggested that the subsection be revised to include a mandatory filing of cargo insurance for tow trucks. The

commenter feels that the public needs to be protected from damages to vehicles caused by negligent tow truck operators. The department does not concur. Texas Civil Statutes, Article 6675c requires only liability insurance and workers' compensation or accidental insurance on commercial motor vehicles, which would include tow trucks. Therefore, the commenters' suggestion is not adopted.

Section 18.16, Subsection (c) Worker's compensation or accidental insurance coverage.

One commenter suggested that the department consider and clarify whether it will approve reimbursement or indemnity policies to meet accidental insurance requirements. The commenter cites these policies as the only ones which provide legal liability indemnity for the registered motor carrier in the event of workplace injury negligence claims. The department does not concur with this suggestion. Senate Bill 3 added the workers' compensation and accidental insurance provisions to protect employees. The intent does not appear to include the protection or indemnification of the employer. Therefore, the commenter's suggestion is not adopted.

Numerous commenters, including TMTA and Representative Curtis L. Seidlits, Jr., house sponsor of Senate Bill 3, among other legislators, state that the language of this provision of the bill was intended to address a 1993 Attorney General's opinion that voided a law which sought to allow a motor carrier working on a government project to have the option of providing either worker's compensation or occupational accidental insurance. Additionally, they suggested a revision to eliminate the provision requiring motor carriers that use independent contractors to provide insurance coverage for the employees of the independent contractors. Furthermore, suggestions were made to revise this subsection to clarify the minimum amounts of coverage to apply only to accidental insurance, since the minimum amounts of coverage do not relate to workers' compensation insurance promulgated in a policy form by the Texas Department of Insurance.

Numerous commenters, including Senator Teel Bivins and other state legislators, requested that the subsection be revised to clarify the term "employees," in respect to the required coverage. They suggested that changes be made to require the coverage on motor vehicle operators only. Some suggested that the term "employees" be substituted with the term "motor vehicle operators." The basis for their request is to avert financial hardships and employment cutbacks if all employees are required to be covered.

Many commenters, including TMTA and Representative Curtis L. Seidlits, Jr., requested a revision of this requirement to exclude private carriers altogether, such as grocery supply companies with trucking divisions, nursing homes, and hotels. Among these commenters, a number of legislators requested a revision of this subsection to exempt retirement centers that operate buses. The commenters' concern is the added cost and expense that will be passed down to the consumers.

The department concurs in part with these suggestions. The department has determined that it would be inconsistent with the general purpose of Senate Bill 3 to require entities which are not for-hire motor carriers to purchase workers' compensation insurance or accident insurance for all their employees, whether or not the employees' duties relate to transportation, and therefore, the department, consistent with the legislative purposes of Senate Bill 3, determines it necessary to revise §18.16 to require motor carriers who were required to obtain certificates of public convenience and necessity prior to September 1, 1995, to protect all their employees with workers' compensation insurance or accident insurance and all other motor carriers to protect their transportation related employees with workers' compensation insurance or accident insurance.

One commenter suggested that the statute is not clear as to what kind of accidental coverage could be personal injury protection under a vehicle policy and suggests using personal injury protection since its cost would be minimal. The department does not concur in that the statute specifically requires either workers' compensation or accidental insurance. Therefore, the commenter's suggestion is not adopted.

Section 18.16, Subsection (d) Qualification of carrier as self-insurer.

One commenter suggests that the subsection be revised to clarify that self insurance provisions do not apply to workers' compensation. The department does not concur with this suggestion. Paragraph (1) of this subsection specifies the applicability of this subsection to subsection (a) and (b) of this section concerning minimum liability and cargo insurance requirements. Therefore, the commenter's suggestion is not adopted.

Section 18.16, Subsection (d), paragraph (1) General qualifications.

Numerous commenters, including Senator Teel Bivins and Representative Curtis L. Seidlits, Jr., among other legislators, requested that the paragraph be revised to provide for or exempt certain disability plans such as, responsible non-subscribers to workers compensation, businesses with plans approved by the federal Employee Retirement Income Security Act (ERISA), and existing self-insurance plans. The department does not concur with this suggestion. Senate Bill 3 does not allow for self-insurance or responsible non-subscribers to be applicable on workers' compensation or accidental insurance. Further, ERISA plans may be self-funded, insurance-funded, or funded by a risk retention group. Senate Bill 3 requires accidental insurance coverage to be acquired "from a reliable insurance company or companies authorized to write such policies in this state." Therefore, the commenters' suggestion is not adopted.

One commenter suggested that the subsection be revised to clarify the insurance levels for liability and deductibles for liability and cargo insurance. The department does not concur with the suggestion. Motor carriers that are required to register with the department are required to maintain minimum levels of liability insurance. Deductibles are not authorized under Texas Civil Statutes, Article 6675c. Therefore, the commenter's suggestion is not adopted.

Section 18.16, Subsection (d), paragraph (8) Governmental entities.

The department has revised this subsection by removing paragraph (8). This revision is due to the exclusion of governmental entities to the definition of commercial motor vehicle. A revision concerning non-profit organizations shall be addressed in §18.2 of subchapter A.

Section 18.16, Subsection (e) Proof of insurance.

Numerous commenters requested a revision of this subsection to allow Texas Workers Compensation Commission certified self-insurers to provide proof of compliance with insurance requirements on coverage for their employees. The department concurs with this suggestion, but it is not necessary to change the subsection. Senate Bill 3 specifically provides that motor carriers shall protect its employees by obtaining workers' compensation insurance coverage as defined under the Texas Workers' Compensation Act, Title (Labor Code, Title 5, Subtitle A). If the coverage being provided complies with law as enforced by the Texas Workers Compensation Commission then the coverage is sufficient.

Section 18.16, Subsection (e), paragraph (2) Filing proof of insurance, subparagraph (A).

One commenter suggested that the subsection be revised to eliminate the requirement for proof of insurance at initial registration of a vehicle. The department does not concur with the suggestion. Texas Civil Statutes, Article 6675c requires that a motor carrier maintain evidence of insurance on file with the department before a registration listing can be issued. If the motor carrier has an insurance filing covering its fleet on file with the department, the proof of insurance requirement will be met. Therefore, the commenter's suggestion is not adopted.

Section 18.16, Subsection (e), paragraph (4) Other bonds, policies or certificates.

One commenter suggested that the subsection be revised due to a contradiction in the first two sentences. The first sentence states that a certificate of insurance will be accepted if it is issued by an insurance company licensed and authorized to do business in the state of Texas. A surplus lines insurer is authorized to do business in Texas but not licensed in Texas. The second sentence says that the department will accept a certificate of insurance issued by a surplus insurer meeting the requirements of Article 1.12-2 of the Code if accompanied by proof of inability to obtain insurance from an authorized insurance company. The department should clarify the rules that it will accept accidental insurance coverage by authorized insurance companies in Texas, which includes licensed insurers and eligible (unlicensed) surplus lines insurers. The department concurs with the suggestion and will omit the portion of the last sentence that reads, "if accompanied by proof of inability to obtain insurance from an insurance company authorized to do business in the State of Texas made by affidavit

in the form required under 28 Texas Administrative Code §15.13 (relating to Surplus Lines Insurance Affidavit)."

Section 18.16, Subsection (f) Termination of insurance coverage.

One commenter suggested that the subsection be revised to clarify which 30 days notice is required, the specific types of insurance coverage requiring cancellation notice, and whether the notice of cancellation requirements applies to all, or specific insurance coverages. The department does not concur with the suggestion. The filing of insurance, and 30 days notice of cancellation applies only to liability and cargo insurance. Therefore, the commenter's suggestion is not adopted.

Section 18.18, Temporary Registration of International Motor Carriers, subsection (d) Cessation of temporary registration.

Eighteen commenters, including the McAllen Economic Development Corporation, Mexico-Texas Bridge Owners Association, McAllen Produce Terminal Market, Middle Rio Grande Development Council and the City Council of Del Rio requested that the subsection be amended to continue the temporary registration of international commercial motor carriers entering from Mexico. They believe that the cost of having to provide annual insurance would be excessive considering that most international carriers operate in Texas for less than a day. The department concurs with these suggestions. The subsection is revised to delete paragraphs (d) and (e). This change will allow the international stamp program to continue beyond December 17, 1995.

Two commenters requested that temporary registration of Mexican commercial motor carriers be made available at port of entries via U.S. customs house brokers in order to facilitate the movement of cross border commerce. This subchapter stipulates that only insurance agents who are duly licensed by the Texas Department of Insurance and who maintain evidence of master insurance policies on file with the department may obtain and sell international registration stamps. The rationale behind this requirement is to control the issuance of temporary registration stamps through agents' insurance policies. However, custom brokers that meet the requirements of §18.18(c), concerning insurance agents may provide temporary registration to international carriers.

General Comments.

One commenter suggested that the proposed rules be revised to include a requirement for tow trucks to have tow lights and safety chains. The department does not concur with the suggestion. There is no authorization in Senate Bill 3 for the department to administer these requirements. Therefore, the commenter's suggestion is not adopted.

One commenter suggested that the proposed rules be revised to bring back regulation of the tow truck industry. The department does not concur with this suggestion. Since Senate Bill 3 repealed the Tow Truck Act, the department has no statutory authority to continue regulation. Therefore, the commenter's suggestion is not adopted.

One commenter suggested that the department consider Section 28 of Senate Bill 3 concerning indemnification. The commenter states that the intent of the provision was to prohibit a shipper from requiring a trucking company to hold the shipper harmless from negligent acts of those other than the trucking company or its employees. The department does not concur with this suggestion. Section 28 of Senate Bill 3 amended Texas Civil Statutes, Article 6701d-11, and is not part of this rulemaking. Therefore, the commenter's suggestion is not adopted.

One commenter suggested that the department promptly appoint an advisory committee with respect to the trucking industry and the department that the Commission voted to establish a year ago in March. The issue is not part of this rulemaking. Therefore, the commenter's suggestion is not adopted.

One commenter suggested that the department study how disputed claims will be addressed under the accidental insurance requirements, including a study to determine if there are accidental coverages available. The department does not concur with this suggestion. Senate Bill 3 does not have provisions for the department to be involved in the actual claims process, but only to require insurance filing of companies who are registered. Therefore, the commenter's suggestion is not adopted.

One commenter suggested the department produce a listing of reliable insurance companies that are not authorized to write policies in this state. The department does not disagree with this suggestion, but the comment is not part of the proposed rulemaking. The suggestion may merit further consideration in a subsequent rulemaking. Therefore, the commenter's suggestion is not adopted.

One commenter suggested the department study and consider similar laws in other states for any duplicity of coverage by any federal legislation. The department does not concur with this suggestion. The Texas Legislature has chosen to address the regulation of transportation by enacting Senate Bill 3. Therefore, the commenter's suggestion is not adopted.

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 Texas Civil Statutes, Article 6675c and 6675c-1, which authorizes the department to adopt rules to administer the regulation of motor carriers.

§18.13. Application for Motor Carrier Registration

(a) Form of application. The application for motor carrier registration shall be in the form prescribed by the director and shall contain, at a minimum, the following information.

(1) Business or trade name. The applicant shall designate the business or trade name of the motor carrier.

(2) Owner name. If the motor carrier is a sole proprietorship, the owner shall indicate the name and social security number of the owner. A partnership shall indicate the partners' names, and a corporation shall indicate principal officers and titles.

(3) Principal place of business. A motor carrier shall designate on the application the motor carrier's principal business address. If the mailing address is different than the principal business address, the mailing address shall also be designated on the application.

(4) Legal Agent. A Texas domiciled motor carrier will be the agent for service of process unless otherwise designated by the motor carrier.

(A) The Texas domiciled motor carrier shall provide the name and address of a legal agent for service of process, if different than the motor carrier.

(B) A motor carrier domiciled outside of Texas shall provide the name and Texas address of the legal agent for service of process.

(C) A legal agent of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(5) Description of vehicles. All applications shall include a motor carrier equipment report identifying each commercial motor vehicle requiring registration that the carrier proposes to operate. Each commercial motor vehicle shall be identified by its motor vehicle identification number, make, model year, license plate number and state of issuance, type of cargo, and the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles shall be made in accordance with subsection (d) of this section.

(6) Description of cargo. An applicant shall also:

(A) state as to whether or not the carrier proposes to transport passengers, household goods, or hazardous materials;

(B) state whether or not the applicant is a tow truck operator; and

(C) specify the amount of insurance coverage.

(7) Safety Affidavit. Each motor carrier shall complete, as part of the application, an affidavit stating that the motor

carrier has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations.

(8) Workers' compensation or accidental insurance. An applicant shall indicate on the application the type of coverage provided for employees.

(9) Accompaniments to application. The following fees and information shall be included with all applications:

(A) an application fee of $100, plus a fee to equal $10 for each vehicle requiring registration that the motor carrier proposes to operate;

(B) proof of insurance or financial responsibility and insurance filing fee as required by §18.16 of this title (relating to Insurance Requirements); and

(C) any other information as required by law.

(10) Payment of fees. Fees paid under paragraph (9)(A) of this subsection are non-refundable and will not be prorated. Credit will be given to fees paid under §18.17 of this title (relating to Single State Registration System), if the carrier provides a copy of the single state registration receipt;

(11) Place of application. All applications for motor carrier registration shall be filed with the department's Motor Carrier Division.

(b) Incomplete applications. Any application for registration that is incomplete, but that is accompanied by all fees and proof of insurance or financial responsibility, may be conditionally accepted by the director. Conditional acceptance shall in no way constitute approval of the application. The director will notify the applicant of the additional information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director; the application will be considered withdrawn and all fees will be retained.

(c) Disposition of application.

(1) Approval. An applicant meeting the requirements of this section and whose registration is approved shall be issued the following information.

(A) Certificate of registration. A certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles the carrier operates which require registration.

(B) Registration listing. An original registration listing will be issued by the department and shall be continuously maintained at the registrant's principal place of business. Such listing will contain information regarding each vehicle registered by the motor carrier.

(i) A copy of the page of the registration listing on which the power unit is shown shall be maintained in each power unit registered, with the appropriate information concerning that vehicle to be highlighted. The registration listing shall serve as proof of insurance as long as such insurance is in effect and such vehicle is registered with the department.

(ii) The highlighted page of the registration listing maintained in the power unit shall, upon demand, be presented by the driver to a department certified inspector or any other authorized government personnel for inspection in accordance with §18.31 of this title (relating to Investigation and Examination of Records).

(iii) Before the expiration of its registration listing, the commercial carrier shall notify the department in writing when it discontinues use of a registered commercial motor vehicle.

(iv) Any erasure, alteration, or unauthorized use of a registration listing shall render it void.

(v) If an original registration listing is lost, stolen, destroyed, mutilated, becomes illegible, or otherwise requires replacement, a new registration listing will be issued by the department upon written request by the motor carrier.

(2) Denial. The department may deny a registration if the applicant has a registration revoked under §18.72 of this title (relating to Suspension and Revocation).

(d) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the conditions described in this subsection.

(1) Additional vehicles.

(A) A motor carrier may not operate an additional vehicle requiring registration unless the carrier pays a $10 registration fee for each additional vehicle the motor carrier proposes to operate, except as provided in subparagraphs (B) and (C) of this paragraph, and must have evidence of continuing insurance or financial responsibility in the amounts set forth in §18.16 of this title (relating to Insurance Requirements).

(B) A motor carrier is not required to pay the $10 registration fee for a substitute vehicle that is a replacement for a vehicle for which the fee was previously paid, provided that the motor carrier notifies the department of the vehicle being taken out of service and identifies the replacement vehicle on a form prescribed by the department, before the replacement vehicle is put into operation.

(C) Credit will be given to fees paid for vehicles registered in accordance with §18.17 of this title (relating to Single State Registration System), if the carrier provides the department with a copy of the single state registration receipt.

(2) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier presents a supplemental application which shows the department evidence of insurance or financial responsibility in the amounts specified by §18.16 of this title (relating to Insurance Requirements).

(3) Change of name. A motor carrier that changes its name (other than by transferring ownership) shall file a supplemental application for registration in compliance with this section no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name, and in the amounts specified by §18.16 of this title (relating to Insurance Requirements).

(4) Change of address or legal agent for service of process. A motor carrier shall notify the director, in writing, of any change of address or legal agent for service of process no later than the effective date of the change. The address most recently filed shall be presumed conclusively to be the current address.

(5) Change of ownership.

(A) A change of ownership of a sole proprietorship or partnership, and the merger, sale, or transfer of a corporation will require the new owner to file a new application for registration in accordance with the provisions of this section.

(B) A motor carrier that is a corporation shall notify the director, in writing, of any change in the principal officers and titles no later than the effective date of the change.

§18.16. Insurance Requirements.

(a) Minimum requirements. A motor carrier registered under this subchapter shall carry at least the minimum amount of liability insurance and file proof of insurance with the department for each vehicle

registered under this subchapter. Such insurance must be sufficient to pay, not more than the amount of the insurance, for each final judgment against the carrier (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both. Minimum insurance levels shall be maintained in at least the amounts indicated in the following table. Figure 2: 43 TAC §18.16(a)

(b) Cargo insurance. A for-hire motor carrier of household goods shall carry cargo insurance in the same amount required by 49 U.S.C. §10102. The minimum limits of financial responsibility for household goods carriers for hire are as follows:

(1) loss or damage to total cargo shipped-$5, 000;

(2) loss of or damage to total cargo carried on any one motor vehicle-$5,000; and

(3) aggregate loss or damage to cargo at one time-$10,000.

(c) Workers' compensation or accidental insurance coverage.

(1) Motor carriers required to register under this subchapter with present operations that would have required certificates of public convenience and necessity for operations conducted prior to September 1, 1995, shall provide for all its employees workers' compensation, or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) $300,000 for medical expenses and coverage for at least 104 weeks,

(B) $100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) $500 for the maximum weekly benefit.

(d) Qualification of carrier as self-insurer.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in the form prescribed by the department, to qualify as a self-insurer. The application shall include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability, without affecting the stability or permanency of its business. In lieu of other proof, the department may accept Interstate Commerce Commission evidence of the motor carrier's qualifications as a self-insurer.

(2) Adopted final orders. The department will adopt all RRC final orders concerning self-insurance active on August 31, 1995, and will continue such final orders as authorized by the RRC until further amended or changed by order of the department.

(3) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insurer status shall submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth shall be adequate in relationship to the size of its operations and the extent of its request for self-insurance authority. The applicant shall demonstrate that it can and will maintain such a net worth.

(B) Self-insurance program. An applicant shall demonstrate that it has established, and will maintain, a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

(i) reserves;

(ii) sinking funds;

(iii) third-party financial guarantees;

(iv) parent company or affiliate sureties;

(v) excess insurance coverage; and

(vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant shall submit evidence of substantial compliance with the Federal Motor Carrier Safety Regulations as adopted by the Texas Department of Public Safety, and with Texas Civil Statutes, Article 6675d.

(4) Other securities or agreements. The department may consider applications for approval of securities or agreements and may approve any such application if satisfied that the security or agreement offered will afford adequate protection of the public.

(5) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and status of its self-insurance program during the period of the motor carrier's self-insurer status.

(6) Duration of self-insurer status. The department may approve an applicant as a self-insurer for any specific time period, or for an indefinite period until revoked under the provisions of paragraph (7) of this subsection.

(7) Revocation of self-insurer status. Upon evidence that a self-insured motor carrier's financial condition has changed, safety program or record is inadequate, or is otherwise not in compliance with this subchapter, the department may at any time, with 10 days notice to the self-insurer, require the self-insurer to appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability; and that it remains in compliance with the requirements of this section and any active self-insurance orders issued or adopted by the department. If an applicant fails to so demonstrate, its self-insurer status may be revoked.

(8) Appeal. An applicant may appeal a denial of self-insurance status or revocation of such status by filing a petition for an administrative hearing in accordance with §§1.21 et seq of this title (relating to Contested Case Procedure).

(e) Proof of insurance.

(1) Proof of insurance. A motor carrier shall maintain proof of insurance in their vehicles at all times. This proof shall be in the form prescribed by the department and the Texas Department of Insurance (DOI) in coordination with the Texas Department of Public Safety.

(2) Filing proof of insurance. A motor carrier's insurance or surety company shall file and maintain proof of insurance on the appropriate form:

(A) at initial registration of a vehicle;

(B) when the insurance carrier changes;

(C) when the ownership of the certificate changes;

(D) when the motor carrier changes its name under §18.13(d)(3) of this title (relating to Application for Motor Carrier Registration); and

(E) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported.

(3) Filing fee. Each certificate of insurance filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of $100.

(4) Other bonds, policies or certificates. No surety bond, insurance policy, or certificate of insurance will be accepted by the department unless issued by an insurance or surety company licensed and authorized to do business in the State of Texas, in the form prescribed or approved by the DOI, and signed or countersigned by an authorized agent of the insurance or surety company. The department will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1. 14-2, and rules adopted by the DOI under that article.

(f) Termination of insurance coverage. Except when replaced by another acceptable form of insurance coverage approved by the department, no insurance coverage or surety bond shall be canceled or withdrawn until after 30 days notice has been given to the department by the insurance or surety company, in the form prescribed by the department and the DOI.

(1) Insolvency of insurance carrier. If the insurer or surety of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier may apply for approval of a surety bond or insurance policy issued by another surety or insurer, upon filing an affidavit with the department. Such affidavit shall be executed by an owner, partner, or officer of the motor carrier, and show that:

(A) no accidents or claims have occurred or arisen during the insolvency of the insurance carrier or surety; or

(B) that all damages and claims have been satisfied.

(2) Notifications. The department shall notify the Texas Department of Public Safety of each notice received by the department under this subsection.

§18.18. Temporary Registration of International Motor Carriers.

(a) Registration. In lieu of registering under §18.13 of this title (relating to Application for Motor Carrier Registration), an international motor carrier may apply for temporary registration in accordance with the provisions of this section.

(b) Application and issuance of registration stamp.

(1) Place of application. An international motor carrier may apply to an insurance agent for international temporary registration.

(2) Issuance. The insurance agent shall issue temporary registration upon the international motor carrier:

(A) providing proof of insurance at or above the levels required by §18.16(a) and (b) of this title (relating to Insurance Requirements); and

(B) paying a fee of $10 for each commercial motor vehicle or tow truck to be operated in this state.

(3) Registration stamp. Upon compliance with paragraph (1) of this subsection, the insurance agent will issue the carrier an international registration stamp which will be valid for one trip of no more than seven days in duration.

(4) Use of stamp. The international registration stamp shall be affixed to the temporary insurance policy, and shall be carried in the vehicle at all times.

(c) Insurance agents.

(1) Purchase of stamps. An insurance agent may obtain international registration stamps from the department upon filing, in a form prescribed by the director, evidence of a master liability policy. The department will assign an identification number to the policy and to all stamps issued under the policy. Stamps may be obtained, in lots of five stamps per lot, either:

(A) by purchase, at a cost of $10 per stamp; or

(B) by consignment, with monies collected upon the sale of the stamps to be remitted to the department as provided in paragraph (4)(B) of this subsection.

(2) Consignment.

(A) Qualifications. Only insurance agents who are duly licensed by the Texas Department of Insurance and who maintain evidence of master insurance policies on file with the department may obtain and sell international registration stamps on consignment from the department.

(B) Surety bond. An insurance agent selling international registration stamps on consignment shall file a surety bond, in a form approved by the department, issued by a corporate surety authorized to do business in this state. The bond shall ensure the return of all unused stamps, and shall ensure full timely remittance of monies collected on the sale of stamps. The amount of the bond shall be at least two times the total value of stamps held on consignment at any given time. Written notice of renewal of a bond shall be given to the department before international registration stamps may be taken on consignment from the department.

(3) Recordkeeping.

(A) For each international registration stamp sold by an insurance agent, the agent shall record, on a form approved by the director:

(i) the name of the motor carrier to whom the stamp is issued;

(ii) the vehicle identification number, and the year, make, and license number of the vehicle for which the stamp is issued;

(iii) the date of sale;

(iv) the port of entry;

(v) the trip policy number; and

(vi) the effective period of the temporary insurance policy.

(B) Within 30 days of the sale of a stamp to a carrier, the agent shall submit to the department evidence of the sale, including the information required by subparagraph (A) of this paragraph.

(4) Fees.

(A) Charge. An insurance agent may not charge an international motor carrier more than $10 for each international registration stamp.

(B) Sale on consignment. An insurance agent selling international registration stamps on consignment shall remit to the department the fee collected from the sale of a stamp no later than 30 days from the date the stamp is sold. If an insurance agent fails to remit monies to the department by the due date, the department shall discontinue issuing stamps to the agent on consignment, and may seek to enforce payment of the surety bond. No stamp shall be held on consignment for a period exceeding one year from the date of consignment by the department.

(5) Design change. In the event of a design change on international stamps, the department shall redeem all unused stamps sold by the department, and shall exchange for new stamps all unused stamps

consigned by the department. If a design change occurs, agents holding unused stamps shall send the stamps to the department for refund or exchange within 60 days after the effective date of the design change. Stamps not returned within the 60-day period are void.

(d) Enforcement of surety bond. The department will seek to enforce payment of the surety bond for failure to return all unused stamps and for failure to pay for all stamps issued on consignment.

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 December 5, 1995

TRD-9515794 Robert E Shaddock
General Counsel
Texas Department of Transportation

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

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Subchapter C. Records and Inspections

• 43 TAC §§18.30-18.33

The Texas Department of Transportation adopts new §§18.30-18.33, concerning procedures for maintenance and examination of information and records, and inspection of premises of motor carriers registered under subchapter B of this chapter. Section 18.32 is adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Sections 18.30, 18.31, and 18.33 are adopted without changes and will not be republished.

New §18.32, and subchapters A, B, and D-F, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995.

Senate Bill 3, 74th Legislature, 1995, added Texas Civil Statutes, Articles 6675c and 6675c-1, which transferred the regulatory authority of the motor carrier industry from the Railroad Commission to the department and provided the department with the authority to register motor carriers, regulate the transportation of goods, and administer the single state registration system.

New §§18.30-18.33 provide for an efficient and effective system of record maintenance and examination procedures for motor carriers by setting out the information and records they are required to maintain, where the records must be maintained, and department procedures for examining records and inspecting a motor carrier's premises.

On September 22, 1995, the department conducted a public hearing on the proposed new sections. One commenter gave oral testimony at the hearing, and four written comments were received.

Concerning §18.32, Subsection (a)(2), three commenters suggested that the subsection be revised to eliminate the requirement that both household goods carriers and their local agents retain all information and documents described in this paragraph and subsection (b)(4). The commenters recommended that either the carrier or its agent make available all information and documents instead of two separate sets of records. The department concurs with the recommendation and has revised the paragraph to read, "Household goods carriers or their local agents shall retain all information and documents described in this paragraph, as well as those documents described in subsection (b)(4) of this section."

Concerning §18.32, Subsection (b)(1), one commenter suggested that the department should focus its enforcement efforts of this subchapter on non-registered carriers by stopping carriers operating on the highways of this state, rather than requiring motor carriers to maintain specific records. The department does not concur with the commenter's suggestion. The department believes that the available resources for verification of compliance are best utilized in audit situations rather than roadside compliance reviews.

Concerning §18.32, Subsection (b)(4), three commenters recommended a revision of this subsection on the basis that the contents, concerning the maintenance of accurate records with acceptable accounting guidelines, are inconsistent with deregulation of transportation. Additionally, the commenters indicate that these requirements are extremely burdensome on carriers, especially when performing local moves or services not governed by a tariff. In the alternative, they recommended the department adopt a system that would require a carrier to maintain an acceptable accounting system and some mandatory documents. The department concurs with the recommendation and has amended the paragraph to limit the applicability of this section to documents that relate directly to the services provided by the carrier and those related to consumer protection. Additionally, the amended paragraph shall replace the current inflexible financial accounting requirements with general and widely accepted accounting principles. The revised paragraph will require either every household goods carrier or their household goods agent to make available to the department the general records and specific documents with reasonable accounting procedures of all services performed on intrastate commerce.

Concerning §18.32, Subsection (d), three commenters suggested a revision to the subsection concerning the three year retention period of all books and records generated by a motor carrier. They suggested that driver's logs be maintained six months and all other records be maintained two years. The department concurs with the recommendation and has revised the subsection to read, "All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address."

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 Texas Civil Statutes, Articles 6675c and 6675c-1, which authorizes the department to adopt rules to administer the regulation of motor carriers.

§18.32. Records.

(a) General records to be maintained.

(1) All carriers. Every motor carrier shall prepare and maintain:

(A) operational logs and insurance certificates and documents to verify the carrier's operations; and

(B) complete and accurate records of services performed.

(2) Household goods carriers. Household goods carriers or their local agents shall retain all information and documents described in this paragraph, as well as those documents described in subsection (b)(4) of this section.

(b) Specific records and documents to be inspected.

(1) Operation documents. To verify compliance with subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every motor carrier shall make available to the department on request all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, tow tickets, insurance certificates and policies, or any other document which would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle.

(2) Registration listing. Each motor carrier shall make available to a certified inspector or any law enforcement officer a copy of the current registration listing issued by the department or a current cab card issued by the Railroad Commission or the National Association of Regulatory Commissioners.

(3) Insurance forms. Every motor carrier shall maintain in the cab of each registered vehicle proof of insurance, in a form approved by the department.

(4) Records and documents of household goods carriers. To verify compliance with subchapter E of this chapter (relating to Consumer Protection), every household goods carrier or their household

goods agent thereof shall make available to the department on request complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce with complete information for each shipment as to shipper, consignee, origin, destination, description of commodities transported, services performed, equipment used and date of shipment for services performed. Such records shall also contain all information supporting all billing charges and the receipt and disposition of all claims. The following documents are required:

(A) bills of lading or receipts and freight bills;

(B) time cards, trip sheets or driver's logs;

(C) claim records;

(D) ledgers and journals;

(E) canceled checks;

(F) bank statements and deposit slips;

(G) invoices, vouchers or statements supporting disbursements, and

(H) dispatch records.

(5) Records and documents of interstate carriers. An interstate carrier registered under §18.17 of this title (relating to Single State Registration) shall maintain for a period of at least three years records and documents supporting fee payments and the original registration receipts issued by the department.

(c) Location of files.

(1) Texas firms. Every motor carrier domiciled within the state shall maintain at a principal office in Texas all information required by the department. Maintenance of records at an alternate location must be approved by the manager. The request shall be submitted on a form approved by the manager.

(2) Out-of-state firms. Every motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at a designated place in Texas; provided, however, that a motor carrier may maintain such records at an out-of-state facility if the carrier reimburses the department for its necessary travel expenses and per diem for any inspections conducted in accordance with §18.31 of this title (relating to Investigation and Examination of Records).

(d) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

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 December 5, 1995.

TRD-9515793 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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

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Subchapter D. Motor Transportation

• 43 TAC §§18.40-18.42

The Texas Department of Transportation adopts new §§18.40-18.42, concerning motor transportation brokers without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7054).

New §§18.40-18.42 and Subchapters A-C and E-F, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995.

Senate Bill 3, 74th Legislature, 1995, created Texas Civil Statutes, Article 911m, which transferred the authority to require bonds for motor transportation brokers from the Texas Railroad Commission to the Texas Department of Transportation.

New §§18.40-18.43 describe exemptions to this subchapter, state that a motor transportation broker shall file a bond with the department before acting as a motor transportation broker, and require that upon submission of a bond to the department, a motor transportation broker shall include a bond review fee of $5.00.

On September 22, 1995, the department conducted a public hearing on the proposed new sections and no oral or written comments were received.

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 Texas Civil Statutes, Articles 911m, which authorizes the department to require a motor transportation broker to provide a bond.

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

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TRD-9515792 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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• 43 TAC §§18.50-18.61

The Texas Department of Transportation adopts new §§18.50-18.61, concerning the protection of consumers who use the services of household goods carriers. Sections 18.51-18.55 and §§18.57-18.61 are adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Section 18.50, and §18.56 are adopted without changes and will not be republished.

New §§18.50-18.61, and subchapters A-D and F-G, Chapter 18, Motor Carrier, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995, and Texas Civil Statutes, Article, 6687-9a.

Senate Bill 3, 74th Legislature, 1995, added Texas Civil Statutes, Articles 6675c and 6675c-1, which transferred the regulatory authority of the motor carrier industry from the Railroad Commission to the department and provided the department with the authority to register motor carriers, regulate the transportation of household goods, and administer the single state registration system.

New §§18.50-18.61 provide an effective system to protect shippers of household goods against deceptive or unfair practices and unreasonably hazardous activities on the part of a household goods carrier.

On September 22, 1995, the department conducted a public hearing to seek comments concerning the adoption of new Subchapter E-Consumer Protection, §§18.50-18.61, concerning consumer protection requirement for the household goods carrier industry. Four commenters gave oral testimony at the hearing. Six written comments were received by mail. Southwest Movers Association, Inc. and Consumers Union submitted some comments in favor and some comments against provisions in this subchapter.

Section §18.51, Local Agents.

One commenter suggested the department discontinue the use of the term "local" in connection with agents. The commenter suggested the department use the term "agent." The department concurs with the commenter, but shall refer to the agent as a "household goods agent" rather than agent.

Section 18.51, Local Agents, subsection (b).

Four commenters suggested the department amend this subsection to clarify that a household goods carrier shall be responsible for the acts of its local agents when such agents are acting on behalf of the household goods carrier. The subsection currently states simply that a household goods carrier shall be responsible for the acts of its agent. The commenters are concerned that the language of the subsection could be interpreted broadly and cause a household goods carrier to assume liability for the acts of its agent even when the agent is operating on its own behalf or on behalf of another motor carrier. One of these commenters went further by suggesting the department allow indemnification provisions to be included in local agents' agency agreements. Another of the commenters remarked that, while the department should ensure that a household goods carrier be held accountable only for the act of its local agents while the agent is acting on the carrier's behalf, the department should be careful not to weaken the subsection so that no household goods carrier is held accountable. The department agrees with the commenters that only the household goods carrier on whose behalf the local agent is operating, if any, should be held accountable for the local agent's acts. However, the department does not agree that the subsection should specifically allow for indemnification provisions because such provisions do nothing to promote the department's consumer protection goals. The subsection is amended to read, "A household goods carrier shall be responsible for the acts, delinquencies, omissions, and conduct of its household goods agent while acting on behalf of the household goods carrier."

Section 18.51, Local Agents, subsection (d).

Three commenters suggested the department amend this subsection to require a local agent to identify to the consumer the name of the household goods carrier it is representing rather than to require the agent to operate under the name of the represented carrier. The commenters consider this an important point because a local agent can represent several household goods carriers at different times. Currently, the subsection would require the local agent to use the trade name of all the household goods carriers it represents at all times. The department concurs with the commenters and the subsection is revised to read "On every shipment handled or negotiated by a household goods agent, the agent shall: (1) operate under the trade name of the represented household goods carrier, as shown on the certificate of registration issued by the department; and (2) prominently display the name of the represented household goods carrier in all communications with the public."

Section 18.51, Local Agents, subsection (f).

Three commenters suggested the department amend this subsection to reduce the retention period for business records from three years to two years for business records, and six months for driver's logs. The department agrees partially with the commenters. Since the household goods carrier is ultimately responsible for maintaining specific records on each shipment transported on its behalf, the household goods agent will be required to retain a record of each shipment it transports rather than requiring the household goods agent to maintain specific documents such as driver's logs. The subsection is amended to read, "A household goods agent shall keep a record of every shipment it negotiates or handles for at least two years after the date of the shipment."

Section 18.51, Local Agents, subsection (g).

Two commenters suggested the department reduce the retention period of terminated agency agreements to two years. One of the commenters went further by recommending that the department exempt short-term leases from the requirements of this subsection. Currently, the subsection requires a household goods carrier to retain all agency agreements for three years. The department agrees with the commenters about the two years retention period, but disagrees with the commenter about the exemption of short-term leases. Because a household goods agent can represent various household goods carriers at one time, it is very important to maintain each lease in writing so that the appropriate household goods carrier can be held accountable for the acts of the household goods agent. The subsection is amended to read, "An agreement between a household goods carrier and its household goods agent shall be in writing and signed by the principal and the household goods agent, and copies of any agreement must be kept in the files of the household goods carrier for a period of not less than two years following the date of each agreement."

Section 18.51, Local Agents.

One commenter suggested the department add a new subsection to this section that would restrict a local agent from representing more than one household goods carrier. The commenter believes that allowing local agents to represent more than one household goods carrier cannot enhance the department's consumer protection goal. The department does not necessarily disagree with the commenter, but cannot add such a subsection without denying local agents their registration rights as provided in Texas Civil Statutes, Article 6675c.

Section §18.53, Tariff Registration, subsection (a)(1)(B). One commenter was concerned that the consumer would be unable to accurately calculate freight charges based on weight or value because of lack of expertise at estimating weight or volume. The current subparagraph requires the household goods carrier's tariff to contain a requirement that final charges be based on the actual weight, volume, or time required to transport a shipment. The commenter suggested the department advise the consumer in the department's pamphlet of the different pricing options available to the consumer. The department does not disagree with the commenters point about the average consumer's ability to estimate the weight of its shipment. However, the department disagrees with the commenter's recommendation for two reasons. First, the household goods carrier might only have one pricing option available to the consumer for any particular type of shipment. For example, the carrier might only allow in its tariff for a weight based rate, for shipments being transported between two or more incorporated cities. By stating in the department's pamphlet that another pricing option is available to the shipper, the department might only be confusing the consumer. The second reason the department disagrees with the commenter is that on a shipment transported between two incorporated cities, weight based rates are typically more economical for the consumer. By encouraging the consumer to pursue another pricing option in the department's pamphlet, the department might actually be recommending the consumer transport its shipment at a higher rate. Therefore, the department is not adopting the commenter's suggestion.

Section 18.54, Mandatory Transportation Standards.

Two commenters suggested that the term "Mandatory" be deleted from the heading of this section. The first commenter remarked that the term "mandatory" places a burden that restricts household goods carriers from modifying their operations under unique situations. The second commenter remarked that the term mandatory "...connotes an absoluteness which is unnecessary and which could be construed in the case of inadvertent or nominal non-compliance as negligence per se." Although the department does not agree with the commenters, the term mandatory is deleted from the title of this section because the department recognizes the provisions of this section as implicitly mandatory and use of the term is redundant.

Section 18.54, Mandatory Transportation Standards, subsection (a)(1).

Two commenters submitted comments on this paragraph. The paragraph allows household goods carriers to provide for the furnishing of binding estimates in the carrier's tariff and requires the carrier to follow procedures outlined in the subsequent subparagraphs. The first commenter suggested the department ensure that the provisions of this paragraph apply only to binding estimates. The second commenter was concerned that the provisions of this paragraph would discourage consumers from obtaining binding estimates. The department agrees with the first commenter about clarifying the paragraph. The department does not agree with the second commenter because a similar federal regulation governs shipments transported on an interstate basis and no ill affects have resulted. Therefore, the department amends the paragraph to read, "A household goods carrier may provide in its tariff for the preparation and furnishing to shippers binding estimates of the costs which the shippers will be required to pay. Household goods carriers must comply with the following conditions if it proposes and furnishes a binding estimate to a shipper."

Section 18.54, Mandatory Transportation Standards, subsection (a)(1)(A).

Two commenters submitted comments on this subparagraph which requires a household goods carrier to furnish a binding estimate in writing and to retain it as an addendum to the bill of lading. The first commenter suggested the department clarify

that this subparagraph apply only on shipments that were actually transported by the household goods carrier. A broad interpretation of the subparagraph could be construed as to require a household goods carrier to retain a binding estimate on a shipment that it did not transport. The other commenter expressed support for the subparagraph because of its provisions for written information. The department agrees that the subparagraph should be amended to clarify that the provisions of this subparagraph apply only on shipments that were actually transported by the household goods carrier. Clarification of the subparagraph will not affect the provisions that the second commenter supports. The subparagraph is revised to read, "Any binding estimate must be furnished, in writing, to the shipper or other person responsible for payment of the freight charges, and if the estimate is accepted by the shipper and the carrier transports the shipment a copy of each estimate must be retained by the household goods carrier as an addendum to the bill of lading or receipt."

Section 18.54, Mandatory Transportation Standards, subsection (a)(1)(B).

Four commenters submitted comments on this subparagraph which requires a household goods carrier to set out the charges on a binding estimate and disclose that the estimate is a binding estimate by printing in large red letters. Three commenters are opposed to the subparagraph and suggest that the department allow household goods carriers to utilize their existing interstate estimate forms to comply with this subparagraph. The commenters go further to state that the use of uniform interstate and intrastate forms is necessary to improve the efficiency of household goods carriers. The fourth commenter expressed its support for this subparagraph because of the information it would require. The department does not agree that existing interstate forms utilized by household goods carriers should be allowed to be used on intrastate shipments. The department is concerned that many of the existing interstate forms utilized by household goods carriers do not adequately convey all the information required by §18.54(a)(1). Specifically, the department is concerned that many of the existing interstate forms do not prominently state that the estimate is binding. However, the department does recognize the need for uniform forms and that the existing regulation is too restrictive to allow for the harmonizing of interstate and intrastate forms. With respect to the fourth commenter, the department agrees that the provisions they support are important and should be retained. In order to reconcile and respond to the comments, the subparagraph is amended to read, "All charges to be assessed for services under a binding estimate shall be identified clearly in the estimate. The estimate shall conspicuously set forth that the estimate is binding and that the prices for the listed services are guaranteed."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2).

One commenter suggested the department ensure that the provisions of this paragraph apply only to a non-binding estimate. Currently, the paragraph requires household goods carriers to provide a non-binding estimate when requested by a consumer and requires the carrier to follow procedures outlined in the subsequent subparagraphs. The department agrees with the commenter and shall revise the paragraph to read, "If requested by a shipper, a household goods carrier shall provide estimates of the total costs of the proposed services or estimated total weight of a shipment of household goods. A household goods carrier must comply with the following conditions if it prepares a non-binding estimate to a shipper."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2)(B).

One commenter expressed concern over the effectiveness of this subparagraph. Currently, the subparagraph states that a non-binding estimate is not binding on the carrier and the charges shall be no more than those appearing in the carrier's tariff. The commenter states that the language used in the subparagraph would seem to imply that the final charges could be based on the rates contained in the carrier's tariff rather than the rates quoted on the non-binding estimate. While the department acknowledges that this scenario could happen, it does not agree that the subparagraph should be revised because the entire nature of a non-binding estimate is based on uncertainty. If the consumer is truly interested in an accurate estimate of cost, the consumer should obtain a binding estimate rather than a non-binding estimate. Thus, this subparagraph is not amended.

Section §18.54, Mandatory Transportation Standards, subsection (a)(2)(D).

Three commenters submitted comments in opposition to this subparagraph which requires a household goods carrier to print on non-binding estimates in large red letters that the estimate is non-binding. The first commenter suggested the department amend the subparagraph to allow the household goods carrier to utilize non-binding estimate forms that are reasonably formatted. The other two commenters recommended the department amend the subparagraph to conform with the requirements imposed on household goods carriers by the Interstate Commerce Commission. While the department acknowledges that the proposed subparagraph might be considered over burdensome, it does not agree with the first commenter's suggestion. Rather, the department, taking the suggestions of the other two commenters into account, is amending the subparagraph to require household goods carriers to conspicuously set forth that the estimate is non-binding. While not expressly linking the forms to those prescribed in the code of federal regulations, this amendment would allow household goods carriers to create a uniform estimate form for interstate and intrastate shipments. Thus, the subparagraph is amended to read, "The non-binding estimate shall conspicuously set forth that the estimate is non-binding and not guaranteed, and that the actual costs for the services to be provided shall be determined after all services have been completed."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2)(E).

Three commenters submitted comments in opposition to this subparagraph which requires household goods carriers to state the "maximum" charges that a shipper will be required to pay on a non-binding estimate. The commenters state that the maximum charges the consumer would be required to pay on a non-binding estimate cannot be entered onto the estimate because the actual costs are based on services rendered. Thus, the transportation and accessorial services rendered would have to be accomplished before the household goods carrier can calculate the maximum charges that the consumer would be required to pay. The commenters suggest that this subparagraph be deleted. The department agrees with the commenters about the impracticality of the subparagraph, but does not agree with the commenters' suggestion. The intent of the subparagraph was to require household goods carriers to itemize the charges the consumer would be required to pay for the listed services. Therefore, the department is revising the subparagraph to require household goods carriers to itemize all the charges that a consumer would be required to pay when a consumer requests a non-binding estimate. Thus, the subparagraph is amended to read, "A non-binding estimate shall include the charges for each service listed."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2)(G).

Two commenters suggested that the department amend this subparagraph and clarify that only shipments that were actually transported by a household goods carrier are subject to the provisions contained in the proposed subparagraph. Currently, the subparagraph requires a household goods carrier to maintain copies of non-binding estimates regardless of whether or not the carrier actually transported the shipment. The department agrees with commenters that the retention of a non-binding estimate of shipment that a household goods carrier did not transport serves no purpose. Therefore, the subparagraph is revised to read, "A copy of a non-binding estimate relating to a shipment transported by a household goods carrier shall be retained by the carrier as an addendum to the bill of lading or receipt, and the original shall be delivered to the shipper."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2)(H).

Three commenters suggested that the department delete this subparagraph which requires a household goods carrier to enter a statement on an order for service when a non-binding estimate is not requested. The commenters do not believe the statement should be entered on an order for service because an order for service is an obsolete form. The department does agree that the statement should not be included on an order for service, but should be included on a bill of lading or receipt. Therefore, the subparagraph is revised to read, "A statement shall be made on the bill of lading or receipt when a non-binding estimate was not requested or furnished to the shipper or authorized representative."

Section 18.54, Mandatory Transportation Standards, subsection (a)(2)(J).

Three commenters suggested that the department amend this subparagraph which requires a household goods carrier to enter the estimated charges on an order for service. The commenters consider an order for service an antiquated form and do not recommend having the estimated charges entered on an order for service. The department agrees with the commenters and the subparagraph is revised to read, "The estimated charges shall be entered on the bill of lading or receipt."

Section 18.54, Mandatory Transportation Standards, subsection (a).

Three commenters suggested the department adopt a new paragraph that would explicitly allow household goods carriers to use their interstate estimate forms on intrastate shipments. The commenters state that the utilization of uniform estimate forms will benefit both consumers and carriers. The department does agree that uniform forms would be beneficial to both consumers and carriers, but does not agree that a specific paragraph authorizing the use of interstate estimate forms is necessary or desirable. The amended paragraphs and subparagraphs relating to estimate of charges do not conflict with the existing federal regulations and should not hinder household goods carriers from developing uniform forms. Further, by expressly allowing household goods carriers to use interstate forms, the department would deny itself the opportunity to require any specific information the department deems necessary on an estimate form. Therefore the commenters' suggestions are not adopted.

Section 18.54, Mandatory Transportation Standards, subsection (c).

Three commenters suggested that the department delete this entire subsection which requires household goods carriers to issue an order for service on each shipment it transports. The commenters remarked that an order for service is an antiquated form and is no longer used by household goods carriers. Further, all of the information required on an order for service can be found on various shipping documents. The department agrees with the commenters and the subsection is deleted it in its entirety.

Section 18.54, Mandatory Transportation Standards, subsection (d)(1).

Two commenters submitted comments on this paragraph which requires a household goods carrier to issue a bill of lading on each shipment it transports. The first commenter suggested that the department restrict the applicability of this paragraph to shipments being transported between two or more incorporated cities. This commenter stated that the prohibitive cost of producing and maintaining a bill of lading for "local" shipments would essentially eliminate registered household goods carriers from the "local" shipment market. The second commenter was concerned that the importance of a bill of lading is understated. The commenter states that the average consumer is not aware that a bill of lading is a contract and that the technical language used in the terms and conditions is very difficult to understand. This commenter goes further and suggests that the department should require the term "contract" be prominently printed on the bill of lading and the terms and conditions fully explained in the department's pamphlet. The department recognizes the validity of the first commenter's comments and will address its concerns in §18.54(d)(4). The department also recognizes the validity of the second commenter's comments, but does not agree with both of the commenter's proposed solutions. The department does not agree that the term "contract" should be added to the bill of lading. The content and format of a bill of lading have long been established, and the department does not believe changing this format is advisable. However, the department does concur with the second commenter's second proposal. The department believes that the required pamphlet is an appropriate venue to explain the importance of a bill of lading and discussing the provisions contained in its terms and condition. Therefore, the paragraph is not revised.

§18.54, Mandatory Transportation Standards, subsection (d)(2)(K).

No comments were received on this subparagraph which requires the agreed dates and times for pickup and delivery to be entered on a bill of lading or receipt to be the same as those on an order for service. The subparagraph is amended because the subsection which contained the provisions for orders for service has been deleted. Thus, the subparagraph is revised to read, " the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment".

Section 18.54, Mandatory Transportation Standards, subsection (d)(2)(S).

One commenter submitted a comment in opposition to this subparagraph which would require a household goods carrier to place a statement on a bill of lading that advised the consumer of the availability of the carrier's mediation program for disputes. The commenter remarked that the subsection would require household goods carrier's to reprint all their bills of lading because their existing bills of lading do not contain this statement. Thus, the commenter recommends that the department delete the subparagraph. While the department does not concur with the commenter's conclusion, it will delete the subparagraph. The department already requires household goods carriers to advise the consumer of the mediation program in the required pamphlet and does not see any reason to repeat this information on various forms and documents. Therefore, the subparagraph is deleted in its entirety.

Section 18.54, Mandatory Transportation Standards, subsection (d)(4).

One commenter suggested the department adopt a new paragraph that would exempt "local" moves from the requirement of the issuance of bills of lading. As discussed earlier, the cost of producing and maintaining bills of lading for "local" movements could result in registered household goods carriers being placed at a competitive disadvantage in the "local" shipment market. The department agrees with the commenter. Therefore, a new paragraph is added to §18.54(d) to read, "

(4) Work tickets, short-form bills of lading or receipts. Household goods carriers may utilize a work ticket, short-form bill of lading or receipt on shipments that are not subject to the maximum rates established pursuant to Texas Civil Statutes, Article 6675c, §8(d); provided, however, that such work tickets, short-form bills of lading or receipts shall implicitly be governed by the contract terms and conditions contained in this section."

Section 18.54, Mandatory Transportation Standards, subsection (g).

Four commenters submitted comments about this subsection which requires household goods carriers to perform an inventory of each shipment it transports. Three commenters are opposed to requiring household goods carriers to inventory every shipment they transport. These commenters state that an inventory is an expensive and time consuming document to produce and suggest that the department allow the consumer to elect if it wants its shipment inventoried at the consumer's expense. The fourth commenter does not agree with the other three commenters and does not believe an inventory to be a burdensome document to produce. Further, this commenter states that an inventory will ensure that the same number of boxes loaded by the household goods carrier at the origin are unloaded at the destination. After taking the cost of labor and time consumed producing an inventory into consideration, the department concurs that an inventory is expensive and burdensome to produce. Further, the department does believe the consumer should have the right to elect to have an inventory of its shipment performed. The department does recognize the validity of the fourth commenter's statement of the usefulness of an inventory, but believes the cost to the consumer outweighs the benefits. Thus, the subsection is revised to read, "If requested by a shipper, a household goods carrier shall prepare an inventory of the shipment, a copy of which shall be delivered to the shipper. The inventory shall be endorsed by the household goods carrier and the household goods carrier shall be solely responsible for its accuracy. The original or a legible copy of the inventory shall be attached to the bill of lading or receipt in the household goods carrier's file. The household goods carrier may assess a charge for preparing the inventory."

Section 18.54, Mandatory Transportation Standards, subsection (h)(5).

Two commenters requested that the department adopt a new paragraph that would allow a household goods carrier to use the manufacturer's weight specifications as a basis for determining the weight on household goods shipments classified as office or exhibition goods. This provision would not be effective on shipments of household goods that are classified as personal effects. The commenters also mention that household goods carriers were allowed to use a manufacturer's weight specification for these types of shipments while they were regulated by the Railroad Commission of Texas. The commenters claimed that this provision allowed household goods carriers a cost effective alternative weighing option on shipments that could be reasonably calculated. The department recognizes the commenters' concerns and agrees that such a provision should be added to the proposed subsection. Further, the department noted that the current subsection does not take into account the situation where a certified scale is not available for the weighing of shipments of household goods that is classified as personal effects. The department is adding a provision in this new paragraph that would allow a household goods carrier to use a constructive weight based on seven pounds per cubic foot as the method for determining the shipment's weight. Thus, a new paragraph is added to the subsection to read, "

(5) Manufacturers' weight. Notwithstanding any contrary provision of this subsection, a household goods carrier may substitute the manufacturers' weight for any commodity identified in subparagraphs (B) or (C) of the household goods definition contained in §18.2 of this title (relating to Definitions). Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded van space may be used on household goods as defined in subparagraph (A) of §18.2 of this title (relating to definitions)." Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded van space may be used on household goods as defined in subparagraph (A) of this title (relating to Definitions)."

Section 18.54, Mandatory Transportation Standards, subsection (i)(1).

Two commenters suggested that the department amend this paragraph which requires household goods carriers to "ensure" shipments are transported with reasonable dispatch. The commenters remark that the corresponding federal regulation uses the term "cause" rather than ensure. The commenters are concerned that a change in terminology might result in a different and adverse interpretation of the paragraph in an administrative or judicial proceeding. The department does not concur with the conclusion drawn by the commenters, but is not opposed to the amendment because it does not adversely affect the stringency of the paragraph. Therefore, the paragraph is revised to read, "A household goods carrier shall cause shipments of household goods to be transported with reasonable dispatch, unless accepted for transportation on the basis of guaranteed pick up and delivery dates."

Section 18.54, Mandatory Transportation Standards, subsection (i)(4)(A).

One commenter suggested that this subparagraph be deleted. The subparagraph requires a household goods carrier to obtain the consumer's consent if it intends to deliver a shipment before the agreed date or time. The commenter states that this subparagraph will only result in conflicts between consumers and carriers. The department disagrees with the commenter because requiring the carrier to obtain the consumer's consent when it intends to deliver the shipment prior to the agreed date or time will reduce the number of situations where the consumer is not available when the carrier is ready for delivery. This is especially important on shipments that are transported on an hourly basis. Thus, the subparagraph is not revised.

Section 18.54, Mandatory Transportation Standards, subsection (j)(1).

One commenter suggests that the department amend this paragraph which requires a household goods carrier to inform the consumer of the actual weight or volume and charges on a shipment when requested by a shipper. The commenter points out that the corresponding federal regulation restricts the applicability to Collect on Delivery (COD) shipments. The commenter recommends that the department restrict the applicability of the paragraph to COD shipments. The department concurs with the commenter because the need for notification is not necessary on any other shipment than a COD shipment. Therefore, the paragraph is revised to read, "Whenever a shipper specifically requests notification of the actual weight or volume and charges on a COD shipment, and supplies the household goods carrier with an address or telephone number at which the communication will be received, the household goods carrier shall comply with such request upon determining the actual weight and charges by telephone, electronic document transfer, or in person."

Section 18.54, Mandatory Transportation Standards, subsection (j)(2).

One commenter suggested the department amend this paragraph which requires a household goods carrier to notify consumers of the actual weight or volume and charges on a shipment when requested by a shipper at least 24 hours prior to delivery. The commenter points out that the corresponding federal regulation restricts the applicability to COD shipments. The commenter recommends that the department restrict the applicability of the paragraph to COD shipments. The department concurs with the commenter because the need for notification is not necessary on any other shipment than a COD shipment. Therefore, the paragraph is revised to read, "Whenever a shipper requests notification of the weight or volume and charges on a COD shipment, the notification must be received by the shipper, at least one full 24-hour day, excluding Saturdays, Sundays, and legal holidays, prior to any tender of the shipment for delivery."

Section 18.54, Mandatory Transportation Standards, subsection (k).

One commenter expressed concern over this subsection which allows a household goods carrier to include a statement on shipping documents that indicate that the property transported was received in apparent good condition. The commenter believes that this type of statement will have adverse affect on a consumer if the consumer files a claim against the carrier. While the department does agree with the commenter, the department also believes that there is a need for a less binding statement that shows that the carrier has delivered the shipment in reasonably good condition. Therefore, the subsection is revised to read, "A shipping document to be signed by the shipper/consignee at time of delivery shall not contain any language which purports to release or discharge the household goods carrier or its household goods agents from liability. It may contain a statement that the property has been received in apparent good condition except as noted on the

shipping documents and any concealed or uninspected damage."

Section 18.55, Selling of Insurance to Shippers.

One commenter expressed concern about this section which authorizes household goods carriers to sell or procure insurance to a consumer. The commenter suggested that the department enter into a memorandum of understanding with the Department of Insurance that would establish standardized policy language and loss ratio standards. The department does not agree with the commenter's suggestion because the department has no statutory authority to enter into any such agreement. Therefore, the department shall not amend this section.

Section 18.56, Collection of Freight Charges.

One commenter suggested that the department amend this section which defines the liability of household goods carriers. The commenter recommends that the section be amended to allow a consumer to file a claim for more than the declared value if the consumer can provide proof that it under-estimated the value of its shipment. The department does not agree with this recommendation because Texas Civil Statutes, Article 883(a) specifies that a household goods carrier shall not be liable in an amount that exceeds the value of a shipment. The department does not believe amending this section to be in conflict with a state statute is advisable. Therefore the department shall not amend this section.

Section 18.57, Collection of Freight Charges, subsection (c).

Three commenters suggested the department amend this subsection which allows household goods carriers to accept charge cards as payment for services rendered. The commenters believe that the language in this subsection would require them to accept charge cards. The commenters request that the department clarify that the carrier may elect to accept charge cards as payment. The department agrees that household goods carriers should be allowed to decide whether or not to accept charge cards as payment. Thus, the subsection is revised to read, "If authorized by the household goods carrier's tariff, a carrier may agree to accept charge cards. In such event payment by charge card shall be considered the same as payment by cash, certified check, or money order to the extent that these provisions do not conflict with any other provisions of this subchapter."

Section 18.58, Information for Shippers, subsection (a).

One commenter suggested the department amend this subsection which requires the carrier to disclose the household goods carriers name, address, and registration number in all advertisements. The commenter recommends that these requirements be restricted to written advertisements. The department does not agree that restricting the required information to written advertisement is in the best interest of consumers. This is especially true for advertisement that could be broadcasted over the air-waves. Therefore, the department shall not amend this subsection.

Section 18.58, Information for Shippers, subsection (b).

Four commenters submitted comments on this subsection which requires a household goods carrier to deliver a pamphlet of rights and responsibility to consumers prior to moving the consumer and a copy of the carrier's annual performance report. Three commenters are opposed to requiring a household goods carrier to deliver a copy of its annual performance report to the consumer. The fourth commenter supports the subsection, especially the provision for an annual performance report. The fourth commenter believes that the information conveyed in these documents is very important. The department agrees that the information contained in the documents is important, but also agrees that the household goods carrier should not be required to deliver a copy of the annual report to the consumer. The information contained on the annual performance report is important because it provides the consumer information on a household goods carrier's performance on matters such as handling claims. Therefore, the subsection is revised to reflect that the annual performance report shall be filed with the department and consumer will be notified through the pamphlet.

Section 18.59, Claims, subsection (a)(1).

Two commenters submitted comments on this paragraph which explains how a consumer shall file a claim. The first commenter requested that the department clarify this paragraph to show that a consumer must file a written claim if it wished the carrier to officially investigate the matter. The second commenter expressed general support for the section which contains this paragraph. The department agrees with the first commenter because requiring a consumer to file a written claim will establish a written record of the proceeding. Therefore, the paragraph is revised to read, "A household goods carrier must act on all claims filed pursuant to this subsection."

Section 18.59, Claims, subsection (a)(3).

Four commenters submitted comments on this paragraph which set out the time periods a household goods carrier has to acknowledge and dispose of claims. The current paragraph specifies that the carrier must acknowledge the claim within 15 days of receipt and dispose of it within 60 days of receipt. Three of the commenters requested that the department adopt the federal guidelines which allow the carrier 30 days to acknowledge receipt and 120 days to dispose of the claim. The fourth commenter expressed general support for the section which contains this paragraph. The department agrees with the three commenters with respect to the use of the time periods prescribed by the federal government. The department recognizes the establishment of a claims handling system that can be used on both an interstate and intrastate basis as helpful in the reduction of confusion in the handling of claims. Thus, the paragraph is revised to require a household goods carrier to acknowledge receipt of a claim within 30 days and to dispose of the claim within 120 days.

Section 18.59, Claims, subsection (c)(3).

Four commenters submitted comments on this paragraph which lists the types of documents that should be filed when a consumer files a service complaint with a carrier. Three commenters requested that the paragraph be amended by eliminating the term "etc." from the paragraph. The commenters note that this broad term could be used to abuse the paragraph and claim inappropriate expenses. The fourth commenter expressed general support for the section which contains this paragraph. The department agrees with the three commenters because "etc." is a vague term. Therefore, the term "etc." is deleted from the paragraph.

Section 18.59, Claims, subsection (d).

Four commenters submitted comments on this subsection which requires household goods carriers to maintain a claims register or claims file. Three commenters recommended this entire subsection be deleted because a claims register is another needless document to maintain. The fourth commenter expressed general support

for the section which contains this paragraph. The department does not agree with the three commenters because the subsection does not require a household goods carrier to maintain both a claims file and claims register. It requires the maintenance of one or the other. In order to clarify this point, the title to this subsection is revised to read, "Claims register or claims file."

Section 18.60, Complaint Resolution Processes, subsection (b)(1)(G).

Four commenters submitted comments on this subparagraph which gives the qualification that a household goods carrier must require of a mediator that it intended to use in connection with its mediation program. Currently, the regulation requires a mediator to have 40 hours of education and one year of experience. The first commenter claims the expense of obtaining a mediator with this type of qualification is more than the value of most claims. It recommends that the department amend the subparagraph to allow mediations where the claim is less than $1,000 to be conducted by disinterested industry members and allow mediations where the claim is more than $1,000 to be conducted by a mediator with 40 hours of education. The second commenter recommended the department eliminate the subparagraph in its entirety. The third commenter recommended the department remove the one year experience requirement. The fourth commenter recommends the department add a penalty provision so that the department can penalize carriers that do not have all the essential elements of a mediation program as specified in this subsection. In response to the first three commenters the department agrees to eliminate the one year experience requirement. Further, on mediations where the claim is less than $1,000, the department recommends that the mediation be conducted through written submission. As for the comment submitted by the fourth commenter, the department does not agree because the penalty provision already in this chapter is sufficient to address the commenter's concerns. Thus, the department shall amend this subparagraph by eliminating the one year experience requirement and adding a new subparagraph that shall read, "On claims of less than $1,000, the household goods carrier's mediation program may be conducted by written submissions instead of an actual meeting between the parties."

Section 18.60, Complaint Resolution Processes, subsection (b)(1)(I).

Four commenters submitted comments on this subparagraph which requires the household goods carrier to initiate mediation within three calendar weeks. Three commenters consider this period too short and recommended periods ranging from 60 days to whenever a mediator is available. The fourth commenter supports the three week requirement. The department agrees that three weeks is not sufficient time to coordinate a mediation session and the subparagraph is revised to read, "ensure that mediations are conducted within 60 days of a request for mediation being filed with a household goods carrier;".

Section 18.60, Complaint Resolution Processes, subsection (b)(1)(J).

Three commenters submitted comments on this subparagraph which authorizes the mediator to request and obtain any additional information from the parties. Two commenters recommend deletion of this subparagraph because it goes against the principles of mediation. Mediation is a voluntary process where parties agree to meet in good faith and resolve a dispute. The mediator's function is only to facilitate the resolution and not the resolver of the dispute. The third commenter generally supports the section in which this subparagraph is located. The department agrees with the first two commenters. Mediation is a voluntary process and the provisions of the subparagraph are inappropriate in a voluntary process. Thus, the subparagraph is deleted in its entirety.

Section 18.60, Complaint Resolution Processes, subsection (b)(1)(K).

Three commenters submitted comments on this subparagraph which requires household goods carriers to bear all costs associated with its mediation program. Two commenters recommend that the department amend the subparagraph to limit the costs to be borne to those associated with the mediator and mediation facilities. The third commenter generally supports the section in which this subparagraph is located. The department agrees with the first two commenters because the current subparagraph could be interpreted to include many inappropriate expenses. Therefore, the subparagraph is revised to read, "ensure that all costs of the mediator and the facilities for mediation shall be borne by the household goods carriers, its household goods agent, or a collective association of household goods carriers, if appropriate."

Section 18.60, Complaint Resolution Processes, subsection (b)(4).

Three commenters submitted comments on this paragraph which requires household goods carriers to retain and make a part of their claims records all communications. Two commenters suggest that the department amend this paragraph to restrict this requirement to written communications. The third commenter generally supports the section in which this paragraph is located. The department recognizes the concerns of the first two commenters and agrees because a written record would facilitate the orderly handling of claims. Thus, the paragraph is revised to read, "The household goods carrier shall retain and make part of the file relating to a shipment any written complaint and written inquiry received from the shipper or consignee."

Section 18.60, Complaint Resolution Processes, subsection (b)(5).

Three commenters submitted comments on this paragraph which requires a household goods carrier to report the type of complaints it receives on an annual basis. Two commenters suggested the department delete this paragraph because the reporting requirements are burdensome and costly to household goods carriers. The third commenter generally supports the section in which this paragraph is located. The department disagrees with the first two commenters, but will delete the paragraph because similar reporting requirements are located in the annual performance report. Therefore, the paragraph is deleted in its entirety.

Section 18.60, Complaint Resolution Processes, subsection (c).

One commenter expressed concern over this subsection which requires a household goods carrier to participate in the department's non-binding arbitration program. The commenter suggested that the non-binding arbitration program should be limited to disputes over fees and damage rather than fees, damage and service. The commenter offers its opinion as to the reasoning behind the different terms used in Texas Civil Statutes, Article 6675c, that authorize the establishment of the mediation and non-binding arbitration program. The commenter suggests that the mediation program was intended to cover disputes over services while the non-binding arbitration program was not intended to cover these disputes. The department does not agree. The department believes that both programs should be used to resolve the same types of disputes. By covering the same types of disputes the department will achieve consistency and the orderly processing of claims. Therefore, the department shall not amend this subsection.

Section 18.60, Complaint Resolution Processes, subsection (c)(2)(H).

Three commenters submitted

comments on this subparagraph which requires both parties involved in a non-binding arbitration session to submit all requested documentation to the arbitrator in a timely fashion. Two commenters recommend deletion of this subparagraph because it goes against the principles of non-binding arbitration. The third commenter generally supports the section in which this subparagraph is located. The department does not concur with the opinion expressed by the first two commenters. Non-binding arbitration is a process in which two parties agree to allow a disinterested third party to examine and resolve a dispute. In order for non-binding arbitration to work, the arbitrator must have sufficient information to issue a decision. Therefore, the subparagraph is not revised or deleted.

Section 18.60, Complaint Resolution Processes, subsection (c). Two commenters suggested the department consider adopting a new paragraph that would restrict the applicability of the department's non-binding arbitration program. Citing the probable ineffectiveness of an non-binding arbitration program, the first commenter suggested the department either delete this entire subsection or cause the consumer to elect between using the carrier mediation program or the department's non-binding arbitration program. For a similar reason the second commenter suggested the department cause the consumer to elect between using the carrier mediation program or the department's non-binding arbitration program. The department does not agree because the two programs are required to be independent of each other and such restrictions are not in the best interest of the consumer. Therefore, the department shall not revise this subparagraph.

Section 18.61, Reporting Requirements. Four commenters submitted comments on this section which requires a household goods carrier to submit an annual performance report. Three of the commenters are opposed to this section citing that such a report is expensive to produce and of little or no value to the consumer or the department. The fourth commenter strongly supports this section. The department does not agree with the first three commenters because household goods carriers are required to produce a similar report on interstate shipments. Further, the report contains statistics that indicate the level of performance by the carrier such as the number of shipments that were transported on a non-binding estimate where the final charges were more than 110% of the estimated charges. The department will authorize that household goods carriers elect to submit either their interstate report or the department's intrastate report. Thus, the section is revised to authorize household goods carriers to elect between filing their interstate report or the department's intrastate report.

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 Texas Civil Statues, Article 6675c, which authorizes the department to adopt rules to administer the regulation of motor carriers, and Texas Civil Statutes, Article 6675c-1, which authorizes the department to administer the single state registration system.

§18.51. Household Goods Agents

(a) Appointment of household goods agent. A household goods carrier may appoint a household goods agent to represent the household goods carrier's business interests in any city, town, or area in Texas.

(b) Liability. A household goods carrier shall be responsible for the acts, delinquencies, omissions, and conduct of each of its household goods agents while acting on behalf of the household goods carrier.

(c) Agent list. A household goods carrier shall file with the department a current, accurate list of its household goods agents and their addresses, on or before January 1, April 1, July 1, and October 1, of each year.

(d) Use of trade name. On every shipment handled or negotiated by a household goods agent, the agent shall:

(1) operate under the trade name of the represented household goods carrier, as shown on the certificate of registration issued by the department; and

(2) prominently display the name of the represented household goods carrier in all communications with the public.

(e) Availability of tariff records. A household goods carrier shall require each of its household goods agents to keep copies of the applicable tariff in the household goods agent's office, open to public inspection.

(f) Shipping records maintained. A household goods agent shall keep a record of every shipment that it negotiates or handles for at least two years after the date of shipment.

(g) Agency agreements. An agreement between a household goods carrier and its household goods agent shall be in writing and signed by the principal and the household goods agent, and copies of any agreement must be kept in the files of the household goods carrier for a period of not less than two years following the date of termination of each agreement.

§18.52. Rates.

(a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff and disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) Prohibited charges and allowances. A household goods carrier and/or its household goods agent shall not charge a higher compensation for transportation services between two incorporated cities than the maximum charges published in its tariff on file with the department.

(c) Collective ratemaking agreements.

(1) Eligibility. In accordance with Texas Civil Statutes, Article 6675c, §9(d), a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) Designation of collective ratemaking associations. An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of the required filing of a tariff for maximum rates and charges required by §18.53 of this title (relating to Tariff Registration).

(3) Submission. In accordance with Texas Civil Statutes, Article 6675c, §9(d), a collective ratemaking agreement shall be submitted to the department for approval, and shall include the following information:

(A) full and correct name and business address (street and number, city and zip code, county, and state), and phone number of the association; whether the association is an corporation or partnership; if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter, and, if an association or a partnership, the names of the officers or partners and date of formation;

(B) full and correct name and business address (city and state) of each household goods carrier on whose behalf

the agreement is filed and whether it is an association, a corporation, individual, or partnership;

(C) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed;

(D) a true copy of the agreement; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) Signature. The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) Incomplete agreement. If the department receives an agreement which does not comply with subsection (c) of this section, the department will send a letter to the individual submitting the agreement advising them of the information that is missing and that the agreement will not be processed until the information is received.

(6) Approval. In accordance with Texas Civil Statutes, Article 6675c, §9(d), the director or his or her designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) Noncompliance. The director or his or her designee may withhold approval of the agreement if he or she finds and concludes, after notice and hearing, that the agreement fails to comply with subsection (c)(6) of this section.

(A) If the director determines that an agreement does not comply with subsection (c)(6), the association representative shall be notified by certified mail. This notice shall specify the reason that an agreement is not being approved. It will also notify the household goods carrier or association representative of the hearing date.

(B) If the association representative resubmits an acceptable agreement which meets the requirements of subsection (c)(6) of this section within ten business days prior to the hearing date, the hearing will be canceled and the agreement will be approved.

(C) If the hearing is held, the presiding officer shall explain the reason(s) that the agreement was rejected. The association representative will be allowed to respond to the objections and present evidence or exhibits which relate to his or her response. The hearing examiner, based on the evidence provided, shall decide whether an agreement shall be approved or resubmitted. The association representative shall be advised of the examiner's decision at the hearing. The State Office of Administrative Hearings would conduct such a hearing. SOAH does not have the authority to render a final decision at the hearing, because under the department's contested hearing procedures, §1.50 and §1.58 of this title (relating to The Hearing Officer's Proposal for Decision and Final Orders), only the commission, after receiving the hearing officer's proposal, may sign this type of order.

(8) New parties to an agreement. An updated agreement shall be filed with the department as new parties are added.

(9) Amendments to approved agreements. Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

§18.53. Tariff Registration.

(a) Submission. In accordance with Texas Civil Statutes, Article 6675c, §8(d), a household goods carrier and/or its household goods agent shall file a tariff with the department which establishes maximum rates and charges for transportation services where, in the course of such transportation, a highway between two or more incorporated cities, towns or villages is traversed. A household goods carrier who is not a member of an approved association under §18.52 of this title (pertaining to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, who is a member of an approved association pursuant to §18.52 of this title (pertaining to Rates), may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) Contents. The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) shall include a requirement that the final charges relating to a shipment, as described in §18.54(b) of this title (relating to Transportation Standards) be computed based on the actual weight or volume of the shipment or actual time required to transport the shipment;

(C) may provide for the acceptance of charge cards for the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check, or money order, and identify the charge card plans participated in by the household goods carrier;

(D) may provide for the offering, selling, or procuring of insurance as provided in §18.55 of this title (relating to Selling of Insurance to Shippers); the tariff may also provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase;

(E) shall describe the procedure for determining charges which are below the maximum rate, as described in the applicable tariff, for each service performed; and

(F) shall reference a specific mileage guide or source in the general rules section of the tariff, if information on rates and charges based on mileage is included in the tariff (The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer data base as a mileage guide, the household goods carrier shall allow free access to the system to department personnel when conducting an inquiry regarding a specific movement performed by the household goods carrier).

(2) Interstate tariff. In accordance with Texas Civil Statutes, Article 6675c, §8(d), a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal office;

(C) the household goods carrier's registration number;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff;

(v) the tariff number; and

(C) shall be separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than ten days prior to the effective date of the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department will reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff is submitted prior to November 1, 1995.

(c) Access. In accordance with Texas Civil Statutes, Article 6675c, §8(d), tariffs filed pursuant to this section will be made available for public inspection at the Motor Carrier Division, 4000 Jackson, Camp Hubbard, Building 1 and by calling 1-800-299-1700.

§18.54. Transportation Standards.

(a) Estimates of charges.

(1) Binding estimates. A household goods carrier may provide in its tariff for the preparation and furnishing to shippers, binding estimates of the costs which the shippers will be required to pay. Household goods carriers must comply with the following conditions if it prepares and furnishes a binding estimate to a shipper.

(A) Any binding estimate must be furnished, in writing, to the shipper or other person responsible for payment of the freight charges. If the estimate is accepted by the shipper and the carrier transports the shipment a copy of each estimate must be retained by the household goods carrier as an addendum to the bill of lading or receipt.

(B) All charges to be assessed for services under a binding estimate shall be identified clearly in the estimate. The estimate shall conspicuously set forth that the estimate is binding and that the prices for the listed services are guaranteed.

(C) A binding estimate must clearly describe the shipment and all services to be provided.

(2) Non-binding estimates. If requested by a shipper, a household goods carrier shall provide estimates of the total costs of the proposed services or estimated total weight of a shipment of household goods. A household goods carrier must comply with the following conditions if it prepares and provides a non-binding estimate to a shipper.

(A) A non-binding estimate shall be accurately prepared and shall clearly identify the approximate charges which will be assessed for the services in the estimate.

(B) An estimate of approximate costs shall not be binding on the household goods carriers providing such estimates. The final charges on shipments moved on non-binding estimates shall be no more than those appearing in the household goods carrier's tariff applicable to the transportation.

(C) The non-binding estimate shall conspicuously set forth that the estimate is non-binding and not guaranteed, and that the actual costs for the services to be provided shall be determined after all services have been completed.

(D) A non-binding estimate shall include the charges for each service rendered.

(E) A non-binding estimate must be furnished without charge and in writing to the shipper or other person responsible for payment of the freight charges prior to loading the shipment and only after visual inspection of the goods to be moved is made by the estimator.

(F) A copy of any non-binding estimate relating to a shipment transported by a household goods carrier shall be retained by the household goods carrier as an addendum to the bill of lading or receipt, and the original estimate shall be delivered to the shipper.

(G) A statement shall be made on the bill of lading or receipt when a non-binding estimate was not requested or furnished to the shipper or authorized representative.

(H) A non-binding estimate must clearly describe the shipment and all services to be provided.

(I) The estimated charges shall be entered on the bill of lading or receipt.

(3) COD delivery. At time of delivery of a COD shipment on which a non-binding estimate of the approximate costs has been furnished by a household goods carrier under the provisions of subsection (a)(2) of this section, the shipper may request delivery of the shipment upon payment, in a form acceptable to the household goods carrier, of an amount not exceeding 110% of the estimated charges, except when such shipment is delivered to a warehouse for storage at the request of the shipper. The household goods carrier shall, upon request of the shipper, relinquish possession of the shipment upon payment of not more than 110% of the estimated charges and shall defer demand for the payment of the balance of any remaining

charges for a period of 30 days following the date of delivery.

(b) Final charges subject to minimum weight, volume, or time provisions. A household goods carrier providing services for shippers on rates based on the transportation of a minimum weight or volume or on a minimum time period or hourly charge shall indicate on the bill of lading or receipt the minimum weight or volume-based rates, minimum time period or hourly charge, and the minimum charges applicable to the shipment. Failure to comply with this requirement shall result in the final charges being computed based on the actual weight or volume of the shipment or the actual number of hours used to transport the shipment.

(c) Bill of lading or receipt.

(1) Issuance of a bill of lading or receipt. Every household goods carrier shall issue a bill of lading or receipt. The bill of lading or receipt shall contain the minimum information required by paragraph (2) of this section and the terms and conditions of the contract. The household goods carrier shall furnish a complete copy of the bill of lading or receipt to the shipper prior to the commencement of the loading of a shipment. A bill of lading or receipt shall comply with, be governed by, and have the consequences stated in the Business and Commercial Code, Chapters 1-11, and any other applicable and effective provisions of the statutes. All property transported by a household goods carrier between points in Texas shall be subject to all terms and conditions of the uniform bill of lading or receipt, as set forth in this subsection, except in cases where such terms and conditions are in conflict with the laws of the State of Texas.

(A) Section 1 of contract terms and conditions.

(i) The household goods carrier or party in possession of any of the property herein described shall be liable at common law for any loss thereof or damage thereto, except as hereinafter provided.

(ii) No household goods carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by an act of God, the public enemy, the authority of law, or an act or default of the shipper or owner. The household goods carrier's liability shall be that of warehouseman only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file after notice of the arrival of the property at destination has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the household goods carrier or party in possession (and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession), the household goods carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes. Except in the case of household goods carrier's negligence, no household goods carrier, or party in possession of all or any of the property herein described, shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession.

(iii) In case of quarantine the property may be discharged at the risk and expense of the owner into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the household goods carrier's dispatch at the nearest available point in the household goods carrier's judgment, and in any such case the household goods carrier's responsibility shall cease when property is so discharged, or property may be returned by the household goods carrier at the owner's expense to the shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owner of the property or the household goods carrier may file a lien. The household goods carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by the household goods carrier's officers, local agents, or employees, nor for detention, loss, or damage of any kind occasioned by the quarantine or its enforcement. A household goods carrier shall not be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the household goods carrier, its local agents, or officers, as to quarantine laws or regulations. The shipper shall hold the household goods carrier harmless from any expense it may incur, or damages it may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

(B) Section 2 of contract terms and conditions.

(i) A household goods carrier is not bound to transport property by any particular scheduled vehicle or in time for any particular market other than with reasonable dispatch. A household goods carrier shall have the right, in case of physical necessity, to forward the property by any household goods carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges, if paid, shall be the maximum amount recovered, whether or not such loss or damage occurs from negligence.

(ii) As a condition precedent to recovery, a claim must be filed in writing with the receiving or delivering household goods carrier, or the household goods carrier issuing the bill of lading or receipt, or the household goods carrier on whose line the loss, damage, injury, or delay occurred, or the household goods carrier in possession of the property when the loss, damage, injury, or delay occurred, within nine months after delivery of the property or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any household goods carrier only within two years and one day from the day when notice in writing is given by the household goods carrier to the claimant that the household goods carrier has disallowed the claim or any of its part or parts specified in the notice. Where a claim is not filed or a suit is not instituted in accordance with the foregoing provisions, a household goods carrier hereunder shall not be held liable, and the claim will not be paid.

(iii) Any household goods carrier or party liable on account of loss of or damage to any of the property shall have the full benefit of any insurance that may have been effected, upon, or on account of, said property, so far as this shall not avoid the policies or contracts of insurance; provided, that the household goods carrier reimburses the claimant for the premium paid.

(C) Section 3 of contract terms and conditions. Except where such service is required as the result of household goods carrier's negligence, all property shall be subject to necessary cooperage and baling at the owner's cost.

(D) Section 4 of contract terms and conditions.

(i) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after notice of the arrival

of the property at destination) has been duly sent or given, and after tender of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vehicle, warehouse, or place of business of the household goods carrier, subject to the tariff charge for storage and to household goods carrier's responsibility as warehouseman, only, or at the option of the household goods carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available storage facility, at the cost of the owner and there held without liability on the part of the household goods carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading or receipt for notification, showing the warehouse in which the property has been placed.

(ii) If nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the household goods carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the household goods carrier; provided, that the household goods carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading or receipt if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Thirty days must elapse after notice that the property was refused or remains unclaimed was mailed, sent, or given before notice of sale may be published

(iii) If perishable property which has been transported is refused by the consignee or party entitled to receive it, or the consignee or party entitled to receive it shall fail to receive it promptly, the household goods carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale; provided, that if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, notification shall be given, in such manner as the exercise of due diligence requires before the property is sold. .

(iv) If the procedure provided for in this section is not possible, it is agreed that nothing contained in the section shall be construed to abridge the right of the household goods carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(v) The proceeds of any sale made under this regulation shall be applied by the household goods carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care requires special expense. If there is a balance it shall be paid to the owner of the property.

(vi) If the household goods carrier is directed by the consignor or its agent to load property from (or render any services at) a place or places at which the consignor or its agent is not present, the property shall be at the risk of the owner before loading.

(vii) If the household goods carrier is directed by the consignee or its agent to unload or deliver property (or render any services) at the place or places at which the consignee or its agent is not present, the property shall be at the risk of the owner after unloading or delivery.

(E) Section 5 of contract terms and conditions. A household goods carrier shall not carry or be liable in any way for documents, specie, or for articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed

(F) Section 6 of contract terms and conditions. Every party, whether the principal or local agent, shipping explosives or dangerous goods, without previous full written disclosure to the household goods carrier of their nature, shall be liable for and indemnify the household goods carrier against all loss or damage caused by the goods, and the goods may be warehoused at the owner's risk and expense or destroyed without compensation.

(G) Section 7 of contract terms and conditions.

(i) The owner or consignee shall pay the freight and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no household goods carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading or receipt until all rates and charges have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading or receipt that the household goods carrier shall not make delivery without requiring payment of the charges and the household goods carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for the charges. Where the household goods carrier has been instructed by the shipper or consignor to deliver the property to a consignee other than the shipper or consignor, the consignee shall not be legally liable for transportation charges in respect of the transportation of the property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee is an agent only and has no beneficial title in said property, and prior to delivery of said property has notified the delivering household goods carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading or receipt, has also notified the delivering household goods carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges.

(ii) If the consignee has given to the household goods carrier erroneous information as to whom the beneficial owner is, such consignee shall be liable for the additional charges. Nothing herein shall limit the right of the household goods carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading or receipt, the freight charges must be paid on the articles actually shipped.

(H) Section 8 of contract terms and conditions. If this bill of lading or receipt is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading or receipt, the shipper's signature to the prior bill of lading or receipt as to the statement of value or otherwise, or election of common law or bill of lading or receipt, in or in connection

with such prior bill of lading or receipt, shall be considered a part of this bill of lading or receipt as fully as if the same were written or made in or in connection with this bill of lading or receipt.

(I) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in this bill of lading or receipt which shall be made without the special notation herein of the agent of the household goods carrier issuing this bill of lading or receipt, shall be without effect, and this bill of lading or receipt shall be enforceable according to its original tenor.

(2) Minimum information required on a bill of lading or receipt. Whenever a bill of lading or receipt is issued in compliance with paragraph (1) of this subsection, the household goods carrier shall include:

(A) the number of the bill of lading or receipt;

(B) the name and address of the household goods carrier issuing the bill of lading or receipt;

(C) the date the shipment was received by the household goods carrier;

(D) the points of origin and destination;

(E) the number and an exact description of the commodity, goods, articles, packages, or property tendered and received for transportation, showing separately those items of differing classification and those which are subject to varying rates or charges;

(F) the weight, volume, or measurement of the property tendered and received for transportation according to the lawfully applicable rates and charges shown separately by classification;

(G) the names and addresses of any other household goods carriers, when known, which will participate, through interline, in the transportation of the shipment;

(H) the name, address and telephone number of the office of the household goods carrier that should be contacted in relation to the transportation of the shipment;

(I) the name and address of the shipper or consignee;

(J) the name, address and, if furnished, the telephone number of a person to whom notification provided for in subsection (j)(2) of this section shall be given when the transportation is to be performed on a COD basis;

(K) the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment;

(L) the dates for pickup and delivery and any penalty or per diem entitlement due the shipper under the agreement, when the transportation is to be performed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service;

(M) the actual date of pickup;

(N) the company or household goods carrier identification number of the vehicle on which the shipment is loaded;

(O) the terms and conditions for payment of the total charges including notice of any minimum charges;

(P) the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment when the transportation is to be performed on a COD basis;

(Q) the required released rates valuation statement; and

(R) evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(3) Copy of bill of lading or receipt to accompany shipment. A copy of the bill of lading or receipt shall accompany a shipment at all times while in the possession of a household goods carrier. When the shipment is loaded on a vehicle for transportation, the bill of lading or receipt shall be in possession of the driver responsible for the shipment.

(4) Household goods carriers may utilize a work ticket, short-form bill of lading, or receipt on shipments that are not subject to the maximum rates established pursuant to Texas Civil Statute Article, 6675c §8(d); provided, however, that such work tickets, short-form bills of lading or receipts shall implicitly be governed by the contract terms and conditions contained in this section.

(d) Freight bills. Freight bills containing applicable rates and charges for services are to be issued by the household goods carriers and are to be presented to shippers for collection of such charges. The freight bill shall contain all information shown on the bill of lading or receipt, and in addition, the rate assessed and total charges to collect, including charges for extra labor or accessorial services, if any. All freight bills bearing hourly charges for detention, extra labor, or other accessorial charges shall show the date and time of the beginning and ending of the services upon which charges are based and any other information necessary for a complete explanation of such charges. This information may be shown on the bill of lading or receipt instead of on the freight bill, if a copy of the bill of lading or receipt is attached to the freight bill.

(e) Combining documents. A household goods carrier may elect to use a combination bill of lading or receipt and freight bill. In such an event, the combination document shall contain all information required in subsections (c) and (d) of this section.

(f) Shipment inventory. If requested by a shipper, a household goods carrier shall prepare an inventory of the shipment, a copy of which shall be delivered to the shipper. The inventory shall be endorsed by the household goods carrier, and the household goods carrier shall be solely responsible for its accuracy. The original or a legible copy of the inventory shall be attached to the bill of lading or receipt in the household goods carrier file. The household goods carrier may assess a charge for preparing the inventory. The inventory must reflect at a minimum:

(1) a description of each article in the shipment, including:

(A) the exact size, as shown in the applicable tariff, of all containers packed or crated by the carrier;

(B) the exact description of items requiring charges in addition to line haul rates;

(2) the symbol "CP" for all containers packed or crated by the carrier; and

(3) the symbol "PBO" for all containers packed or crated by the owner or shipper.

(g) Determination of weights. A carrier transporting household goods on a non-binding estimate utilizing shipment weight as a factor in determining transporta-

tion charges shall determine the weight of each shipment transported prior to the assessment of any charges. Except as provided in this section, the weight shall be obtained on a certified scale.

(1) Weighing procedures.

(A) The weight of each shipment shall be obtained by determining the difference between the tare weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(B) At the time of both weighings, all pads, dollies, handtrucks, ramps, and other equipment required in the transportation of a shipment shall be on the vehicle. Neither the driver nor any other person shall be on the vehicle at the time of either weighing.

(C) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(D) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(E) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(F) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment, and the gross weight of the container with the shipment loaded.

(G) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The household goods carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these rules.

(2) Weight tickets.

(A) The carrier shall obtain a separate weight ticket for each weighing required under this subsection and shall carry it on the vehicle except when both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket shall be signed by the person performing the weighing. Weight tickets shall be attached to the bill of lading or receipt covering the shipment. Weight tickets shall contain:

(i) the complete name and location of the scale;

(ii) the date of each weighing;

(iii) identification of the weight entries as being tare, gross, or net weights;

(iv) the company or carrier identification of the vehicle;

(v) the last name of the shipper as it appears on the bill of lading or receipt;

(vi) the household goods carrier's shipment registration or bill of lading or receipt; and

(vii) the original weight ticket or tickets relating to the determination of the weight of a shipment.

(B) This ticket must be retained by the carrier as part of the file on the shipment. A freight bill presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(3) Reweighing of shipments. Before unloading a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

(4) Storage shipments. On all shipments weighed pursuant to the provisions of this subsection which are placed in storage in transit or delivered out of storage to destination by another vehicle, no additional weighing shall be required unless the shipment has been decreased or increased in weight subsequent to the original weighing of the shipment.

(5) Manufacturers' weight. Notwithstanding any contrary provision of this subsection, a household goods carrier may substitute the manufacturers' weight for any commodity identified in subparagraphs (B) or (C) of the household goods definition contained in §18. 2 of this title (relating to Definitions). Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded van space may be used on household goods as defined in §18.2(A) of this title (relating to Definitions).

(h) Reasonable dispatch.

(1) Reasonable dispatch required. A household goods carrier shall cause shipments of household goods to be transported with reasonable dispatch, unless accepted for transportation on the basis of guaranteed pickup and delivery dates.

(2) Notification of delay in providing service with reasonable dispatch. Whenever a household goods carrier is unable to perform either or both the pickup and delivery of a shipment on the dates or during the periods of time specified in the bill of lading or receipt, the household goods carrier shall notify the shipper by telephone, electronic document transfer, or in person, at the household goods carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the household goods carrier that it will be unable to provide the service in compliance with the terms of the bill of lading or receipt.

(3) Carrier notification of delay.

(A) At the time of notification of delay, the household goods carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made, which considers the needs of the shipper.

(B) If the notification of delay occurs prior to the pickup of the shipment, the amendment shall be in writing.

(C) If the notification of delay occurs subsequent to the pickup of the shipment, the household goods carrier representative notifying the shipper of the delay shall prepare a written record of the date, time, and manner of notification, and the amended date or period of time for delivery by the household goods carrier. The record shall be retained by the household goods carrier as part of its file on the shipment and a true copy of the record shall be furnished, by first class mail or in person, to the shipper.

(4) Tendering for delivery.

(A) Except upon the request or concurrence of the shipper, a shipment being transported shall not be tendered for

delivery prior to the agreed delivery date and time or period of time specified on the bill of lading or receipt; provided that whenever a household goods carrier is able to tender a shipment for final delivery more than 24 hours prior to the specified date or the first day of the specified period of time, and the shipper has not requested or concurred in such early delivery, the household goods carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in proximity to the destination of the shipment.

(B) Whenever a household goods carrier shall exercise such option, it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment.

(C) The household goods carrier's responsibility for the shipment under the terms and conditions of the bill of lading or receipt and its responsibility for the charges for redelivery, handling and storage thereof shall continue until final delivery; provided that the household goods carrier's responsibility under the bill of lading or receipt shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading or receipt.

(i) Notification of charges.

(1) Weight information. Whenever a shipper specifically requests notification of the actual weight or volume and charges on a COD shipment, and supplies the household goods carrier with an address or telephone number at which the communication will be received, the household goods carrier shall comply with such request upon determining the actual weight and charges by telephone, electronic document transfer, or in person.

(2) Notification requirements. Whenever a shipper requests notification of the weight or volume and charges on a COD shipment, the notification must be received by the shipper, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery.

(3) Exceptions. The 24-hour notification requirement shall not apply on a shipment:

(A) to be backweighed; or

(B) to be picked up and delivered within a time period encompassing two consecutive week days, with the agreement of the shipper; or

(C) on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110% of the estimated charges.

(j) Signed receipt for shipment-release prohibition. A shipping document to be signed by the shipper/consignee at time of delivery shall not contain any language which purports to release or discharge the household goods carrier or its household goods agents from liability. It may contain a statement that the property has been received in apparent good condition except as noted on the shipping documents and any concealed uninspected damage.

§18.55. Selling of Insurance to Shippers. A household goods carrier or their employees, household goods agent, or representative, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in excess of the specified household goods carrier liability to a shipment or shipments of household goods to be transported.

(1) Policy issuance. The shipper shall be issued a policy or other appropriate evidence of the insurance purchased, and a copy of this must be furnished to the shipper at the time the insurance is sold or procured.

(2) Policy language. Carrier issued policies shall be written clearly and concisely and shall clearly specify the nature and extent of coverage.

(3) Penalty. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the household goods carrier to full liability for any claims to recover for loss or damage attributed to the household goods carrier.

§18.57. Collection of Freight Charges.

(a) Lost or destroyed shipments. The collection of freight charges on household good shipments involving the loss or destruction of the shipment, in transit, shall follow the guidelines described in 49 CFR Part 1056.15 to the extent that these regulations do not conflict with the provisions of this title.

(b) Shipments transported on more than one vehicle. The collection of freight charges on a shipment transported on more than one vehicle by a household goods carrier shall follow the guidelines described in 49 CFR Part 1056.16 to the extent that these regulations do not conflict with the provisions of this title.

(c) Use of charge card plans. If authorized by the household goods carriers' tariff, a carrier may agree to accept charge cards. In such event payment by charge card shall be considered the same as payment by cash, certified check, or money order to the extent that these provisions do not conflict with any other provisions of this subchapter.

§18.58. Information for Shippers.

(a) Advertising. A household goods carrier shall include the following information on all advertisements published within the state.

(1) The name or trade name of the household goods carrier as shown on the Certificate of Registration, as described in §18.11 of this title (relating to Motor Carrier Registration).

(2) The household goods carrier's place of business and street address in this state.

(3) The household goods carrier's certificate or registration number assigned by the department which shall be in the following form in every advertisement: "TxDOT Number _____," but shall not include any subnumbers which may have been assigned.

(b) Publications. The household goods carrier shall provide the following information to a shipper prior to transporting any household goods:

(1) a pamphlet entitled, Your Rights and Responsibilities When You Move in Texas;

(2) a notice in its pamphlet that its annual performance report is on file with the department;

(3) a concise, easy-to-read, accurate description of the customer complaint and inquiry handling procedures established and maintained by the household goods carrier, as described in §18.59 of this title (relating to Claims), and §18.60(b) of this title (relating to Complaint Resolution Processes); in addition, the description shall include a telephone number which the shipper may use to communicate with the household goods carrier, accompanied by a clear and concise statement concerning who shall pay for such calls and the phone number of the department's customer service line;

(4) a concise, easy-to-read, accurate summary of the department's complaint resolution processes available to shippers which may be used to resolve disputes over fees, damages, or services, including the processes described in §18.60(c) of this title (relating to Complaint Resolution Processes); and

(5) the toll-free customer service line (1-800-299-1700) shippers may access to receive information about a household goods carrier's complaint history.

(c) False advertising. No household goods carrier shall make, publish, display, disseminate, advertise, circulate, or place before the public or prospective shipper in any manner, orally or in writing, in any format, or via any other medium of advertisement or communication, a statement concerning any aspect of intrastate regulated transportation performed by the household goods carrier that is false or misleading, in whole or in part. A statement shall be deemed misleading within the meaning of this subsection if it omits any qualification imposed by the regulations of this department.

(d) Shipper access to complaint information.

(1) The department will maintain information about complaints against household goods carriers, including, but not limited to, information reported by household goods carriers pursuant to §18.60 of this title (relating to Complaint Resolution Processes) and complaints reported in the annual report as described in §18.61 of this title (relating to Reporting Requirements).

(2) The department will maintain a toll-free number (1- 800-299-1700) which any individual may use to obtain information about a household goods carrier's complaint history.

(3) Shippers who wish to receive any additional information must submit a written request, to the director, describing the information they are requesting.

§18.59. Claims.

(a) Loss or damage claims.

(1) Filing of claims. A household goods carrier must act on all claims filed pursuant to this subsection.

(A) A claim for loss, damage, injury, or delay to a shipment must be filed in writing or by electronic document transfer with the household goods carrier who received, delivered, or handled the shipment. The use of a claims form set out in the applicable tariff is recommended, but not required.

(B) The claim must contain facts sufficient to identify the shipment, and make demand for payment of a specified or determinable amount of money.

(C) Bad order reports, appraisal reports of damage, notation of exceptions on freight bills or other documents, inspection reports issued by household goods carrier inspectors, tracers, or inspection requests, cannot be substituted for a written claim but may be used to supplement or support a written claim.

(2) Documents required in support of claims. A claim must be accompanied by:

(A) the original freight bill and bill of lading or receipt or other contract of carriage, or copies of such documents;

(B) documentation to establish the value of the property;

(C) a signed statement that the property covered by the claim has not been received when an asserted claim for loss cannot otherwise be confirmed by the household goods carrier, if the household goods carrier requires it; and

(D) a written assignment or other documentation of claimant's interest when the interest of the claimant in the property involved does not appear from the documents submitted.

(3) Acknowledgment and disposition of claims.

(A) A household goods carrier receiving a written claim for loss of or damage to property transported shall acknowledge receipt of the claim in writing to the claimant within 30 calendar days after receipt by the household goods carrier or its household goods agent, unless the carrier pays or declines to pay the claim, in writing, within that 30 days. At the time of claim acknowledgment, the household goods carrier shall notify the claimant in writing with the following statement: "Claim handling procedures are established by the Texas Department of Transportation. Household goods carriers operating in intrastate commerce must comply with the Motor Carrier Regulations in §18.59 in the handling of loss and/or damage claims. Questions or complaints concerning the household goods carrier's handling should be directed to the Motor Carrier Division at 1-800-299-1700." The claimant shall also be notified of his or her right to request mediation if a claim is not settled to his or her satisfaction or 120 days have passed and the claim has not been resolved. The household goods carrier or its household goods agent shall record the date of receipt on the claim.

(B) The household goods carrier shall, after a thorough investigation of the facts, pay, decline to pay, or make a firm compromise settlement offer in writing to the claimant within 120 days after receipt of the claim by the household goods carrier or its household goods agent.

(C) If the claim cannot be processed within 120 days of receipt, the household goods carrier shall advise the claimant, in writing or electronic communication, of the status and reason for the delay and of the shipper's right to request mediation. The household goods carrier shall continue to advise the claimant every 60 days until a decision or settlement is made or mediation is initiated.

(4) Inconsistent claims. When two or more household goods carriers have been presented with a similar claim on the same shipment, the household goods carriers may require further substantiation from each claimant to the extent necessary to resolve any overlap or conflict.

(5) Documenting pilferage. If any portion of a shipment bears any indication of pilferage, the household goods carrier and consignee shall jointly inventory the contents and note shortages or damages on the household goods carrier's delivery receipt.

(6) Reporting of concealed damage. The consignee has the responsibility to notify the delivering household goods carrier of concealed damage to a shipment as soon as it is discovered, and to preserve the shipping container and its contents in the same condition as when the damage was discovered, insofar as possible.

(7) Inspection by household goods carrier or consignee. The household goods carrier shall inspect a damaged shipment as soon as practicable after a claim has been filed or being notified and requested to inspect by the consignee, but no later than 30 normal working days after that claim filing or request. The household goods carrier shall make a written report of the results of the inspection and provide the original to the consignee.

(8) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other.

(9) Conflicting provisions. Any and all items or provisions of tariffs that apply to the operations of household goods carriers are superseded to the extent that they conflict with the provisions of this section.

(b) Overcharge, duplicate payment, or over collection claims. A claim for overcharge, duplicate payment, or over collection on a shipment of household goods shall be processed and disposed of pursuant to subsection (a) of this section, except where documentation concerning the claim is required pursuant to this subsection. The following minimum documentation shall be submitted with the claim to the carrier;

(1) name of the claimant, file number, if any, and the amount of the refund sought to be recovered; and

(2) the original or a true copy of the freight bill.

(3) additional information shall include, but is not limited to:

(A) the rate or weight claimed to have been applicable;

(B) freight bill payment documents;

(C) binding or non-binding estimates; and

(D) other documentation which substantiates the claim.

(c) Service claims. Service claims on a shipment of household goods shall be processed and disposed of in the same manner described in subsection (a) of this section, and except where documentation of the claim is required, the following minimum information shall be submitted with the claim:

(1) a copy of the bill of lading or receipt, including the pick-up and delivery dates;

(2) an itemized list of all expenses related to the claim; and

(3) copies of bills for lodging and meals, if applicable.

(d) Claim register or claim file. Every household goods carrier shall maintain a claim register or claim files which will include a record of every claim received, including claims for alleged loss or damage to cargo, overcharge, duplicate payment, over collection, services, personal injury, accident, fire, or other situations. Each claim shall be numbered in each household goods carrier's own series. Each claim shall be supported by all claim papers or a memorandum identifying the person with possession of the claim papers. The household goods carrier shall notify the department of all unresolved claims pertaining to fees, damages, or services. For convenience, claims may be recorded according to type under the headings mentioned in this subparagraph. The following information on each claim shall be recorded in the register or claim files:

(1) the claim number, date received, and amount;

(2) the number and date of the bill of lading or receipt, if any;

(3) name of the claimant;

(4) commodity involved, if any;

(5) date claim was paid;

(6) total amount paid or date claim was disallowed and reasons therefore;

(7) amount of salvage recovered, if any; and

(8) amounts reimbursed by insurance companies, connecting lines, or others, and the amount absorbed by the household goods carrier.

§18.60. Complaint Resolution Processes.

(a) Establishment of a complaint resolution process. A household goods carrier and/or its household goods agent shall establish and maintain a program for responding to complaints and inquiries and resolving disputes over fees, damages, and services from shippers. Failure to maintain such a program may result in administrative penalties under §18.71 of this title (relating to Administrative Penalties).

(b) Requirements for household goods carrier's complaint resolution program.

(1) Program requirements. A complaint resolution program shall:

(A) provide a claim filing process as described in §18.59 of this title (relating to Claims).

(B) provide a fair and expeditious method for settling complaints;

(C) prevent a household goods carrier from having any special advantage in any case in which the shipper resides or does business at a place distant from the household goods carrier's principal or other place of business;

(D) provide a means whereby shippers may communicate with the principal office of the household goods carrier by telephone;

(E) ensure that any forms or other information necessary for initiating an action under the program are provided promptly when requested by a shipper;

(F) include mediation as part of the program;

(G) ensure that any person conducting mediation under this program has received at least 40 hours of education pertaining to conducting mediations;

(H) ensure that mediators are independent of the parties to the dispute and are capable of resolving disputes fairly and quickly;

(I) ensure that mediations are conducted within 60 days of a request for mediation being filed with a household goods carrier;

(J) ensure that all costs of the mediator and the facilities for mediation shall be borne by the household goods carriers, household goods agents, or a collective association of household goods carriers, if appropriate;

(K) not require a shipper to agree to utilize the program prior to the time that a complaint arises;

(L) ensure that any complaint mediation that is not resolved to the mutual agreement of both parties shall be reported by the carrier to the department and that shippers are advised that they may contact the department's customer service line for additional assistance in resolving complaints;

(M) provide the household goods carrier with the option of conducting its mediation program by written submission on claims of less than $1000; and

(N) ensure that a shipper is not required to file for mediation with both the household goods carrier and its household goods agent.

(2) Participation. All household goods carriers and their household goods agents must participate in the mediation process.

(3) Notification to shippers. Household goods carriers shall advise shippers that they must file a claim pursuant to §18.59 of this title (pertaining to Claims) prior to requesting mediation from the carrier and must complete or attempt to complete the household goods carrier's complaint resolution process before utilizing the department's non-binding arbitration process. Household goods carriers shall provide shippers with the phone number of the department's customer service line.

(4) Records retention. The household goods carrier shall retain and make part of the file relating to a shipment, any written complaint and written inquiry received from a shipper or consignee.

(5) Investigation. The department may investigate at any time the compliance with any requirement of this subsection, and a household goods carrier shall be subject to administrative penalties pursuant to §18.71 of this title (relating to

Administrative Penalties) if it fails to provide mediation to a shipper or if it refuses to participate in the mediation process.

(c) Department complaint resolution process. The department will establish a toll-free number (customer service line) which shippers may use to register complaints. The number is 1-800-299-1700.

(1) General complaints or questions.

(A) Once a shipper contacts the customer service line concerning a question or problem with a household goods carrier, the department's customer service representative will ask the shipper for details regarding his or her question or for a summary of his or her problem.

(B) The customer service representative will assist the shipper with answering his or her question or resolving his or her problem with a household goods carrier.

(C) Shippers shall be informed of the components of the household goods carrier's process and how to initiate a claim, mediation, or non-binding arbitration, depending on the circumstances.

(2) Complaints regarding fees, damages, or services.

(A) Once a shipper contacts the customer service line concerning a complaint about fees, damages, or services, the customer service representative will ask the shipper for a summary of the problem and what action the shipper has taken.

(B) If the shipper has not used or attempted to use the household goods carrier's complaint resolution process, as described in subsection (b) of this section, the customer service representative will advise the shipper that he or she must attempt to resolve the complaint with the household goods carrier by following the household goods carrier's complaint resolution process before the department will attempt to resolve the shipper's complaint.

(C) If a shipper attempts to utilize the household goods carrier's complaint resolution process and is unsuccessful in resolving his or her complaint with the household goods carrier, due to unavailability of mediation, lack of participation on the part of the household goods carrier, or failure to reach an acceptable agreement, the shipper may meet with an arbitrator selected by the department to resolve the complaint if the shipper contacts the department within 180 days after the last mediation meeting with the household goods carrier or last attempt to resolve the complaint with the household goods carrier.

(D) If a shipper chooses to meet with an arbitrator, the department will coordinate the non-binding arbitration session and provide an arbitrator at the department's expense. All arbitration under this section is non-binding.

(E) The department will establish the time, date, and location of the non-binding arbitration session. The department will take into account the schedules of the shipper and the household goods carrier when coordinating the non-binding arbitration session. The non-binding arbitration session shall take place in a neutral location near the shipper's current residence. In lieu of on-site non-binding arbitration, written submissions may be utilized if agreed to by all parties.

(F) Household goods carriers shall participate in non-binding arbitration.

(G) If the shipper fails to appear at the non-binding arbitration session after due notice, the household goods carrier shall be considered in compliance with the requirements of this subsection, excluding any action a shipper may take regarding the claim through legal action.

(H) The shipper and the household goods carrier shall provide all documentation requested by the arbitrator in a timely fashion.

(I) If the non-binding arbitration is successful and each party complies with the non-binding arbitration agreement, no further action will be taken.

(J) If the household goods carrier or shipper fail to comply with the non-binding arbitration agreement, either party may pursue legal action in a court of law.

(K) The department may impose administrative sanctions, under §18.71 of this title (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the non-binding arbitration process or otherwise fails to comply with the requirements of this section.

§18.61. Reporting Requirements.

(a) Submission date. On or before the 15th day of May of each year, every household goods carrier shall file a copy of its annual operating report as specified in 49 CFR Part 1056.18 or an annual performance report (on a form approved by the director) with the department.

(b) Contents. The Department's report shall include:

(1) the total number of intrastate shipments:

(A) transported that are subject to the maximum rates established pursuant to Texas Civil Statutes, Article 6675c, §8(d); and

(B) transported that are not subject to the maximum rates established pursuant to Texas Civil Statutes, Article 6675c, §8(d); and

(2) the following information for shipments included in paragraph (1) of this subsection:

(A) the number of shipments shipped on a binding, non-binding or other type of estimate;

(B) the percentage of shipments delivered where the final charges exceeded the charges on the binding estimate or exceeded a non-binding estimate by ten percent;

(C) the number of shipments where a claim was filed for loss or damage, overcharge, duplicate payment, or over collection and the number of unresolved claims;

(D) the average number of days required to resolve a claim;

(E) the number of unresolved claims reported to the department and referred to the household goods carrier's mediation program; and

(F) the number of claims resolved after a lawsuit was filed.

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

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TRD-9515791

Robert E. Shaddock
General Counsel
Texas Department of Transportation

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

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Subchapter F. Enforcement

• 43 TAC §§18.70-18.72

The Texas Department of Transportation adopts new §§18.70-18.72, concerning enforcement of statutes related to the motor carrier industry. New §18.71 is adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Section 18.70 and §18.72 are adopted without changes and will not be republished.

New §§18.70-18.72, and Subchapters A-E and G, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995.

Senate Bill 3, 74th Legislature, 1995, added Texas Civil Statutes, Articles 6675c and 6675c-1 which transferred the regulatory authority of the motor carrier industry from the Railroad Commission to the department and provide the department with the authority to register motor carriers, regulate the transportation of household goods, and administer the single state registration system.

New §§18.70-18.72 provide for an efficient and effective system of enforcement of Chapter 18 by setting out procedures for administrative penalties and the suspension and revocation of motor carrier registration.

On September 22, 1995, the department conducted a public hearing on the proposed new sections and no oral or written comments were received.

Section 18.71 has been changed to omit provisions for default procedures because these procedures are being simultaneously adopted in §1.61, concerning contested case procedures, and are cross-referenced in §18.71.

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 Texas Civil Statutes, Article 6675c, which authorizes the department to adopt rules to administer the regulation of motor carriers, and Texas Civil Statutes, Article 6675c-1, which authorizes the department to administer the single state registration system.

§18.71. Administrative Penalties.

(a) Definition. For purposes of this section, the term "director" shall mean the executive director of the department or the executive director's designee not below the rank of division or special office director.

(b) Authority. The department may impose an administrative penalty against a motor carrier required to register under this section if the motor carrier violates a provision of Texas Civil Statutes, Article 6675c, §3, §4, §5, §8 or §12, or a provision of subchapters B, C or E of this chapter (relating to Motor Carrier Registration, Records and Inspections, and Consumer Protection).

(c) Amount of penalty.

(1) The penalty for each violation may be in an amount not to exceed $5,000.

(2) If it is found that the motor carrier knowingly committed a violation, the penalty for that violation may be in an amount not to exceed $15,000. A person acts knowingly if that person has acted with knowledge that such acts constitute or are in violation of Texas Civil Statutes, Article 6675c, §3, §4, §5, §8, or §12, or a provision of subchapters B, C or E of this chapter (relating to Motor Carrier Registration, Records and Inspections, and Consumer Protection).

(3) If it is found that the motor carrier knowingly committed multiple violations, the aggregate penalty for the multiple violations may be in an amount not to exceed $30,000. Multiple violations are all violations arising during a single episode pursuant to one scheme or course of conduct.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) Initiation of proceedings.

(1) Investigation. If an authorized investigator of the department determines that a violation has occurred, the investigator will issue a summary to the manager. The manager shall issue a report to the director stating the facts on which the investigator based his or her determination, and a recommendation on the imposition and amount of the penalty.

(2) Amount of penalty. Any recommendation that a penalty should be imposed must be based on the following factors:

(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(3) Notice of report. Within 14 days of the date the report was issued to the director, the department will mail, by certified mail, written notice of the report to the motor carrier. The notice will include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the recommended penalty;

(C) a statement of the right of the motor carrier to an informal hearing in accordance with paragraph (4) of this subsection; and

(D) a statement of the right of the motor carrier to request an administrative hearing concerning the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(4) Motor carrier response. Not later than the 20th day after the date on which a written notice of violation is received by the motor carrier, the motor carrier may:

(A) accept in writing the determination and recommended penalty;

(B) submit a written request for an administrative hearing concerning the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(C) submit a written request for an informal hearing under subsection (e) of this section.

(e) Informal hearing.

(1) Request. If requested in writing by the motor carrier within 20 days of the date of the notice issued under subsection (d)(3) of this section, the department will hold an informal hearing to discuss a sanction recommended under this section. Such hearing will be scheduled and conducted by the manager.

(2) Procedure. An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportu-

nity to respond to the allegations verbally and/or in writing.

(3) Resolution. In the event matters are resolved in the motor carrier's favor, the manager will send that carrier written notification that the proposed sanction is withdrawn.

(4) Modified sanction. If matters are resolved resulting in a modified sanction, the manager may prepare a settlement agreement as provided by subsection (j) of this section.

(5) Failure to resolve. If matters are not resolved in the informal hearing, the department will initiate a formal enforcement action as provided by subsection (f) of this section.

(f) Administrative hearing.

(1) If the motor carrier requests a hearing or fails to respond in a timely manner to the notice, the department will initiate a contested case in accordance with §§1.21 et seq of this title (relating to Contested Case Procedure). The department will provide written notice of such action to the motor carrier.

(2) A contested case under this subsection will be governed by §§1.21 et seq of this title (relating to Contested Case Procedure), subject to the following exceptions.

(A) Attorney's fees. If the administrative law judge finds that a violation has occurred, he or she shall, in addition to the proposed penalty, include in the proposal for decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. If, under subparagraph (B) of this paragraph, the director finds that a violation has occurred, the director shall adopt the finding and make it a part of the final order.

(B) Action of director. An administrative law judge's proposal for decision shall be submitted to the director, who may find that a violation has occurred and impose a penalty or may find that no violation has occurred. The director may increase or decrease the amount of the penalty recommended by the administrative law judge within the limits prescribed by subsection (c) of this section.

(g) Action of motor carrier.

(1) Within 30 days after the date the director's order becomes final as provided by §2001.144, Government Code, the motor carrier shall:

(A) pay the department the amount of the penalty;

(B) pay the department the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(C) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) Within the 30-day period, a motor carrier who acts under paragraph (1)(C) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the amount of the penalty into the registry of the court for placement in an escrow account; or

(ii) providing to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of a representative of the carrier stating that the carrier is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(ii) serving a copy of the affidavit on the director by certified mail.

(3) If the department receives a copy of an affidavit under paragraph (2)(B)(i) of this subsection, it may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The motor carrier who files an affidavit has the burden of proving that the carrier is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(h) Collection. If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(i) Judicial review. Judicial review of the order of the director is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code, and is under the substantial evidence rule, and shall proceed in accordance with Texas Civil Statutes, Article 6675c, §6.

(j) Settlement agreements.

(1) At any time prior to the date on which a final order is issued by the director under subsection (f)(2)(B) of this section, the department and the alleged violator may agree to enter into a compromise settlement agreement. The agreement shall not constitute an admission by the motor carrier of any violation. The compromise settlement agreement shall be signed by the alleged violator and the director, and will reflect that the alleged violator consents to the assessment of a specific administrative penalty or other action by the department against the violator.

(2) Simultaneously with the filing of a compromise settlement agreement, the alleged violator shall remit a cashier's check or money order to the Texas Department of Transportation, payable to the "State Treasurer of Texas." These funds shall be held in an escrow account pending the issuance of a final order.

(3) Upon the issuance by the director of a final order, the administrative penalty proceeding shall cease.

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

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TRD-9515790 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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Subchapter G. Vehicle Storage Facilities

• 43 TAC §§18.80-18.94

The Texas Department of Transportation adopts new §§18.80-18.94, concerning licensing and operating procedures of statutes related to vehicle storage facility. Sections 18.87, 18.89, 18.92, and 18.93 are adopted with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7056). Sections 18.80-18.86, 18.88, 18.90, 18.91, and 18.94 are adopted without changes and will not be republished.

New §§18.80-18.94, and subchapters A-F, Chapter 18, Motor Carriers, which are being simultaneously adopted, supersede all Railroad Commission rules adopted under a law repealed by Senate Bill 3, §31, 74th Legislature, 1995, and Texas Civil Statutes, Article, 6687-9a.

Senate Bill 3, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-9a, to transfer the licensing authority for vehicle storage facilities from the Railroad Commission to the Texas Department of Transportation.

New §§18.80-18.94 provide for an effective

system of licensing and operating procedures for vehicle storage facilities by establishing policies and procedures by which an operator may obtain a vehicle storage facility license, describes the conditions under which a licensee must operate a facility, and the procedures by which the department will enforce this subchapter.

On September 22, 1995, the department conducted a public hearing on the proposed new sections. Two commenters gave oral testimony at the hearing, and five written comments were received. The Texas Towing & Storage Association ("TTSA") commented in favor of some provisions and against other provisons of the proposed subchapter.

Section 18.87, Subsection (d), paragraph (2) has been revised for clarification purposes. One commenter requested that the subsection be revised to eliminate the requirement that all notifications (sent to vehicle's last registered owner and all lienholders by certified/registered mail) shall state the total amount of fees which must be paid before the vehicle can be released. The commenter cites that the total amount of fees in the notification letter consists of charges that have accrued daily up until the day the notification is mailed, excluding the daily charges that can accrue for the days following the notification. The department has revised the paragraph to read, "the daily storage rate, the type and amount of all other charges assessed, and the statement: Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released."

Section 18.89 has been revised for clarification purposes. One commenter requested a revision of the section in order to make the complaint procedure clear to consumers. The commenter suggested that complaints regarding the storage of vehicles be covered in the notification and not the towing of vehicles, though towing fees may be included in the bill of service. The department has revised the sentence to read, "Each VSF shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints regarding vehicle storage to the department."

Section 18.92, Subsection (a), paragraph (2) has been revised for clarification purposes. The department has revised the paragraph to read, "Facilities which do not accept vehicles 24 hours a day. If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and 12 midnight Mondays-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after 12 midnight, and refusal to release after that time, even with notice after 11 p.m., is not a violation of this section. "

Section 18.92, Subsection (f) has been revised to correct technical errors. The department has made changes to the paragraph to read , "Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops. Such actions are included in the storage fee as set forth in §18.93 of this title (relating to Storage Fees/Charges)."

Section 18.92, Subsection (i), paragraph (1) has been revised to correct technical errors. The department has made changes to the paragraph to read, "charge only those fees otherwise permitted by §18.93 of this title (relating to Storage Fees/Charges) after the vehicle is towed to another location without the vehicle owner's permission;"

Section 18.93, Subsection (1) has been revised to correct technical errors. The department has made changes to the paragraph to read, "Notification fee. A VSF operator may not charge the owner more than $25 for notification under §18.87 of this title (relating to Notification Regarding Towed Vehicles)."

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 Texas Civil Statutes, 6687-9a, which authorize the department to administer licensing and operating procedures for vehicle storage facilities.

§18.87 Notifications Regarding Towed Vehicles.

(a) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles registered outside of Texas. After accepting for storage a vehicle registered outside of Texas, or outside of the United States, the VSF must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle. It shall be a defense to an action initiated by the department for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the governmental entity where the vehicle is registered.

(3) Vehicle registrant unknown. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.

(b) Unclaimed or undeliverable notices. Regardless of place of vehicle registration, if the certified/registered letter is returned unclaimed, refused, or moved, left no forwarding address, publication in a newspaper is not required.

(c) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark upon the written notice.

(d) Form of notifications. All notifications shall state:

(1) the full name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(2) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released."

(3) if the operator will be transferring a vehicle to a second lot if it is not claimed within a certain time period, the date the vehicle will be moved from the VSF and the address to which it will be moved;

(4) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(5) the VSF number preceded by the words "Texas Department of Transportation Vehicle Storage Facility License Number"; and

(6) a notice of the towed vehicle owner's right under Transportation Code, Chapter 685.001, to challenge the legality of the tow involved.

(e) Non-consent towed vehicle towed from private property. A VSF accepting a non-consent towed vehicle towed from private property must report that tow to the local law enforcement agency from the area where the vehicle was towed. This report must be made within two hours of receiving the vehicle, giving the vehicle's license plate number and issuing notification of state, vehicle identification number, and location from which it was towed. Facility records must indicate specifically to whom the stated information was reported and in what manner, as well as the time and date of the report.

(f) Notification fee. The VSF operator may not charge an owner more than $25 for notifications described by this section. However, if a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, then no notification is required under this section, and no notification fee may be charged to the owner by the VSF operator.

§18.89. Notice of Complaint Proce-

dure Each VSF shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints regarding vehicle storage to the department. The licensee may use a sticker or rubber stamp to convey the required information. The notification shall be included on:

(1) any written wrecker slip or ticket;

(2) a sign prominently displayed at the place of payment; and

(3) any bill for service.

§18 92 Technical Requirements.

(a) Release of vehicles.

(1) Facilities which accept vehicles 24 hours per day. All motor vehicle storage facilities shall have vehicles available for release 24 hours a day within one hour's notice if it accepts vehicles 24 hours a day.

(2) Facilities which do not accept vehicles 24 hours per day. If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and 12 midnight Monday-Saturday and from 8:00 a.m. to 5.00 p.m on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after 12 midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(b) Publicly listed telephone number. All motor vehicle storage facilities shall have a publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

(c) Inspection of stored vehicles. When the licensee, the licensee's agent, or the licensee's employee accepts a vehicle towed without the vehicle owner's consent, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip are incorrect, the VSF shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

(d) Removal of parts; dismantling or demolishing of stored vehicles. Except as stated to the contrary in this section, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed VSF. Vehicles may be dismantled or demolished only if the storage lot has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

(e) Use of stored vehicles by facility owner, operator, or employees. No stored vehicle may be used by the vehicle storage lot owner, operator, or its employee(s) for personal or business use.

(f) Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops. Such actions are included in the storage fee as set forth in 18.93 of this title (relating to storage fees/charges).

(g) Preservation of stored vehicles.

(1) Minimum requirements. A VSF operator will be entitled to charge a fee for preservation if, in addition to the requirements set out in this subsection, the VSF operator, at a minimum:

(A) conducts a written inventory of any unsecured personal property contained in the vehicle;

(B) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(C) obtains motor vehicle registration information for the vehicle from the department.

(2) Broken or inoperative doors or windows. If doors or windows are broken or inoperative and require the use of materials such as plastic or canvas tarpaulins, such materials must be used to ensure the preservation of the stored vehicle.

(3) Preservation fee. If the VSF operator charges a fee for preservation, the written bill for services must specify the exact conduct included in that fee and the date(s) when such conduct occurred.

(h) Repair or alteration of stored vehicles. A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without the vehicle owner's or his authorized representative's consent.

(i) Vehicle transfers. When a motor vehicle has been delivered to a VSF, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of VSF capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The VSF must send notice in accordance with §18.87 of this title (relating to Notifications Regarding Towed Vehicles), except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a VSF, the licensee shall:

(1) charge only those fees otherwise permitted by §18.93 of this title (relating to storage fees/charges) after the vehicle is towed to another location without the vehicle owner's permission;

(2) comply with all provisions of Texas Civil Statutes, Article 6701g-3, relating to the rights of the owner of a stored vehicle;

(3) allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle upon presentation of:

(A) a notarized power-of-attorney;

(B) a department-approved affidavit of right of possession;

(C) a court order;

(D) a certificate of title;

(E) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(F) notarized proof of loss claim of theft from an insurance company to show a right to possession, and payment of all fees, at any time between the hours posted on the sign at the location where the vehicle is stored; or

(G) positive name and address information corresponding to that contained in the files of the department's Vehicle Title and Registration Division, and payment of all fees, at any time between the hours posted on the sign at the location where the vehicle is stored;

(4) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the VSF until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and

(5) maintain a record of the ulti-

mate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

§18.93. Storage Fees/Charges. The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(1) Notification fee. A VSF operator may not charge an owner more than $25 for notification under §18.87 of this title (relating to Notification Regarding Towed Vehicle).

(2) Daily storage fee. A VSF operator may not charge less than $5.00 or more than $15 for each day or part of a day for storage of a vehicle. A daily storage fee may be charged for a day regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. For the purposes of this paragraph, a day is considered to begin and end at midnight.

(3) Preservation fee. A VSF operator is entitled to charge an owner $10 for preservation of a stored motor vehicle, if such preservation is performed in accordance with §18.92(g) of this title (relating to Technical Requirements).

(4) Additional fees. A VSF operator may not charge any additional fees that are similar to notification, preservation, or administrative fees.

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

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TRD-9515789 Robert E. Shaddock
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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter A. General Provisions

• 43 TAC §28.2

The Texas Department of Transportation adopts an amendment to §28.2, concerning definitions for Chapter 28, Oversize and Overweight Vehicles and Loads, with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7058).

House Bill 785, 74th Legislature, 1995, amended Texas Civil Statutes 6701-1/2, by increasing the fee for manufactured housing permits from $15 to $20, and also requiring the department to collect additional information in the application and send essential information to appraisal districts. House Bill 1547, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6701d-12, by allowing a concrete pump truck to exceed the legal axle and gross weight limits with the filing of a surety bond. House Bill 2584, 74th Legislature, 1995, added Texas Civil Statutes, Article 6701d-19c, by allowing vehicles transporting recyclable materials to exceed the legal axle and gross weight limits with the filing of a surety bond. Senate Bill 3, 74th Legislature, amended Texas Civil Statutes 6701a, by eliminating the requirements for a Superheavy or Oversize Permit Bond for motor carriers registered with the department under the authority of Texas Civil Statutes, Article 6675c or 6675c-1. Senate Bill 981, 74th Legislature, amended Texas Civil Statutes, Article 6675a-6c, by allowing for the issuance of an annual registration permit to foreign commercial vehicles if proof of financial responsibility is shown.

Amended §28.2 defines words and terms used in Chapter 28 including central permit office, complete identification number, concrete pump truck, director, foreign commercial vehicle annual registration, motor carrier, motor carrier registration, recyclable material, single state registration, vehicle identification number, and several forms for the filing of surety bonds.

On September 26, 1995, the department conducted a public hearing on the proposed amendments and one oral comment was received. No written comments were received.

One commenter brought to the department's attention that the definition of recyclable material was not consistent with the definition contained in Health and Safety Code, Section 361.421(5). The department concurs and the definition has been changed to reflect the proper language.

The amendment is adopted under Transportation Code §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, §§502.353, 623.093, 623.096, 623. 071, 623.011, and 622.011, as amended, and Texas Civil Statutes, Article 6701d-19c, which authorize the department to develop policy and procedures for the issuance of oversize and overweight permits.

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

Central permit office (CPO)-The department office, within the Motor Carrier Division, located in the City of Austin that issues all permits.

Complete identification number-A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

Concrete pump truck-A self propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

Director-The Executive Director of the Texas Department of Transportation.

Foreign commercial vehicle annual registration-An annual registration permit issued by the department to foreign commercial vehicles under authority of Texas Civil Statutes, Article 6675a-6c.

Form 1382-A form titled "Blanket Surety Bond For The Operation Of Vehicles Used Exclusively For The Transportation Of Ready-Mix Concrete or Concrete Pump Trucks."

Form 1382-A-A form titled "Certification Of Surety Bond For The Transportation of Ready-Mix Concrete or Concrete Pump."

Form 1383-A form titled "Amendment To Blanket Surety Bond For Ready-Mix Concrete Vehicles or Concrete Pump Trucks."

Form 1575-A form titled "Blanket Surety Bond For The Operation Of Vehicles Used Exclusively For The Transportation Of Solid Waste or Recyclable Materials."

Form 1576-A form titled "Certification Of Surety Bond For The Transportation Of Solid Waste or Recyclable Materials."

Form 1577-A form titled "Amendment To Blanket Surety Bond For Solid Waste Vehicles or Recyclable Materials."

Motor carrier-An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state.

Motor carrier registration (MCR)-The registration issued by the department under authority of Texas Civil Statutes, Article 6675c, to motor carriers moving intrastate.

Recyclable materials-Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recycled material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed

of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Single state registration (SSR)-Interstate registration authority issued to motor carriers under authority of 49 U.S.C. §11506.

Vehicle identification number-A unique and distinguishing number assigned to a vehicle by the manufacturer for the purpose of identification.

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

Issued in Austin, Texas, on December 5, 1995.

TRD-9515800 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

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Subchapter B. General Permits

• 43 TAC §§28.10, 28.11, 28.14, 28.17

The Texas Department of Transportation adopts amendments to §§28.10, 28. 11, 28.14, and new §28.17, concerning the certification of surety bonds and the issuance of permits for the movement of oversize and overweight vehicles and loads, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7059).

House Bill 785, effective September 1, 1995, amended Texas Civil Statutes 6701-1/2, by increasing the fee for manufactured housing permits from $15 to $20, and also requiring the department to collect additional information in the application and send essential information to appraisal districts. House Bill 1547, 74th Legislature, 1995, effective September 1, 1995, amended Texas Civil Statutes, Article 6701d-12, by adding a concrete pump truck as an eligible vehicle. House Bill 2584, 74th Legislature, 1995, effective September 1, 1995, amended Texas Civil Statutes, Article 6701d-19c, by allowing overweight vehicles transporting recyclable materials the ability to file a surety bond within certain weight limitations. Senate Bill, 74th Legislature, 1995, effective September 1, 1995, amended Texas Civil Statutes, Article 6701a, by eliminating the requirement for a Superheavy or Oversize Permit Bond for motor carriers registered with the department under authority of Texas Civil Statutes, Article 6675c, or 6675c-1. Senate Bill 981, 74th Legislature, 1995, effective September 1, 1995, amended Texas Civil Statutes, Article 6675a-6c, by allowing for the issuance of an annual registration permit to foreign commercial vehicles. House Bill 1898, 73rd Legislature, 1993, amended Texas Transportation Code 610.003, by allowing the Executive Director to enter into multi-state permitting agreements.

Section 28.10, purpose, is amended by adding references to concrete pump trucks and vehicles transporting recyclable materials to the surety bond certification.

Section 28.11, permit issuance requirements and procedures, is amended by adding foreign commercial vehicles registered under annual registration as an acceptable form of registration, and by adding references to surety bonds affected by new legislation.

Section 28.14, manufactured housing and industrialized housing and building permits, is amended by changing fees, amending acceptable forms of moving authority, and adding additional information required form an applicant.

New §28.17, multi-state permitting agreements, allows the executive director of the department to enter into multi-state permitting agreements with other jurisdictions.

The amendments and new section are adopted under Transportation Code, §201.101, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, §§502.353, 623.093, 623.096, 623.071, 623.011, 622.011, and 621.003, as amended and Texas Civil Statutes, Article 6701d-19c, which authorize the department to develop policy and procedures for the issuance of oversize and overweight permits.

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 December 5, 1995.

TRD-9515801 Robert E. Shaddock
General Counsel
Texas Department of Insurance

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

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Subchapter C. Permits for Over Axle and Over Gross Weight Tolerances

• 43 TAC §28.30

The Texas Department of Transportation adopts an amendment to §28.30, concerning permits for over axle and over gross weight tolerances, with changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7060).

Transportation Code §623.011, as amended, authorizes the department to issue permits for over axle and over gross weight tolerances to commercial motor vehicles, truck tractors, semitrailers, or a combination of those vehicles.

Section 28.30 is amended to adopt a new statutory fee schedule and an administrative fee of $5.00, and provide for the issuance of a windshield sticker and a credit to a vehicle if the vehicle becomes permanently disabled.

On September 26, 1995, the department conducted a public hearing to seek comments concerning the proposed amendments to §28.30, relating to permits for over axle and over gross weight tolerances. Four commenters gave oral testimony at this hearing, and four written comments were received by mail. The Texas Forestry Association indicated it was against the proposed amendments to the section.

One commenter requested that the department streamline the procedure for application of the permit, and give carriers the option of submitting the application in forms other than by mail. The department recognizes this situation, and will study alternative methods for application of the permit. The results of the study may require the department to amend the section in the future.

Four commenters expressed significant concerns about the fiscal impact of the new fine structure for overweight vehicles, and indicated that the department's fiscal impact statement did not take into consideration the impact of the fine structure. The fine structure is required by House Bill 1547, 74th Legislature. The department did not address fine structures in its fiscal impact statement, since the section only addresses issuance of the permit.

Two commenters requested that the fee structure for the permit be revised to allow for the sliding scale fee increase to apply only for counties where the vehicle will travel on county roads, and not when the vehicle operates in the county solely on the state maintained highway system. The department does not concur with this request. After careful evaluation of House Bill 1547, the department believes that the clear language of the bill does not allow the department the discretion for this interpretation.

Two commenters requested that the department delete the language in subsection (l)(4), concerning voiding of a permit when operating in a county not listed on the permit. The department concurs with this request. After careful review of the department's rules regulating this permit, and the language concerning fines in House Bill 1547, the department agrees that the language in subsection (l)(4) should be omitted, and it is reflected in the section.

One commenter requested that the department consider language for issuance of a replacement windshield sticker in the event that a permitted vehicle's windshield is damaged or broken. The department concurs with this request. With considerations of the safety issues, the department has revised the section to allow for the issuance of replacement stickers for lost, stolen or mutilated stickers at the request of the permittee, at a cost of $3.00 per replacement for administration of this function. The request must be in a form

prescribed by the department and must contain a signed statement from the permittee verifying that the windshield sticker has been lost, stolen or mutilated.

Two commenters requested that the department delete the language in subsection (j) requiring that the trailer registration receipt be attached to the permit. The department concurs with this request. The language in subsection (j) which requires the trailer registration receipt for the trailer to be attached to the permit, has been deleted. Based on the fact that the permit is issued to the power unit, and various trailers can be utilized, it is not reasonable to request that the trailer registration receipts be attached to the permit. The trailer registration receipt should be available to law enforcement for roadside enforcement.

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, §623.011, which authorizes the department to issue permits for over axle and over gross weight tolerances to commercial motor vehicles, truck tractors, trailers, semitrailers, or a combination of those vehicles.

§28.30. Permit for Over Axle and Over Gross Weight Tolerances.

(a) Purpose. In accordance with Texas Civil Statutes, Article 6701d-11, §5B, the department is authorized under certain conditions to issue an annual permit for the operation of a vehicle within certain tolerances above legal axle and gross weight limits, as provided in Texas Civil Statutes, Article 6701d-11, §5. The sections under this subchapter set forth the requirements and procedures to be used in issuing an annual permit.

(b) Scope. An applicant that desires to operate a vehicle that exceeds the legal axle weight by a tolerance of 10% and the legal gross weight by a tolerance of 5.0% on any county road and on any road in the state highway system, excluding the national system of interstate and defense highways, must obtain a permit issued under Texas Civil Statutes, Article 6701d-11, §5B. These tolerance allowances shall also apply to any vehicle operated on a road subject to Texas Civil Statutes, Article 6701d-11, Sec. 5-1/2; however, operation of permitted vehicles over load zoned bridges will be limited to 5. 0% over the posted limits.

(c) Eligibility. To be eligible for a permit under this section, a vehicle must be registered under Texas Civil Statutes, Article 6675a-1, et seq, for the maximum gross weight applicable to the vehicle under Texas Civil Statutes, Article 6701d-11, Sec. 5, not to exceed 80,000 pounds in total gross weight.

(d) Security.

(1) Before a permit may be issued under this section, an applicant, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state, must have on file with the department one of the following forms of security in the amount of $15,000, conditioned that payment will be made to the department for any damages to the state highway system and to any county for damages to a road or bridge of such county caused by the operation of any vehicle for which a permit is issued under this section and which has an axle weight or gross weight that exceeds the weights authorized in Texas Civil Statutes, Article 6701d-11, Sec. 5 and Sec. 5-1/2:

(A) an irrevocable letter of credit issued by a financial institution which deposits are guaranteed by the Federal Deposit Insurance Corporation; or

(B) a blanket surety bond.

(2) The department may reject a bond which it determines will not provide the intended security.

(3) If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of $15,000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full $15,000, within 30 days after the date of such payment, all permits held by the applicant under this section shall automatically expire on the 31st day after such date.

(e) Application for permit.

(1) A person who desires to permit a vehicle as provided in this section, must submit a written application to the CPO.

(2) The application shall be in a form prescribed by the CPO and at a minimum will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number;

(C) vehicle information;

(D) an indication as to whether the commodities to be transported will be agricultural or non-agricultural; and

(E) a list of counties in which the vehicle will operate.

(3) The application shall be accompanied by the following documents or information:

(A) a copy of the current registration receipt of the power unit showing that the vehicle is currently registered for the maximum amount allowable for such vehicles;

(B) a base fee of $75 and an administration fee of $5.00; and

(C) an original bond or letter of credit as required in subsection (d) of this section, unless previously filed by the applicant.

(4) An applicant shall remit the total fees, which are nonrefundable, in the form of a check, cashier's check, or money order made payable to the State Highway Fund. In addition to the fees listed in paragraph (3) of this subsection, the applicant must also include an additional fee based on the following schedule:
Figure 43 TAC §28.30(e)(4)

(f) Issuance of permit and windshield sticker.

(1) A permit and a windshield sticker will be issued on the approval of the application and each will be mailed to the applicant at the address contained in the application.

(2) The permit shall be carried in the vehicle for which the permit is issued at all times.

(3) The windshield sticker shall be affixed to the inside of the windshield of the vehicle within six inches above the vehicle's inspection sticker in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void, and will require a new permit and sticker. The windshield sticker must be removed from the vehicle upon expiration of the permit.

(4) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle. The cost for a replacement sticker is $3.00.

(5) Within 14 days of issuance of the permit, the department shall notify the county clerk of each county indicated on the application, and such notification shall contain or be accompanied by the following minimum information:

(A) the name and address of the person for whom a permit is issued; and

(B) the vehicle identification

number, license plate number and state of the vehicle, and the permit number.

(g) Issuance of a credit. Upon written application on a form prescribed by the CPO, a prorated credit for the remaining time on the permit may be issued for a vehicle that is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized. The date for computing a credit will be based on the date of receipt of the credit request. The fee for a credit will be $25, and will be issued on condition that the applicant provides to the department.

(1) the original permit; or

(2) if the original permit no longer exists, written evidence of the destruction or permanent incapacity from the insurance carrier of the vehicle.

(h) Use of credit. A credit issued under subsection (g) of this section may be used only towards the payment of permit fees under this section.

(i) Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other agricultural products in their natural state, may be allowed to exceed the maximum allowable axle weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross weight by an amount of up to 5.0%, a permit issued in accordance with this section will be required.

(j) Semi-trailer registration. Texas Civil Statutes, Article 6675-6-1/2, provides that the owner of a semi-trailer registered with either a Texas token trailer license plate or a Texas apportioned trailer license plate operated in combination with a permitted vehicle, shall pay a $15 fee to the county where the semi-trailer is registered.

(k) Lapse or termination of permit. A permit shall lapse or terminate and the windshield sticker must be removed from the vehicle:

(1) when the lease of the vehicle expires;

(2) on the sale of the vehicle for which the permit was issued;

(3) on the sale, takeover, or dissolution of the firm, partnership, or corporation to which a permit was issued; or

(4) if the applicant does not replenish the letter of credit or bond as required in subsection (d) of this section.

(l) Void permit. A permit is void when an applicant;

(1) gives false or incorrect information;

(2) does not comply with the restrictions or conditions stated in the permit; or

(3) changes or alters the information in the applicant's copy of the permit.

(m) Movement with void permit. A permittee may not operate a permitted vehicle with a void permit; a new permit must be obtained.

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 December 5, 1995.

TRD-9515802

Robert E. Shaddock
General Counsel
Texas Department of Transportation

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

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 25 TAC §35.611 (preamble) page 1 of 2

Public Payment Plans
Vendor Drug Services

Plan	Recipients	Pharmacies	Co-Pays		Dispensing Fees	Drug Acquisition Costs	
			Brand Name	Generic		Brand Name	Generic
Current Medicaid System	~2.1 million recipients	3,266 participating pharmacies	None	None	$4.55 dispensing expense + 7% profit factor paid on (dispensing expense + drug acquisition cost) = ~$6.45	AWP - 10.49%, or usual & customary if less[2]	MAC pricing w/warehouse adjustment for chains
Current ERS System	270,000	~3,400 participating pharmacies	$8.00	$4.00	$4.00	AWP - sliding discount	MAC pricing
Proposed Medicaid System			None	None	$3.00 dispensing fee for metropolitan areas. $4.00 dispensing fee for non-metropolitan areas. Shipping coverage for UT hemophilia products.	AWP - 10.49%, or usual & customary, if less	MAC pricing w/warehouse adjustment for chains
Proposed ERS System	270,000	~2,900 expected participating pharmacies	$8.00	$4.00	Metro areas: $2.50 Areas with access considerations: $4.00	AWP - 15%, or usual & customary, if less	MAC pricing

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Overall average discount is estimated at AWP -14.6%.

Figure 25 TAC §35.611 (preamble) page 2 of 2

Plan	Recipients	Pharmacies	Co-Pays		Dispensing Fees	Drug Acquisition Costs	
			Brand Name	Generic		Brand Name	Generic
Teachers' Retirement System	~107,000 members, of which ~61,000 participate in the traditional program[3]	95% Participation Rate	Retail Program: $50 deductible, then recipient pay 30% Mail Order: $10	Retail Program: $50 deductible, then recipient pay 10% Mail Order: $2	Retail Program: Brand name: $2.75 Generic: $2.25 Mail Order: $2.60	Retail Program: lowest usual & customary, or AWP - 12% Mail Order: AWP - 15%	Retail Program: lowest usual & customary, or AWP - 12% MAC pricing ~ AWP - 40%
Texas A&M	24,000 recipients, of which ~9,200 in Retail Program	97% of recipients within 10 miles of a participating pharmacy	Retail: $10 + cost differential between brand name & generic (if available Mail Order: $8	Retail: $5 Mail Order: $3	Retail: $2.50 Mail Order: $2.00	Retail: AWP - 13% Mail Order: AWP - 15%	Retail: AWP - 13% Mail Order: MAC pricing ~ AWP - 40%[4]
UT-Austin	64,000 recipients, of which ~56,000 in Retail Program	99% participation rate	$12	$5	Retail: $2.45 Mail Order: $2.25	AWP - 10%	Generic[2] = Federal MAC (~AWP - 35%)

[2]This is an average comparison that was made by UT using AWP from the Rugby generic listing.
[3]TRS also offers what is best termed as catastrophic coverage under two plans, Care 1 & 2, and these contain the following characteristics: There is no premium paid, there is a $4,500 total medical and prescription drug deductible for Care 1 (no Medicare coverage) and $1,800 for Care 2 (w/Medicare, Part A), and after which the plan will pay 80% of all prescription costs.
[4]Based on vendor's actual price.

Figure 1. 25 TAC, §35.611(c)(3)

Table 1
Metropolitan Statistical Areas

MSA Name and Counties Included:	
Abilene	Taylor
Amarillo	Potter
	Randall
Austin-San Marcos	Bastrop
	Caldwell
	Hays
	Travis
	Williamson
Beaumont-Port Arthur	Hardin
	Jefferson
	Orange
Brownsville-Harlingen-San Benito	Cameron
Bryan-College Station	Brazos
Corpus Christi	Nueces
	San Patricio
Dallas	Colin
	Dallas
	Denton
	Ellis
	Henderson
	Hunt
	Kaufman
	Rockwall
Forth Worth-Arlington	Hood
	Johnson
	Parker
	Tarrant
El Paso	El Paso
Brazoria	Brazoria
Galveston-Texas City	Galveston
Houston	Chambers
	Fort Bend
	Harris
	Liberty
	Montgomery
	Waller
Killen-Temple	Bell
	Coryell
Laredo	Webb
Longview-Marshall	Gregg
	Harrison
	Upshur
Lubbock	Lubbock
McAllen-Edinburg-Mission	Hidalgo
Odessa-Midland	Midland
	Ector
San Angelo	Tom Green
San Antonio	Bexar
	Comal
	Guadalupe
	Wilson
Sherman-Denison	Grayson
Texarkana	Bowie
	Miller (Arkansas)
Tyler	Smith
Victoria	Victoria
Waco	McLennan
Wichta Falls	Wichita
	Archer

Figure 1: 30 TAC 281.48(a)

Appendix A

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	**THRESHOLDS**
WASTEWATER PERMITS: (inside the boundary)	
Municipal, new	(1) Proposed permits to discharge into tidally influenced segments (See Appendix C) **AND** which would result in an authorized discharge greater than or equal to 5 MGD[1]; or (2) Any permit which proposes to discharge into a priority segment (See Appendix B) which would result in an authorized discharge greater than or equal to 1 MGD[2].
Municipal, amendments	(1) Amendments to increase the total discharge into tidally influenced segments to an amount greater than or equal to 5 MGD; or (2) Amendments to discharge into a priority segment **AND** which would result in an increase in the authorized discharge to an amount greater than or equal to 1 MGD.
Municipal, renewals	EXEMPT

[1] 5 MGD is the EPA trigger level for determining pretreatment requirements.

[2] 1 MGD is the trigger which requires biomonitoring, pursuant to T[redacted]C rules.

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	**THRESHOLDS**
WASTEWATER PERMITS (inside the boundary)	
Industrial, new	(1) Proposed discharge permits for new facilities which are subject to categorical limits and which discharge into a priority segment (See Appendix B).
Industrial, amendments	(1) Proposed amendments to discharge permits for facilities which are subject to categorical limits, which either increase mass loadings into a priority segment **OR** change the point of discharge into a priority segment.
Industrial, renewals	EXEMPT

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	**THRESHOLDS**
WASTEWATER PERMITS (inside the boundary)	
Agriculture (CAFOs), new	Any application for a new concentrated animal feeding operation (CAFO) within one mile of a critical area (as defined by TNRCC rule Chapter 281, Subchapter B, §281.42) or coastal water.
Agriculture (CAFOs), amendments	Any application to amend a permit in order to add or change a discharge point into a critical area.
Agriculture (CAFOs), renewals	EXEMPT
DISTRICT APPROVALS & BOND ISSUES (on coastal barriers only)	
District creation	Any application for creation of a district whose service area would encompass, or partially encompass a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
District bond issues	Any application for approval of a bond issue to support infrastructure projects encompassing, or partially encompassing a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
401 CERTIFICATION (inside the boundary)	
	Application for 401 certification of a 404 Corps of Engineer permit which affects one or more acres in a critical area (as defined in TNRCC rules Chapter 281, Subchapter B, §281.42) and authorizes the discharge of not less than 1,000 cubic yards of dredged or fill material, all or part of which occurs in a critical area.

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	**THRESHOLDS**
WATER RIGHTS (inside the boundary)	
New	Any application for a new right, except emergency permits, for an annual appropriation of 5,000 acre-feet or more of water.
Amendments	Any application to amend an existing right: (1) to increase the annual appropriation of water by 5,000 acre-feet or more; or (2) to change the purpose of use of 5,000 acre-feet or more to a more consumptive use.
Renewals (reissues)	EXEMPT
WATER RIGHTS (outside the boundary)	
New	Any application for a new right, except emergency permits, within 200 stream miles of the coast for an annual appropriation of 10,000 acre-feet or more of water.
Amendments	Any application to amend an existing right within 200 stream miles of the coast and seeking to: (1) increase the annual appropriation of water by 10,000 acre-feet or more; or (2) to change the purpose of use of 10,000 acre-feet or more to a more consumptive use.
Renewals ("reissues")	EXEMPT

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	**THRESHOLDS**
SOLID WASTE (inside the boundary)	
Municipal, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, renewals	n/a (Municipal permits are issued for the life of the site.)
Commercial-Industrial, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, renewals	EXEMPT
Hazardous, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, renewals	EXEMPT
LEVEE PROJECTS (inside the boundary) Approval of levee impoundment or flood control projects	**Not applicable:** Pursuant to §16.236 of the Texas Water Code, approval of projects is delegated to local governments participating in the National Flood Insurance Program. All coastal counties participate in the program.
DECLARATION OF EMERGENCIES (pursuant to §16.195, Texas Water Code) (inside the boundary)	EXEMPT

Figure 2: 30 TAC §281.48(b)

APPENDIX B

TIDAL SEGMENTS DESIGNATED AS TNRCC PRIORITY WATERBODIES

COASTAL MANAGEMENT PROGRAM

Segment Number	Name
2412	Sabine Lake
2411	Sabine Pass
2423	East Bay
2439	Lower Galveston Bay
0801	Trinity River Tidal
1113	Armand Bayou Tidal
2431	Moses Lake
2424	West Bay
2432	Chocolate Bay
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2435	Drum Bay
2442	Cedar Lakes
2441	East Matagorda Bay
2451	Matagorda Bay/Powderhorn Lake
2452	Tres Palacios Bay/Turtle Bay
2456	Carancahua Bay
2455	Keller Bay
2461	Espiritu Santo Bay
2462	San Antonio Bay/Hynes Bay/Guadalupe Bay
1801	Guadalupe River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2473	St. Charles Bay
2471	Aransas Bay
2472	Copano Bay/Port Bay/Mission Bay
2483	Redfish Bay
2482	Nueces Bay
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/ Laguna Salada
2491	Laguna Madre
2493	South Bay

Figure 3: 30 TAC §281.48(c)

APPENDIX C
TNRCC DESIGNATED TIDAL SEGMENTS

Segment Number	Name
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2455	Keller Bay
2435	Drum Bay
2442	Cedar Lakes
2432	Chocolate Bay
2411	Sabine Pass
2424	West Bay
2461	Espiritu Santo Bay
2472	Copano Bay/Port Bay/Mission Bay
2423	East Bay
2452	Tres Palacios Bay/Turtle Bay
2412	Sabine Lake
2203	Petonila Creek Tidal
2451	Matagorda Bay/Powderhorn Lake
2429	Scott Bay
2003	Aransas River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2441	East Matagorda Bay
2430	Burnet Bay
2431	Moses Lake
2001	Mission River Tidal
2428	Black Duck Bay
1601	Lavaca River Tidal
1105	Bastrop Bayou Tidal
2436	Barbours Cut
1111	Old Brazos River Channel
2482	Nueces Bay
1501	Tres Palacios Creek Tidal
2493	South Bay
2483	Redfish Bay
1801	Guadalupe River Tidal
2473	St. Charles Bay
2456	Carancahua Bay
1603	Navidad River Tidal
2462	San Antonio Bay/Hynes Bay/Guadalup Bay
2471	Aransas Bay
2426	Tabbs Bay
1107	Chocolate Bayou Tidal
2439	Lower Galveston Bay

Segment Number	Name
2494	Brownsville Ship Channel
0801	Trinity River Tidal
1109	Oyster Creek Tidal
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/ Laguna Salada
1113	Armand Bayou Tidal
2301	Rio Grande Tidal
2425	Clear Lake
1701	Victoria Barge Canal
2438	Bayport Channel
2422	Trinity Bay
1103	Dickinson Bayou Tidal
2454	Cox Bay
2101	Nueces River Tidal
2437	Texas City Ship Channel
0703	Sabine-Neches Canal
2485	Oso Bay
1304	Caney Creek Tidal
1401	Colorado River Tidal
0508	Adams Bayou Tidal
0501	Sabine River Tidal
0901	Cedar Bayou Tidal
0511	Cow Bayou Tidal
1301	San Bernard River Tidal
2491	Laguna Madre
2427	San Jacinto Bay
2484	Corpus Christi Inner Harbor
1013	Buffalo Bayou Tidal
1101	Clear Creek Tidal
1001	San Jacinto River Tidal
2481	Corpus Christi Bay
0702	Intracoastal Waterway
2421	Upper Galveston Bay
0601	Neches River Tidal
2201	Arroyo Colorado Tidal
1201	Brazos River Tidal
1005	Houston Ship Channel/San Jacinto River
2453	Lavaca Bay/Chocolate Bay
1005	Houston Ship Channel
1007	Houston Ship Channel/Buffalo Bayou

Figure 4: 30 TAC §281.48.(d)

APPENDIX D

DISTRICTS IN THE COASTAL BARRIER RESOURCES SYSTEM

Nueces County

Nueces County WCID #4 (1, 2)

San Patricio County

San Patricio MWD (2)

Aransas County

Aransas County Conservation & Reclamation District (1, 2)
Aransas County Navigation District (1, 2)

Matagorda County

Matagorda County Navigation District #1 (1, 2)

Brazoria County

Treasure Island MUD (1)
Blud Water MUD (1)
Velasco Drainage District (1, 2)
Brazos River Harbor Navigation District (1, 2)

Galveston County

Gulf Coast Water Authority of Galveston County (1, 2)
Harris-Galveston Coastal Subsidence District (1, 2)
Galveston County Navigation District #1 (1, 2)

Legend: (1) Coastal Barrier (Coastal Barrier Resources System or "Cobras")
(2) Otherwise Protected Areas

Figure 5: 30 TAC §281.48(e)

Appendix E

TNRCC Rules Relating to Actions Subject to the Coastal Management Program

Administrative

Chapter 261 Subchapters B and C, Environmental, Social, and Economic Impact Statements
Chapter 281 Applications Processing

Water Discharge and Non-point Source Pollution

Chapter 284 Private Sewage Facilities (Rules for Angelina and Neches River Authority)
Chapter 285 On-Site Wastewater Treatment
Chapter 305 Consolidated Permits
Chapter 307 Supplemental Surface Water Quality Standards
Chapter 309 Effluent Limitations
Chapter 314 Toxic Pollutant Effluent Standards and Prohibitions
Chapter 315 Pretreatment Regulations for Existing and New Sources of Pollution
Chapter 321 Control of Certain Activities by Rule
Chapter 334 Underground and Aboveground Storage Tanks

Non-hazardous and Hazardous Solid Waste

Chapter 305 Consolidated Permits
Chapter 330 Municipal Solid Waste
Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste

Dredging, Filling, and Other Activities or Development that May Affect Critical Areas

Chapter 279 Water Quality Certification
Chapter 293 Water Districts
Chapter 301 Levee Improvement Districts, District Plans of Reclamation and Levees, and other Improvements

Instream Flows, Water Rights, and Water Conservation

Chapter 288 Water Conservation Plans, Guidelines, and Requirements
Chapter 295 Water Rights, Procedural
Chapter 297 Water Rights, Substantive

Air Emissions

Chapter 101 General Rules
Chapter 111 Control of Air Pollution from Visible Emissions and Particulate Matter
Chapter 112 Control of Air Pollution from Sulfur Compounds
Chapter 113 Control of Air Pollution from Toxic Materials
Chapter 114 Control of Air Pollution from Motor Vehicles
Chapter 115 Control of Air Pollution from Volatile Organic Compounds
Chapter 116 Control of Air Pollution from Permits for New Construction or Modification

Chapter 117 Control of Air Pollution from Nitrogen Compounds
Chapter 118 Control of Air Pollution from Air Pollution Episodes
Chapter 119 Control of Air Pollution from Carbon Monoxide
Chapter 120 Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities
Chapter 121 Control of Air Pollution from Municipal Solid Waste Facilities
Chapter 122 Federal Operating Permits

Figure 5: 30 TAC §281.48(e)

Appendix E

TNRCC Rules Relating to Actions Subject to the Coastal Management Program

Administrative
Chapter 261 Subchapters B and C, Environmental, Social, and Economic Impact Statements
Chapter 281 Applications Processing

Water Discharge and Non-point Source Pollution
Chapter 284 Private Sewage Facilities (Rules for Angelina and Neches River Authority)
Chapter 285 On-Site Wastewater Treatment
Chapter 305 Consolidated Permits
Chapter 307 Supplemental Surface Water Quality Standards
Chapter 309 Effluent Limitations
Chapter 314 Toxic Pollutant Effluent Standards and Prohibitions
Chapter 315 Pretreatment Regulations for Existing and New Sources of Pollution
Chapter 321 Control of Certain Activities by Rule
Chapter 334 Underground and Aboveground Storage Tanks

Non-hazardous and Hazardous Solid Waste
Chapter 305 Consolidated Permits
Chapter 330 Municipal Solid Waste
Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste

Dredging, Filling, and Other Activities or Development that May Affect Critical Areas
Chapter 279 Water Quality Certification
Chapter 293 Water Districts
Chapter 301 Levee Improvement Districts, District Plans of Reclamation and Levees, and other Improvements

Instream Flows, Water Rights, and Water Conservation
Chapter 288 Water Conservation Plans, Guidelines, and Requirements
Chapter 295 Water Rights, Procedural
Chapter 297 Water Rights, Substantive

Air Emissions
Chapter 101 General Rules
Chapter 111 Control of Air Pollution from Visible Emissions and Particulate Matter
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Chapter 114 Control of Air Pollution from Motor Vehicles
Chapter 115 Control of Air Pollution from Volatile Organic Compounds
Chapter 116 Control of Air Pollution from Permits for New Construction or Modification

Chapter 117 Control of Air Pollution from Nitrogen Compounds
Chapter 118 Control of Air Pollution from Air Pollution Episodes
Chapter 119 Control of Air Pollution from Carbon Monoxide
Chapter 120 Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities
Chapter 121 Control of Air Pollution from Municipal Solid Waste Facilities
Chapter 122 Federal Operating Permits

MINIMUM PRECIPITATION RATE FOR LANDSCAPE SYSTEMS BY ZONE

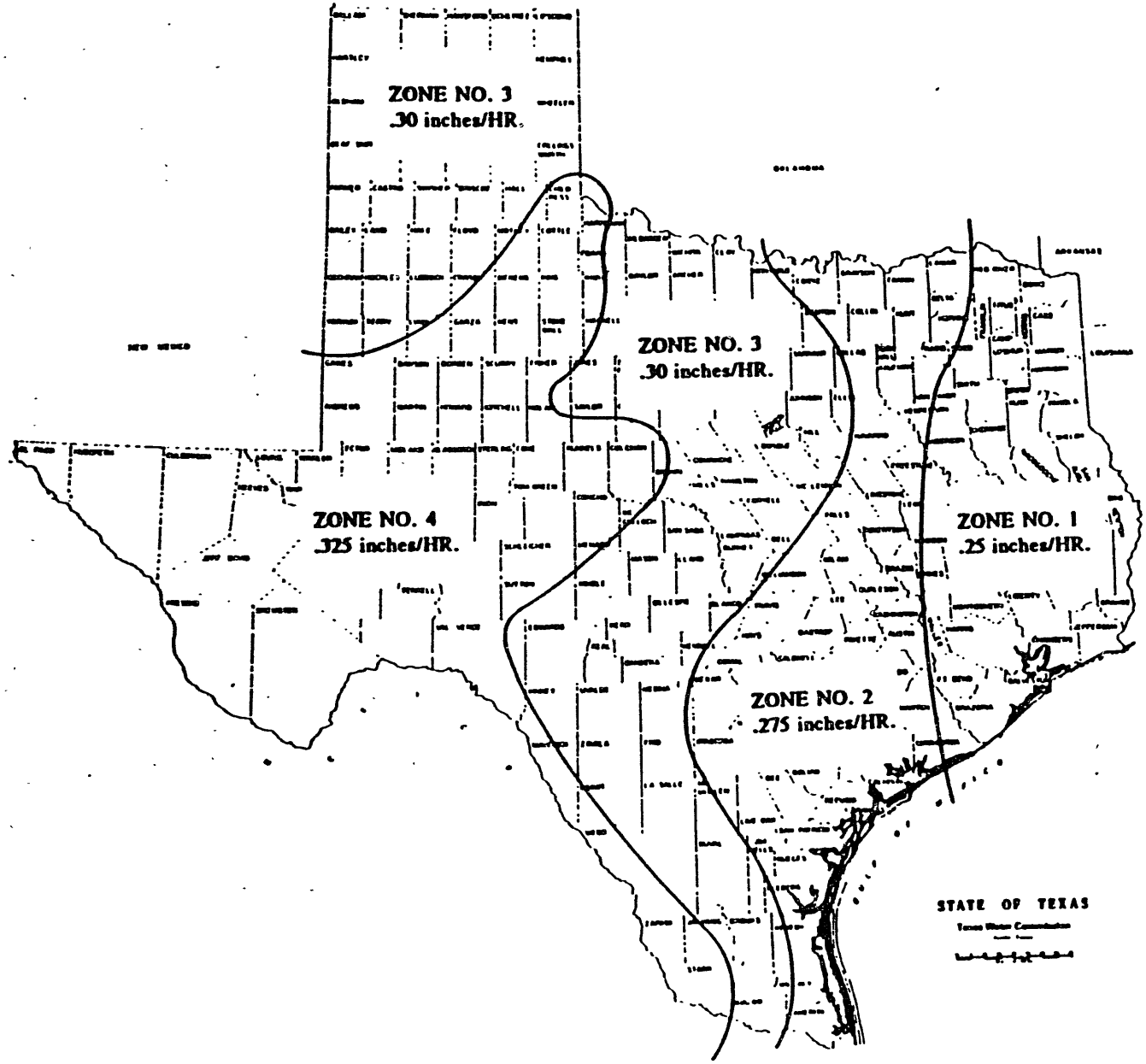

Figure: 34 TAC 3.164(d)

HOTEL OCCUPANCY TAX EXEMPTION CERTIFICATE

NOTE: This certificate is for business only, not to be used for private purposes, under penalty of law. The hotel operator may request a government ID, business card or other identification to verify exemption claimed. Certificate should be furnished to the hotel or motel. DO NOT send the completed certificate to the Comptroller of Public Accounts. The certificate does not require a number to be valid.

Check exemption claimed:

____ Federal government agency or Texas government official [agency or agency employee or diplomatic personnel] (state, city and county tax exemption) The United States government when paying the hotel directly for the price of the room, State of Texas official who presents a Hotel Tax Exemption photo identification card or diplomatic personnel of a foreign government who present a Tax Exemption Card issued by the United States Department of State (state, city and county tax exemption). Refer to Hotel section 3.163 for government exemptions.

____ Religious, charitable or educational organization or employee (state tax exemption only) Educational organizations include state and private universities, junior colleges, community colleges, independent school districts, public and private elementary and secondary schools of this state and other states.

Name of exempt organization

Organization exempt status (Religious, charitable, educational, governmental)

Address of exempt organization (Street and number, city, state, ZIP code)

GUEST CERTIFICATION: I declare that I am an occupant of this hotel/motel on official business sanctioned by the exempt organization named above and that all information shown on this document is true and correct.

Guest name (Please print) Date

SIGN HERE:

FOR HOTEL/MOTEL USE ONLY (OPTIONAL)
Name of hotel/motel

Address of hotel/motel (Street and number, city, state, ZIP code)

Method of payment (Cash, personal check or credit card, organization check or credit card, direct billing, other)

Room rate Local tax Exempt state tax Amount paid by guest

Figure: 34 TAC 3.166(f)

TEXAS CLAIM FOR REFUND OF HOTEL OCCUPANCY TAX

Claimant ID. Number _____

Agency Name _____

Street Address _____

City _____ State _____ Zip _____

Period of Claim (Note: More than one quarter may be claimed on one form.)

_____ 1st quarter, 19_____ (Jan, Feb, Mar)

_____ 2nd quarter , 19_____ (Apr, May, Jun)

_____ 3rd quarter, 19_____ (Jul, Aug, Sep)

_____ 4th quarter, 19 _____ (Oct, Nov, Dec)

Tax Claimed (Note: A separate claim form must be filed with each applicable municipality or county.)

_____ **MUNICIPAL** Hotel Occupancy Tax (Sec. 351, Tax Code)

Name of municipality _____

Total price paid for hotel rooms (excluding taxes, meals, and other services) $ _____

Municipal hotel tax rate _____%

Amount of municipal hotel tax paid $_____

_____ **COUNTY** Hotel Occupancy Tax (Sec. 352, Tax Code)

Name of county _____

Total price paid for hotel rooms (excluding taxes, meals, and other services) $_____

County hotel tax rate _____%

Amount of county hotel tax paid $_____

Name (please print) _____
(agent, representative or other person authorized to file refund claim for the state or federal agency and answer questions concerning the claim)

Signature _____

Phone (area code and number)_____

Date _____

Figure 2: 43 TAC §18.16(a)

Type of Vehicle	Minimum Insurance Level
1. Tow trucks (gross vehicle weight less than 26,000 lbs.)	$ 300,000
2. Buses designed to transport more than 15 passengers (including the driver), but less than 26 passengers	$ 500,000
3. Buses designed to transport 26 passengers or more (including the driver)	$5,000,000
4. Farm trucks (gross vehicle weight 48,000 lbs. or more)	$ 500,000
5. Commercial motor vehicles (gross vehicle weight 26,000 lbs. or more), including tow trucks	$ 500,000
6. Commercial motor vehicles - Oil listed in 49 CFR §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in item 7 of this table.	$1,000,000
7. Commercial motor vehicles - Hazardous substances, as defined in 49 CFR §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 CFR §173.403. Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR §173.403.	$5,000,000

Figure 43 TAC §28.30(e)(4)

Number of counties on permit application	Fee
1-20	$125
21-40	$345
41-60	$565
61-80	$785
81-100	$1,005
01-254	$2,000

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Thursday, January 4, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-95-1571-Application of Texas Utilities Electric Company for authority to implement rate WP1 to Lyntegar Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc., (PUC Docket Number 14716).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 6, 1995, 3:50 p.m.

TRD-9515934

Wednesday, February 28, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-95-1563-Application of Central Power and Light Company for authority to change rates (PUC Docket Number 14965).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 5, 1995, 4:48 p.m.

TRD-9515850

Monday, March 18, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-95-1567-Complaint of Larry Wade doing business as WECO against GTE Southwest, Inc. (PUC Docket Number 14434).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 5, 1995, 4:48 p.m.

TRD-9515851

Wednesday, April 17, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in the following proceeding: SOAH Docket Number 473-95-1564/PUC Docket Number 14940-Applications of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. for interim number portability pursuant to §3.455 of the Public Utility Regulatory Act.

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 6, 1995, 2:30 p.m.

TRD-9515923

♦ ♦ ♦

Texas Board of Chiropractic Examiners

Friday, December 29, 1995, 3:00 p.m.

333 Guadalupe, Room 100

Austin

AGENDA:

The Texas Board of Chiropractic Examiners announces a public hearing to solicit comments on proposed rules. Rules proposed include §§71.1-71.3, 71. 5-71.12, 73.1-73.5, 74.1, 75.1, 75.5-75.10, 76.1, 76.3-76.7, 77.1-77.3, 78.1, 79.1, and 80.1. These rules were previously published in the Texas Register. Comments or suggestions may be presented in person at the hearing, or may be submitted in writing to the Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, by January 1, 1996.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: December 6, 1995, 1:23 p.m.

TRD-9515913

♦ ♦ ♦

Correctional Managed Health Care Advisory Commission

Thursday, December 14, 1995, 1:00 p.m.

University of Texas Medical Branch, John Sealy Annex, Seventh Floor, Room 7.134

Galveston

AGENDA:

A. Call to order

B. Approval of minutes from September 18, 1995 committee meeting

C. Executive director report

D. Receive report from CMHCAC staff on fiscal year 1996-1997 contracts

E. Receive report from CMHCAC staff regarding medical facilities constructions

F. Receive update from CMHCAC staff on planned TDCJ fiscal year 1996-1997 capacity expansion

G. Discussion, consideration and possible action relating to incorporation of psychiatric services

H. Discussion, consideration and possible action relating to quality improvement process revisions

I. Receive report on Hepatitis B employee vaccination policy

J. Report on Special Needs Offender Program

K. Report on National Commission on Correctional Health Care Conference

L. Update on payroll transition

M. Discussion, consideration and possible action relating to extension of terms for committee chairman and vice-chairman

N. Discussion of date and location of next committee meeting

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3251.

Filed: December 6, 1995, 9:57 a.m.

TRD-9515901

♦ ♦ ♦

Texas County and District Retirement System

Thursday-Friday, December 14-15, 1995, 9:00 a.m. and 8:30 a.m., respectively.

La Mansion Del Rio Hotel, 112 College Street

San Antonio

Board of Trustees

AGENDA:

Opening of meeting. Executive session: Deliberations on personnel and real property matters. Review and approval of: September 1995 board minutes; investment, administrative, building project, and building operations budgets; applications for retirements and supplemental death benefits; termination of a disability retirement; subdivision applications for participation; financial statements. Consider and act on: Building Committee report and recommendations pertaining to the sale, leasing, management and construction of TCDRS office buildings; proposed Board of Trustees bylaws; proposed administrative rule changes; adoption of IRC §125 Plan for TCDRS employees; resolutions authorizing transfers of monies to the expense fund and the distributive benefits account of the Endowment Fund; administrative and investment policies, practices, budgets and personnel, including adoption of 1996 operating and capital assets budgets; investment income projections; determination of interest rates for 1995. Resolutions of appreciation for Senator Montford and Representative Kuempel. Election of officers for 1996. Receive reports from: Actuary; legal counsel; fiduciary counsel; Investment Committee; investment officer; chair; director. Set date of March meeting. Adjournment.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: December 6, 1995, 8:08 a.m.

TRD-9515865

♦ ♦ ♦

State Board of Dental Examiners

Friday, December 15, 1995, 8:30 a.m.

333 Guadalupe, William Hobby Building, Tower Two, Second Floor

Austin

Settlement Conference Hearing

AGENDA:

I. Call to order

II. Discuss and consider the following complaints

A. #94-322-0331B

B. #94-279-0310B

C. #94-503-0801S

D. #94-451-0616K

E. #94-380-0509S

F. #94-463-0711S

G. #94-464-0718S

H. #94-465-0714S

III. Executive session to discuss pending contemplated litigation pursuant to Article 551.071, Texas Government Code, Texas Civil Statutes, 1994

A. #94-322-0331B

B. #94-279-0310B

C. #94-503-0801S

D. #94-451-0616K

E. #94-380-0509S

F. #94-463-0711S

G. #94-464-0718S

H. #94-465-0714S

IV. Adjourn

Contact: Douglas A. Beran, Ph.D., 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: December 5, 1995, 2:49 p.m.

TRD-9515829

Saturday, December 16, 1995, 8:00 a.m.

333 Guadalupe, William Hobby Building, Tower Two, Second Floor

Austin

Settlement Conference Hearings

AGENDA:

I. Call to order

II. Discuss and consider the following complaints

A. #94-572-0830K

B. #95-249-0410S

C. #95-347-0627S

III. Executive session to discuss pending contemplated litigation pursuant to Article 551.071, Texas Government Code, Texas Civil Statutes, 1994

A. #94-572-0830K

B. #95-249-0410S

C. #95-347-0627S

IV. Adjourn

Contact: Douglas A Beran, Ph.D., 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: December 5, 1995, 2:49 p.m.

TRD-9515830

♦ ♦ ♦

Advisory Commission on State Emergency Communications

Wednesday, December 13, 1995, 10:00 a.m.

William P. Hobby Building, 333 Guadalupe Street, Suite 2-212

Austin

Executive Committee Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports and discuss and take action, as necessary, on: Organization structure of the commission; rural addressing and mapped ALI. The commission may meet in executive session on any of the items as authorized under the Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, §551.071, consultation with Assistant Attorney General concerning pending or contemplated litigation or to seek legal advice. Adjourn.

Contact: Jim Goerke, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

Filed: December 5, 1995, 3:54 p.m.

TRD-9515836

♦ ♦ ♦

Texas State Board of Registration for Professional Engineers

Friday, December 15, 1995, 10:00 a.m.

1917 IH-35 South, Board Room

Austin

Ad Hoc Committee on Registration

AGENDA:

1. Meeting called to order by Chairman Treat at 10:00 a.m.

2. Discuss faculty registration.

A. Presentation from Education Advisory Committee.

B. Establish tentative areas to address.

C. Establish tentative plan of action.

D. Establish tentative timetable.

3. Discuss Washington Accord Degrees.

A. Review North Carolina and Tennessee actions.

B. Propose Texas action.

4. Discuss proposed fundamentals examination rule change (Board Rule 131. 101(a)(1) and (2)).

5. Discuss whether a particular individual may appear before the board on a registration issue.

6. Adjourn.

Contact: John R. Speed, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: December 6, 1995, 9:24 a.m.

TRD-9515886

♦ ♦ ♦

Texas Department of Health

Thursday, December 14, 1995, 10:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Family Planning Advisory Committee

AGENDA:

The council will discuss and possibly act on: presentation and discussion of a report, The Best Intentions-Unintended Pregnancy and the Well-Being of Children and Families, by Sarah S. Brown, MPH, Senior Study Director, Institute of Medicine, National Academy of Science; approval of minutes from the October 12, 1995 meeting; long-range planning-follow up discussion of Texas Department of Health Family Planning position paper; report from representative of Regional Coordinating Committee chairpersons; report on the Family Planning Futures Project Committee; public comment; and announcements not requiring council action.

Note: The Regional Coordinating Committee chairpersons will meet at 8:30 a. m., on Thursday, December 14, 1995 at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin.

Contact: Carol Pavlica, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: December 5, 1995, 2:22 p.m.

TRD-9515815

♦ ♦ ♦

Texas Higher Education Coordinating Board

Tuesday, December 19, 1995, 10:30 a.m.

Chevy Chase Office Complex, Building Five, Room 5.139, 7745 Chevy Chase Drive

Austin

Coordinating Board/State Board of Education Joint Advisory Committee

AGENDA:

Report of Tech Prep; report on Eisenhower Mathematics and Science Program; report on Teacher Certification Programs; report on the accountability system for Educator Preparation Programs; report on State Board of Educator Certification; update on the Texas Academic Skills Program (TASP); and discussion of Telecommunications Infrastructure Fund.

Contact: Glenda Barron, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: December 6, 1995, 2:17 p.m.

TRD-9515921

♦ ♦ ♦

Texas Department of Human Services

Tuesday, December 12, 1995, 9:30 a.m.

701 West 51st, Fifth Floor, West Tower, Conference Room 560

Austin

State Advisory Committee on Child Care Programs

AGENDA:

Welcome and introductions. Action item: Approval of minutes of June 29, 1995, meeting. Nomination and election of chair and vice-chair. Staff reports: Update on transition to the Texas Workforce Commission. Update on federal legislation regarding welfare reform. Adjourn.

Contact: Mary Beth O'Hanlon, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4169.

Filed: December 6, 1995, 4:24 p.m.

TRD-9515944

♦ ♦ ♦

Texas Department of Insurance

Wednesday, December 20, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

Revised Agenda

AGENDA:

To consider whether disciplinary action should be taken against Helen F. Francis, Houston, Texas, who holds 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: December 6, 1995, 5:04 p.m.

TRD-9515946

♦ ♦ ♦

Texas Board of Professional Land Surveying

Friday, December 15, 1995, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

Board Meeting

AGENDA:

The board will meet to approve the minutes of the previous meeting. An executive session will be held for the purpose of discussing the executive director's salary. Upon returning to open session the board will consider and act upon the director's salary, presentations from Jack Chisholm concerning Board Rule 663.17(b), Charles Styron concerning certifications and Houtan Jalayer concerning examinations and expired status; a report from the executive director; to consider and act upon active complaints and show cause actions, recommendations from committee reports, to adopt revisions to Board Rule 661.41 concerning applications and rules to be adopted at the next scheduled board meeting-661.50 concerning surveyor-in-training experience requirements, 661.48 concerning unsuccessful examinations and 663.20 concerning criminal convictions; to discuss and act upon possible rule proposals concerning surveys made from record documents and oil well unit surveys, addressing the security of examination questions and for a policy for inactive status; to consider and act upon correspondence to and from the board-correspondence from the City of Houston regarding dedications, David Wahlstrom regarding examination questions, Eric Yahoudy regarding survey update and inspection reports, R. P. Shelley regarding survey requirements, Earl Newman regarding active status, John Poerner regarding active status, Jack Phillips regarding examinations, Paul Landry regarding seismic surveys, and Dennis Austin regarding an Attorney General's opinion; to consider items to be added to future agendas and to receive comments from the public. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: December 6, 1995, 1:40 p.m.

TRD-9515914

♦ ♦ ♦

Texas State Library and Archives Commission

Friday, December 15, 1995, 10:00 a.m.

Lorenzo de Zavala State Archives and Library Building, Room 202

Austin

Texas Historical Research Advisory Board

AGENDA:

1. Call to order

2. Approval of minutes of meeting-October 6 and 7, 1995

3. Discussion of revised Statewide Assessment Report

4. Committee reports

5. Determination of site and date for next meeting

6. Adjournment

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: December 6, 1995, 5:04 p.m.

TRD-9515945

♦ ♦ ♦

Texas State Board of Medical Examiners

Thursday, December 7, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Emergency Revised Agenda

Standing Orders Committee

AGENDA:

In addition to previously posted agenda, the committee will review licensure applicant, Philip Caterbone, M.D., referred to the Committee by the Executive for determination of eligibility for licensure.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7008.

Filed: December 6, 1995, 4:18 p.m.

TRD-9515942

Thursday, December 7, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Emergency Revised Agenda

Standing Orders Committee

AGENDA:

In addition to the previously posted agenda, the committee will go into executive session to review files and cases recommended for dismissal by the Texas State Board of Acupuncture Examiners; discuss and possibly act on proposed amendments to Health Department rules related to persons performing radiologic procedures.

Reason for emergency: Information has come to the attention of the agency and requires prompt attention.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7008.

Filed: December 6, 1995, 4:18 p.m.

TRD-9515941

Thursday-Saturday, December 7-9, 1995, 8:30 a.m. (Thursday, Saturday) and 1:30 p.m. (Friday), respectively.

333 Guadalupe, Tower Two, Suite 225

Austin

Emergency Revised Agenda

AGENDA:

In addition to the previously posted agenda, the following have been added: approval of additional agreed orders and modification/termination orders. The following have been deleted from the agenda: request for termination of suspension concerning Donald W. Smith, M.D.; request for termination of suspension concerning Ira Kaufman, M.D.; request for reinstatement concerning Edgar Conrad, M.D.; and a request for reinstatement concerning Robert Vance, D. O.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7008.

Filed: December 6, 1995, 4:18 p.m.

TRD-9515943

Tuesday, December 12, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Emergency Agenda

Hearings Division

AGENDA:

Probation appearance, 9:00 a.m.-Bruce S. Hinkley, M.D., Dallas, Texas.

Probation appearance, 9:00 a.m.-Bohdan J. Jarem, M.D., Dallas, Texas.

Probation appearance, 9:00 a.m.-Daniel K. Leong, D.O., Plano, Texas.

Probation appearance, 9:00 a.m.-Leslie Schachar, M.D., Gainesville, Texas.

Probation appearance, 10:00 a.m.-James H. Jones, M.D., Denton, Texas.

Probation appearance, 10:00 a.m.-John G. Steele, M.D., Irving, Texas.

Probation appearance, 11:30 a.m.-Barbara H. Briner, M.D., Houston, Texas.

Probation appearance, 11:30 a.m.-Michael H. McCallum, M.D., Spring, Texas.

Probation appearance, 12:30 p.m.-James T. Parsons, M.D., Houston, Texas.

Termination request, 10:30 a.m.-Ronald Van Buskirk, M.D., Mount Pleasant, Texas.

Termination request, 11:00 a.m.-Thomas J. Currier, M.D., Muenster, Texas.

Termination request, 12:45 p.m.-Frank S. Murphy, D.O., Shreveport, Texas.

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes, regarding pending or contemplated litigation.

Reason for emergency: Information has come to the attention of the agency and requires prompt attention.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: December 5, 1995, 10:55 a.m.

TRD-9515762

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Board of Nurse Examiners

Tuesday, December 12, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 460

Austin

Emergency Revised Agenda

AGENDA:

Eligibility and Disciplinary Committee. The Eligibility and Disciplinary Committee will meet to consider the applications for endorsement from Kaylin Douglas Johnson and Catherine Anne Jones.

Reason for emergency: Names of individuals inadvertently omitted from agenda filed on December 1, 1995.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 305-6811.

Filed: December 6, 1995, 11:36 a.m.

TRD-9515908

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Texas Parks and Wildlife Department

Thursday, December 14, 1995, 7:00 p.m.

University of Houston at Victoria, Alcorn Auditorium

Victoria

Parks and Wildlife Commission, Regulations Committee

AGENDA:

Welcome; chairman's opening remarks and introduction of Regulatory Committee; video presentation regarding regulatory process and "Sunset" process; public comment regarding local issues; closing remarks; and adjourn.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: December 5, 1995, 2:52 p.m.

TRD-9515831

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Texas Board of Private Investigators and Private Security Agencies

Thursday, December 14, 1995, 8:30 a.m.

Hilton Palacio Del Rio, El Mirador/La Condesa Rooms, 200 South Alamo Street

San Antonio

Board Meeting

AGENDA:

New Business

I. Docket call.

II. Review of staff recommendation and board action on new licenses, suspension orders, reinstatement orders, revocations, denials, reprimands, summary suspensions, summary denials, requests for waivers, other proposals for decision, requests for rehearings, reconsiderations and related issues.

Old Business

I. Approval of minutes of September 26, 1995 board meeting.

New Business (continued)

III. Discussion and adoption of proposed board rules to implement actions of the 74th Legislative Session. Public testimony.

IV. Discussion and possible approval of funding search for personal protection training development.

V. Discussion and possible board action on Alarm Continuing Education.

It should be noted that a lunch break will be taken at an appropriate time.

Contact: Clema D. Sanders, 313 East Anderson Lane, Suite 200, Austin, Texas 78752, (512) 463-5545.

Filed: December 5, 1995, 3:14 p.m.

TRD-9515833

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Texas Department of Protective and Regulatory Services

Thursday, December 14, 1995, 10:30 a.m.

2355 North Stemmons Freeway, Stemmons Building, 12th Floor, Executive Conference Room

Dallas

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order. 2. Executive session. The Texas Board of Protective and Regulatory Services will meet in closed executive session to discuss applicants for the position of executive director pursuant to §551.074 of the Texas Government Code. 3. Adjournment.

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-3645.

Filed: December 6, 1995, 3:50 p.m.

TRD-9515935

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Public Utility Commission of Texas

Monday, December 18, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled in Docket Number 15034-Application for sale, transfer, or merger of Santa Rosa Telephone Cooperative, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 5, 1995, 4:16 p.m.

TRD-9515845

Monday, December 18, 1995, 2:00 p.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled in Docket Number 15035-Application for sale, transfer, or merger of Cap Rock Telephone Cooperative, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 5, 1995, 4:15 p.m.

TRD-9515844

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Texas National Research Laboratory Commission

Thursday, December 14, 1995, 10:00 a.m.

Waxahachie Chamber of Commerce, Board Room, 102 YMCA Drive

Waxahachie

Commission

AGENDA:

Call to order and administrative actions

Executive director's report-Edward C. Bingler

Other reports

Public comment

Adjourn

Contact: Dixie Eoff, 2275 North Highway 77, Suite 100, Waxahachie, Texas 75165, (214) 935-7810.

Filed: December 6, 1995, 12:01 p.m.

TRD-9515911

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Teacher Retirement System of Texas

Thursday, December 14, 1995, Noon.

1000 Red River, Room 420

Austin

Board of Trustees Nominations Committee

AGENDA:

Approval of minutes of October 13, 1995, meeting and consideration of recommendation for candidates to be appointed to the Retirees Advisory Committee.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance, contact Mary Godzik (512) 397-6400 or T.D. D. (512) 397-6444 or 1-800-841-4497 at least two days prior to the meeting.

Filed: December 6, 1995, 12:01 p.m.

TRD-9515910

Thursday, December 14, 1995, 1:00 p.m.

1000 Red River, Fifth Floor, Board Room

Austin

Board of Trustees Investment Committee

AGENDA:

Approval of minutes of September 14, 1995, meeting; discussion of investment activities; consideration of asset class ranges and normal targets; review of investments; consideration of additions to universe of stocks eligible for investment; consideration of recommended allocation of cash flow for current quarter; review of portfolio performance; and review of investment outlook and market conditions.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance, contact Mary Godzik (512) 397-6400 or T.D. D. (512) 397-6444 or 1-800-841-4497 at least two days prior to the meeting.

Filed: December 6, 1995, 12:01 p.m.

TRD-9515909

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Texas Turnpike Authority

Thursday, December 14, 1995, 9:30 a.m.

Conference Room of Administration Building, 3015 Raleigh Street

Dallas

190T Finance Committee

AGENDA:

Roll call of committee members.

Recognition of other directors and guests present.

1. Consider resolution awarding sale of Texas Turnpike Authority Dallas North Tollway System Revenue Bonds, Series 1995, authorizing a bond purchase and approving an official statement.

2. Consider resolution awarding sale of Texas Turnpike Authority Dallas North Tollway System Revenue Refunding Bonds, Series 1997, authorizing a bond purchase and approving an official statement.

3. Executive session: Pursuant to Chapter 551, Subchapter D, Texas Government Code, including (a) §551.071, advice from counsel concerning negotiations/settlement offers related to the President George Bush Turnpike; (b) §551.072 and §551.073, deliberation concerning the purchase, exchange, lease, donation, or value of real property underlying and/or associated with the President George Bush Turnpike; (c) §551.075, conference with employees of the Texas Turnpike Authority to receive information and question the employment.

4. Receive public comments.

5. Receive comments from members of the Board of Directors of the Texas Turnpike Authority.

Adjournment

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: December 6, 1995, 1:40 p.m.

TRD-9515915

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University of Houston System

Tuesday, December 12, 1995, 9:30 a.m.

1600 Smith, Suite 3400, UH System Office, Conference Room One

Houston

Asset Management Committee

AGENDA:

To discuss the following:

Endowment performance report as of September 30, 1995; endowment asset allocation analysis; report of investment performance of pooled non-endowed funds as of September 30, 1995; non-endowed funds manager report by Texas Commerce Bank Investment Management Group; report on separately invested funds as of September 30, 1995.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: December 5, 1995, 2:20 p.m.

TRD-9515814

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Texas Workers' Compensation Insurance Fund

Wednesday, December 13, 1995, 1:00 p.m.

100 Congress Avenue, Suite 600

Austin

Board of Directors

AGENDA:

Call to order; roll call; review and approval of the minutes of the November 15, 1995, board meeting; action items; consideration of investment policy; consideration of proposed amendments to fund bylaws; consideration of internal audit plan for 1996; con-

sideration of fund holiday schedule for 1996; consideration of current and proposed application forms; consideration of the revisions to Fund 401(a); election of 1996 board officers (vice chair and secretary); financial report; fund status report; informational items; report of the Administrative Committee; report of the Audit Committee; report of the Finance Committee; report of the Operations Committee; public participation; executive session; action items resulting from executive session deliberations; consideration of evaluation and compensation of the president; announcements; and adjourn.

Contact: Jeannette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: December 5, 1995, 2:22 p.m.

TRD-9515816

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Texas Workforce Commission

Wednesday, December 13, 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; consideration and action on higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 50; discussion, consideration, and possible action with regard to transfer of programs pursuant to House Bill 1863; consideration and possible proposal for adoption of rules regarding administration of the Skills Development Fund; consideration and possible proposal for adoption of rules for local workforce development boards in the preparation of local plans; consideration and possible proposal for adoption of rules for waivers for independent staffing and separate service provider requirements for local workforce development boards; consideration and possible proposal for adoption of rules for waiver for a person that provides one-stop services to also provide development services such as basic education and skills training; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 5, 1995, 4:04 p.m.

TRD-9515840

Thursday, December 14, 1995, 1:30 p.m.

Room 101, John H. Reagan Building, 105 West 15th Street

Austin

AGENDA:

Public hearing on proposed rules for formation of local workforce development boards.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 5, 1995, 4:04 p.m.

TRD-9515841

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Regional Meetings

Meetings Filed December 5, 1995

The Austin Transportation Study Policy Advisory Committee met at the Joe C. Thompson Conference Center, 26th and Red River, Room 2.102, Austin, December 11, 1995, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9515846.

The Austin-Travis County MHMR (Emergency Revised Agenda.) Finance and Control met at 1430 Collier Street, Austin, December 6, 1995, at Noon. (Reason for Emergency: New information was available on Item #5 and must be acted upon immediately at this committee meeting.) Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9515821.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1 Board of Directors met at 221 Highway 132, Natalia, December 11, 1995, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9515820.

The Capital Area Planning Council General Assembly will meet at the Wyndam Southpark Hotel, IH-35 South at Ben White Boulevard, Austin, December 13, 1995, at 11:45 a.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite #100, Austin, Texas 78704, (512) 443-7653. TRD-9515832.

The Coastal Bend Council of Governments Membership/Board will meet at 2910 Leopard Street, Corpus Christi, December 15, 1995, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9515788.

The Colorado County Appraisal District Board of Directors will meet at 400 Spring, Colorado Courthouse, Grand Jury Room, Columbus, December 12, 1995, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9515810.

The Education Service Center, Region XX Board of Directors will meet at 1314 Hines Avenue, San Antonio, December 13, 1995, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD-9515847.

The Edwards Central Appraisal District Appraisal Review Board will meet at 408 Austin Street, County Annex Building, Rocksprings, December 12, 1995, 10:00 a.m. Information may be obtained from Teresa Sweeten, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9515835.

The Elm Creek WSC Board met at 508 Avenue E, Moody, December 11, 1995, at 7:00 p.m. Information may be obtained from Debra Williams, 508 Avenue E, Moody, Texas 76557, (817) 853-3838. TRD-9515786.

The Middle Rio Grande Development Council Texas Review and Comment System will meet in the Sage Room, Holiday Inn, 920 East Main Street, Uvalde, December 13, 1995, at 3:00 p.m. Information may be obtained from Erma Alejandro, 209 North Getty Street, Uvalde, Texas 78801, (210) 278-4151, Ext. 10 or Fax: (210) 278-2929. TRD-9515765.

The Rio Grande Council of Governments Board of Directors will meet at the Rio Grande Council of Governments, 1100 North Stanton, Fourth Floor, El Paso, December 15, 1995, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0098. TRD-9515822.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center of the Convention Center Complex, San Antonio, December 11, 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-9515813.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, December 12, 1995, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9515766.

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, 4430 Highway 115, South of Mt. Vernon, December 12, 1995, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9515764.

The Upper Rio Grande Private Industry Council Upper Rio Grand Private Industry Council Board will meet at 1155 Westmoreland, Suite 211, El Paso, December 13, 1995, at 7:30 a.m. Information may be obtained from Norman R. Haley, 1155 Westmoreland, Suite 235, El Paso, Texas 79925, (915) 772-5627, Ext. 406. TRD-9515852.

The West Central Texas Council of Governments Solid Waste Task Force met at 1025 EN Tenth Street, Abilene, December 8, 1995, at 1:30 p.m. Information may be obtained from Avela Morris, 1025 EN Tenth Street, Abilene, Texas 79601, (915) 672-8544. TRD-9515787.

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Meetings Filed December 6, 1995

The Texas Automobile Insurance Plan Association (Emergency Revised Agenda.) Governing Committee met at 700 San Jacinto, Omni Austin Hotel, Austin, December 8, 1995, at 9:00 a.m. (Reason for Emergency: The vice-chair of the organization has tendered his resignation and that resignation was not foreseen at the time the agenda was put together and notice posted as required by §551.044, Government Code. The Governing Committee will probably not meet again for several months and this creates an emergency to fill the unexpired term of the resigned officer.) Information may be obtained from Dianna Brooks, P.O. Box 18449, Austin, Texas 78760, (512) 444-5999. TRD-9515929.

The Bandera County Appraisal District Appraisal Review Board will meet at the Bandera County Appraisal District, 1116 Main Street, Bandera, December 14, 1995, at 9:00 a.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039 or Fax: (210) 796-3672. TRD-9515920.

The Bandera County Appraisal District Board of Directors will meet at the Bandera County Appraisal District, 1116 Main Street, Bandera, December 19, 1995, at 3:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039 or Fax: (210) 796-3672. TRD-9515916.

The Bell County Tax Appraisal District (Revised Agenda.) Board of Directors will meet at 411 East Central Avenue, Belton, December 13, 1995, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9515906.

The Brazos Student Finance Corporation (Revised Agenda.) Executive Committee of the Board of Directors will meet in the Crooker Conference Room, Offices of Fulbright and Jaworski, 51st Floor, 1301 McKinney, Houston, December 12, 1995, at 4:00 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9515903.

The Brazos Valley Development Council Board of Directors will meet at 1706 East 29th Street, Suite F, Bryan, December 13, 1995, at 1:30 p.m. Information may be obtained from Mary Stevens, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9515930.

The Education Service Center, Region V Board will meet at 2295 Delaware Street, Beaumont, December 15, 1995, at 10:00 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703-4299, (409) 838-5555. TRD-9515922.

The Education Service Center, Region VII Board of Directors will meet at 1501 East Marshall Avenue, Longview, December 13, 1995, at 7:00 p.m. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9515907.

The Guadalupe-Blanco River Authority Policy Committee will meet at 933 East Court Street, Seguin, December 12, 1995, at 1:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9515897.

The Guadalupe-Blanco River Authority Audit Committee will meet at 933 East Court Street, Seguin, December 12, 1995, at 3:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9515898.

The Guadalupe-Blanco River Authority Retirement and Benefit Committee will meet at 933 East Court Street, Seguin, December 12, 1995, at 4: 00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9515899.

The Guadalupe-Blanco River Authority Board of Directors will meet at Texas Lutheran College, Timmerman Room, 1000 West Court Street, Seguin, December 13, 1995, at 10:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9515900.

The Hale County Appraisal District Board of Directors will meet at 3314 Olton Road, Plainview, December 19, 1995, at 7:00 p.m. Information may be obtained from Linda Jaynes, P.O. Box 329, Plainview, Texas 79073, (806) 293-4226. TRD-9515917.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, December 13, 1995, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9515885.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, December 15, 1995, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9515883.

The Liberty County Central Appraisal District AG Advisory Board will meet at 315 Main Street, Liberty, December 15, 1995, at 10:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9515884.

The Middle Rio Grande Development Council Private Industry Council will meet in the Sage Room, Holiday Inn, 920 East Main Street, Uvalde, December 13, 1995, at 10:30 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 or or Fax: (210) 876-9415. TRD-9515877.

The Mills County Appraisal District Appraisal Review Board will meet at the Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, December 14, 1995, at 9:00 a.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9515936.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA will meet at 7201 I-40 West, Second Floor, Amarillo, December 14, 1995, at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699 or Fax: (806) 353-9537. TRD-9515925.

The Panhandle Regional Planning Commission Board of Directors will meet at 415 West Eighth Avenue, Amarillo, December 14, 1995, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD-9515912.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, December 12, 1995, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9515932.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, December 13, 1995, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas

79452-3730, (806) 762-8721. TRD-9515933.

The Tarrant Appraisal District Board of Directors will meet at 2301 Gravel Road, Ft. Worth, December 15, 1995, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Ft. Worth, Texas 76118, (817) 284-0024. TRD-9515919.

The Taylor County Central Appraisal District Appraisal Review Board will meet at 1534 South Treadaway, Abilene, December 13, 1995, at 10:00 a.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9515927.

The Taylor County Central Appraisal District Board of Directors will meet at 1534 South Treadaway, Abilene, December 13, 1995, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381, Ext. 24 or Fax: (915) 676-7877. TRD-9515928.

The Wise County Appraisal District Board of Directors will meet at 206 South State Street, Decatur, December 12, 1995, at 7:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9515924.

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Meetings Filed December 7, 1995

The Education Service Center, Region XIV Board of Directors will meet at 1850 Highway 351, Abilene, December 14, 1995, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9515958.

The Gulf Bend Center Board of Trustees will meet at 1502 East Airline, Victoria, December 14, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9515959.

The Henderson County Appraisal District Board of Directors will meet at 1751 Enterprise Street, Athens, December 12, 1995, at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9515965.

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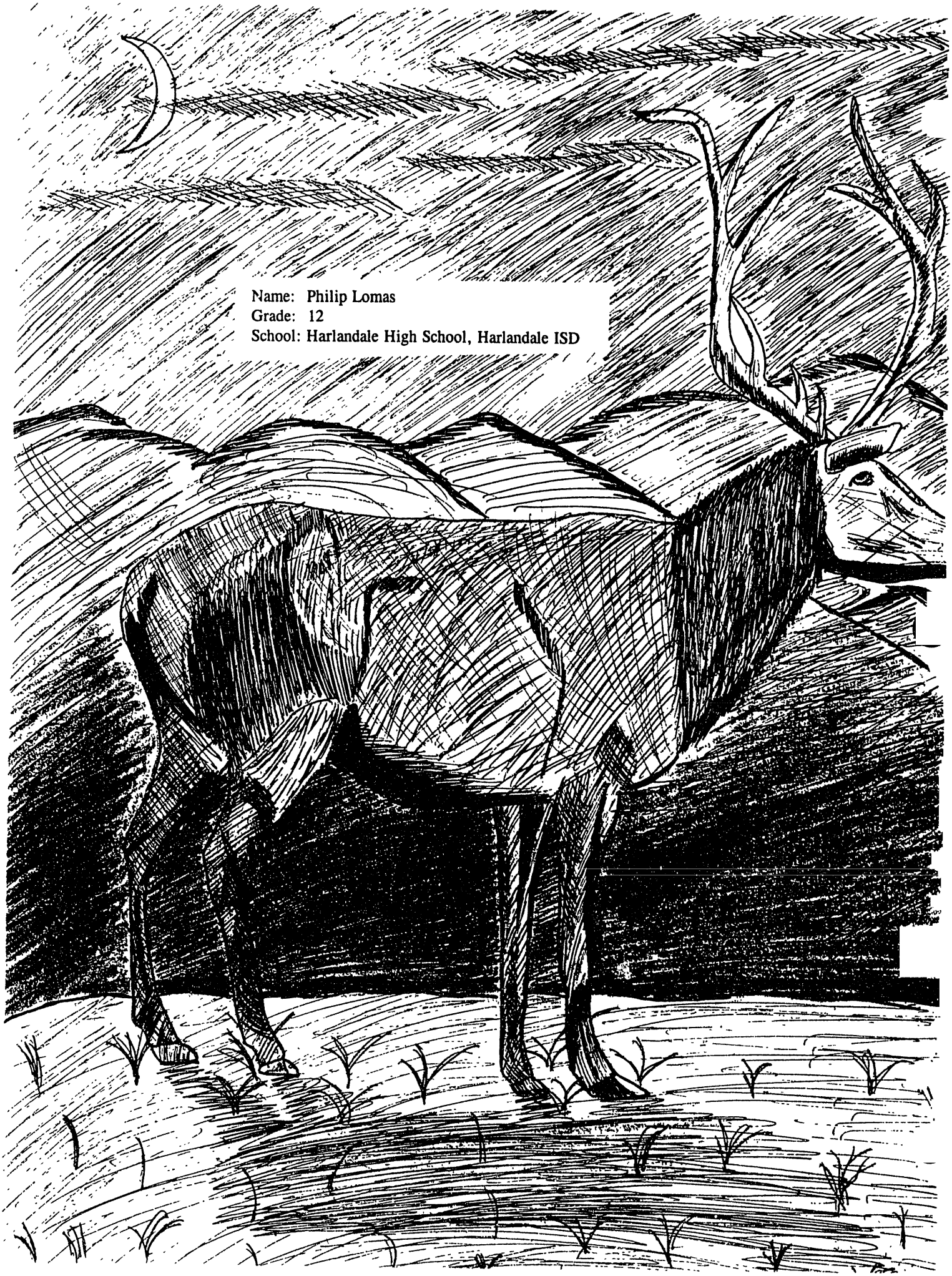

Name: Philip Lomas
Grade: 12
School: Harlandale High School, Harlandale ISD

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.

State Auditor's Office

Notice of Consultant Contract Award

The State Auditor's Office, on the behalf of the Legislative Audit Committee, has contracted with Value Health Management, Inc., 22 Waterville Road, Avon, CT 06001, to perform a comprehensive insurance program review of the Teacher Retirement System of Texas. The consultant proposal request was published in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6948). The consultant will review and provide recommendations regarding the TRS-Care 1, 2, and 3 retiree insurance programs and the active member insurance program. In addition, the consultant will review and make recommendations regarding the effectiveness of program management and operations. The contract was executed effective November 7, 1995, in an amount not to exceed $371,980 and will terminate March 1, 1996. A final report is due no later than March 1, 1996.

Issued in Austin, Texas, on December 1, 1995.

TRD-9515668 Lawrence F. Alwin, CPA
State Auditor
State Auditor's Office

Filed: December 1, 1995

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Texas Commission for the Blind

Computer Access Technology Training FFY 1996-Request for Proposals

Pat D. Westbrook, Executive Director of the Texas Commission for the Blind, has announced the availability of funds to contract for individualized computer hardware and software program training to consumers receiving services from the Commission and staff of the Commission who are blind or severely visually impaired.

Objectives. The Commission intends to enter into contracts with individuals and organizations to provide computer access technology interfacing services and training on a fee-for-service basis to staff and consumers (who are determined eligible by the Commission). The primary objective is to enable consumers and staff who are blind or severely visually impaired to have access to work-place, task-specific, advanced training in the use of access hardware and software systems, and to the integration of software programs and hardware systems for employment, education and training applications. This is achieved by the provision of computer access technology training by individuals familiar with computer technology, applications of this technology for consumers and staff who are blind and visually impaired, and methods of instructing consumers and staff who are blind and visually impaired as well as the ability to set software environments and create windows/macros (Form Fill) specific to an individual's needs on the job. Preference will be given to applicants with skills in computer interfacing and training. The following examples are provided as guides. They are not meant to be inclusive.

Computer interfacing: software customization to access mainframe or personal computer via adaptive software and devices. integration of adaptive software and hardware within a local area network.

Training: advanced skills with computer hardware/software. advanced skills with DOS & Windows 3.11, advanced skills with specific software, e.g., WordPerfect, Lotus 1|2|3, PC|File+, and other off|the|shelf software.

Adaptive technology: large print programs, e.g. , Vista, ZoomText, LPDOS, speech screen review software, e.g. , Vert, VocalIEyes, Artic, JAWS, braille systems, e.g. , Power Braille, ALVA, Braille 'n Speak.

Targeted Population. Consumers served under these contracts are persons who are legally or totally blind or severely visually impaired and who have met the basic requirements for receiving services and who have been referred by an authorized agency representative. Staff served under these contracts would be persons referred by a regional supervisor/program supervisor.

Who is eligible to apply. Organizations and individuals that provide computer technology training to persons who are legally or totally blind are eligible to apply for contracts.

Application Procedures. Submit to: Glenda Embree, Supervisor of Program Specialists, Texas Commission for the Blind, 4800 N. Lamar, Suite 220, Austin, Texas 78756, a narrative no longer than five typed pages, which describes: individual or organization applying proposed geographic coverage, quality and extent of services to be provided (list specific software and adaptive devices for visual loss) experience in providing adaptive technology interface and training to persons with visual loss, cost per person per hour for proposed training and method used to calculate cost. Also include: qualifications of key personnel additional information about you or your organization and past achievements in serving the consumer who is visually impaired or blind.

ALL APPLICATIONS MUST BE POSTMARKED NO LATER THAN JANUARY 15, 1996.

Inquiries: Interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals to facilitate the Request for Proposal process. Inquiries should be directed to Cathy Duvall at (512) 459-2573.

Method of payment: The service provider will be reimbursed monthly via: monthly submission of a voucher with a detailed listing of services provided; and agency review and approval of submitted material.

Review criteria. Reviewers will use the following criteria to evaluate proposals: The proposal addresses the explicit purpose of the RFP. The applicant addresses their expertise with the subject matter. The applicant provides evidence of their professional and organizational capacity to achieve the objectives in a timely manner. The applicant agrees to provide services to the consumer or staff at their work place.

In addition to the written criteria, the applicant will be requested by the Commission to demonstrate their proficiency in providing training in the use of adaptive technology with application software.

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

TRD-9515834 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: December 5, 1995

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1. 04).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/11/95-12/17/95	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

[graphic]

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

TRD-9515888 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: December 4, 1995

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Texas Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on October 27, 1995, the Court Reporters Certification Board certified to the Supreme Court the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to the Texas Government Code, Chapter 52:

ORAL STENOGRAPHY: Mary Elizabeth Boyd-Deer Park; and Katherine Ellen Sheffield-Euless.

MACHINE SHORTHAND: Marla Sue Abernathy-Jefferson; Patricia Teresa Abeyta-San Antonio; Valerie Kaelene Allen-DeSoto; Angela Renee Barre-Houston; Dorma Melisa Tuttle Brown-Beaumont; Raquel M. Bruton-Haltom; Tina Anders Campbell-Carthage; Christy Michelle Cortopassi-Lewisville; Audra Britt Dillingham-Duncanville; Nancy E. Dziak-San Antonio; Mandy Mae Galarsa-San Antonio; Shannon Lynn Ginther-Houston; Becky J. Glugosh-Laguna Hills, CA; Natalie Denise Goodson-Houston; Tracy Carolyn Hampton-Addison; Kelly Colleen Hassell-Carrollton; Suzanne Gayle Hogue-Missour City; Sondra Denise Jay-Arlington; Hope Lynn Lewandoski-Arlington; Rhoda B. Macias-Plano; Melody Monk-New Orleans, LA; Mary Ann Orchard-Dickinson; Jessica Rose Perry-Duncanville; Sharon K. Peveto-Wells-Houston; Dawna Beth Randolph-Stephenville; Sylvia Iris Rodriguez-Austin; Kendra Lee Rowland-Dallas; Latonia Rose Sanchez-Arlington; Tamara K. Stogel-Houston; Patricia Lynn Trevino-West Des Moines, IA; Gina Marie Udall-Arlington; Brandy R. Wagner-Houston; Phyllis Jean Waltz-Pearland; and Kimberly Krus Weindenheft-Houston.

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

TRD-9515758 Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board

Filed: December 5, 1995

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Probationary Suspension

On April 29, 1995, Phyllis Faykus-Dutton of Houston, Texas, Certification Number 2986, agreed to a probationary suspension of her certification as a Certified Shorthand Reporter in the State of Texas. The Court Reporters Certification Board found that Ms. Faykus-Dutton engaged in acts which constitute a violation of the Government Code, §52.029(a), concerning dishonesty, willful or negligent

violation or failure of duty and unprofessional conduct. Ms. Faykus-Dutton was placed on probation for six months based on compliance with the following conditions: No additional complaints are filed against Ms. Faykus-Dutton as of April 29, 1995; and Ms. Faykus-Dutton be tested on the court reporter rules and statute within 30 days of being notified by the Board office. Should Ms. Faykus-Dutton fail to successfully pass a test prepared by the Testing Committee, she must continue to retest until successful. The sanction for violating any part of the Board's Order is immediate revocation of Ms. Faykus-Dutton's certification if the allegations are found to be true.

Issued in Austin, Texas, on December 1, 1995.

TRD-9515819 Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board

Filed: December 5, 1995

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Texas Department of Criminal Justice

Request for Qualification-Quality Assurance Construction Materials Testing Services

The Texas Department of Criminal Justice-Engineering Directorate (TDCJ-ED) announces that it requires professional engineering services for Quality Assurance (QA) Construction Materials Testing for all TDCJ-ED managed construction projects, including work for TDCJ, Texas Youth Commission (TYC), and Texas Juvenile Probation Commission (TJPC), pursuant to the provisions of Subchapter A, Chapter 2254, Texas Government Code.

TDCJ-ED intends to contract with one QA testing laboratory for services on all anticipated projects. There are currently 46 known projects tentatively considered for assignment to the Quality Assurance Construction Materials Testing laboratory selected. Activities with respect to this program will include, but not be limited to the following.

The QA Construction Materials testing laboratory will be acting as a professional service consultant to TDCJ. The lab shall provide comprehensive QA Construction Materials Testing service for projects designed for TDCJ, and where requested, to aid in the evaluation of test reports and procedures of the Contractor furnished QC (Quality Control) Construction Material Testing laboratories. The QA Construction Materials Testing lab will be expected to conduct a minimum of 10% of the tests required of the Contractor's QA laboratory on each project. Additionally, the QA laboratory will audit the Contractor's QA testing lab procedures, equipment, personnel and reports for compliance with the Contractor's Quality Control Plan. The successful firm shall possess accreditation of the facilities or branch facilities utilized by the American Association for Laboratory Accreditation (AALA) with appropriate scope or accreditation for services to be provided. The requested services shall be provided on an as-needed basis through 1998.

To be considered for award of a contract for the Quality Assurance Testing services, interested firms must submit their responses containing statements of interest, qualifications, and performance data to: Jeptha C. Tatum, III, Chief Contracts Administrator, TDCJ-Engineering Directorate, P.O. Box 99, Huntsville, Texas 77342-9987, Fax: (409) 294-8753, not later than 5:00 p.m. (CST) on January 9, 1996. Any submittal received after the stated time will not be considered. Submission and participation in the procedures described by interested firms shall be at no cost or obligation to the TDCJ-ED. The TDCJ-ED reserves the right to select one firm or reject all submittals received. Questions regarding this Request for Qualifications should be submitted in writing to the address shown previously.

Issued in Austin, Texas, on December 6, 1995

TRD-9515896 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: December 6, 1995

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General Land Office

Invitation for Offers of Consulting Services

The Texas General Land Office (GLO) is a participant in the development and implementation of a comprehensive tide monitoring and gauging system known as the Texas Coastal Ocean Observation Network (TCOON). Other participants include the National Ocean Service (NOS), Lamar University (Lamar), and the Conrad Blucher Institute (CBI) of Texas A&M University at Corpus Christi (TAMU-CC). The project is funded and administered through a cooperative effort of NOS and the GLO. In previous years, GLO contracted Lamar and TAMU-CC for installation and monitoring of the system and with CBI to obtain professional and technical assistance necessary to review and analyze data received from the operation of the TCOON.

Pursuant to Texas Government Code, §§2254.021 et seq, the GLO is requesting offers of consulting services to assist with the review and analysis of tide and water level data received from the TCOON during the period beginning September 1, 1995, and ending August 31, 1996.

The chosen consultant will be responsible for the coordination of all gauge installation, leveling, and operational reporting with the other participants in this project. These activities will be the subject of regular reports to the GLO. The chosen consultant will also be responsible for continuation of the process of automating the data collection, analysis, leveling, station stability monitoring and datum computation that has been initiated earlier by CBI.

The requested consultant services will require an understanding of ocean tide gauging systems and the ability to continue the assistance previously provided by CBI under the provisions of the GLO - CBI interagency cooperative agreement. It is the GLO's intent to award this contract to a person or entity familiar with TCOON and the earlier phases of the project in order to obtain maximum benefit of the prior work.

The closing date for the receipt of offers of these consulting services is 5:00 p.m., January 11, 1996. Further information can be obtained by contacting LaNell Aston, GLO Surveying Division, at 1700 North Congress Avenue, Room 720, Austin, Texas, 78701, phone (512) 463-5213.

The consultant selected must demonstrate extensive knowledge of the Texas Coastal Ocean Observation Network and have knowledge and experience working with other federal and state agencies. GLO reserves the right to evaluate qualifications and experience of all responders, to

reject any and/or all responses and to negotiate specific terms of agreement that are in the best interest of the agency and the State.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515818 Garry Mauro
Commissioner
General Land Office

Filed: December 5, 1995

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Request for Information

The Texas General Land Office (GLO)-Oil Spill Prevention and Response Program requests information regarding consultant services to study, analyze, provide advice, and make recommendations relative to the following:

(A) GLO responsibilities, if any, under Occupational Safety and Health Administration regulations, 29 Code of Federal Regulations, §§1910.120 et seq, and procedures to insure compliance;

(B) safety equipment, procedures and measures which are, or should be, implemented at the GLO to safeguard employees which are working with potentially hazardous oil spill response equipment;

(C) with regard to GLO monitoring of geographic areas with an increased risk or high history of persistent oil spill events, what benefits might a "risk audit" provide to the GLO;

(D) methods of securing and protecting oil spill response equipment and other State property (i.e., what security and safety measures are in place at the GLO and what additional measures should be taken to enhance protection of property?);

(E) the risk(s) and benefits to the GLO associated with conducting sampling activities;

(F) the safest, most appropriate manner for the GLO to conduct oil spill and other disaster response activities, through implementation, if necessary, of different or additional procedures or methodologies which may enhance safety of persons and property; and,

(G) with regard to oil spill disaster response activities, strategies to avoid, prevent, reduce, segregate and/or transfer liability and risk exposures.

Consultant is requested to research, analyze and make recommendations regarding the listed queries in order to provide the following benefits to the GLO:

(A) a safe work environment for GLO employees:

(B) maximum protection and preservation of expensive oil spill response equipment and other State property; and

(C) avoidance and/or minimization of GLO liability and risk with regard to oil spill response, disaster response, and other GLO Oil Spill Prevention and Response activities (including, but not limited to, liability for workers compensation claims and property damage and replacement).

Pursuant to Texas Government Code, §§2254.021, et seq, the GLO seeks individuals, partnerships and/or corporations to provide information on such consulting services. This request for information is not a promise or pledge, expressed or implied, that a contract will be granted. Consultant must have experience with risk management techniques and practices and a working knowledge of the oil and gas emergency response industry. Consultant must have knowledge of state and federal agencies, the duties and operation of such agencies, and the statutes and rules which govern their actions and authority.

Historically Underutilized Businesses (HUBs) are encouraged to submit information, and all businesses that submit information are encouraged to give particular attention in preparing their submissions to include HUBs as subcontractors and/or material providers at the first tier. The State of Texas operates under the basic principles of free and vigorous competition. In accordance with House Bill 2626, 73rd Legislature, all State agencies are to give good faith effort to award at least 30% of the total value of all contracts to certified HUBs. Achievement of the goal may be reached by the State contracting directly with HUB firms or by the State's general contractors establishing contracts with HUB firms as subcontractors, suppliers or material providers.

Submissions must be received by 5:00 p.m. on January 11, 1996. Further information regarding this Request for Information may be obtained by contacting Scott Cain, Texas General Land Office, 1700 North Congress Avenue, Suite 740, Austin, Texas 78701-1495, (512) 463-5175.

If further information is required from any consultant(s), the GLO will provide written notice within 30 days following the closing date of this Request for Information.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515817 Garry Mauro
Commissioner
General Land Office

Filed: December 5, 1995

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Texas Department of Health

Designation of Sites Serving Medically Underserved Populations

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the Texas Register and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations: The Skippy Express Mobile Health Unit at Linder Elementary School, located at 2800 Metcalfe Road, Austin (Travis County) , Texas; and The Skippy Express Mobile Health Unit at Walnut Creek Elementary School, located at 401 West Braker Lane, Austin (Travis County), Texas. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days from the date of this notice.

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

TRD-9515701 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 4, 1995

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Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Beaumont	Blood Center of Southeast Texas, Inc.	L04884	Beaumont	0	11/29/95
San Antonio	Alamo Heart Associates, P.A.	L04909	San Antonio	0	11/29/95
Throughout Texas	Kohutek Engineering & Testing, Inc.	L04857	Harker Heights	0	11/20/95
Throughout Texas	Patton, Burke & Thompson	L04900	Dallas	0	11/20/95
Throughout Texas	Apex Geoscience, Inc.	L04929	Tyler	0	11/29/95

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Abilene	National Central Pharmacy	L04781	Abilene	6	11/16/95
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	23	11/20/95
Austin	St. David's Community Hospital	L00740	Austin	65	11/29/95
Beaumont	Beaumont Regional Medical Center	L02102	Beaumont	37	11/17/95
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	28	11/20/95
Cheek	Goodyear Tire and Rubber Company	L04006	Beaumont	10	11/28/95
Corpus Christi	Memorial Medical Center	L00267	Corpus Christi	24	11/17/95
Dallas	Doctors Hospital	L01366	Dallas	36	11/21/95
Dallas	Syncor International Corporation	L02048	Dallas	79	11/28/95
Galveston	The University of Texas Medical Branch	L01299	Galveston	42	11/21/95
Graham	Graham General Hospital	L03271	Graham	13	11/17/95
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	8	11/20/95
Houston	Baylor College of Medicine	L00680	Houston	55	11/29/95
Houston	Twelve Oaks Hospital	L02432	Houston	21	11/29/95
Houston	ISK Biosciences Corporation	L03521	Houston	12	11/28/95
Houston	Baker Hughes INTEQ	L04452	Houston	20	11/16/95
Houston	Macgregor Medical Association	L04646	Houston	3	11/21/95
Irving	Irving Healthcare System	L02444	Irving	23	11/22/95
Kilgore	Roy H. Laird Memorial Hospital	L03496	Kilgore	9	11/29/95
Killeen	Metroplex Hospital	L03185	Killeen	12	11/21/95
Llano	Llano Memorial Hospital	L04438	Llano	5	11/16/95
Longview	Texas Eastman Division Eastman Chemicals Division	L00301	Longview	79	11/21/95
Longview	Good Shepherd Medical Center	L02411	Longview	48	11/27/95

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	53	11/21/95
McKinney	McKinney Hospital Venture	L02415	McKinney	11	11/20/95
N. Richland Hills	HCA Health Services of Texas Inc.	L02271	N. Richland Hills	21	11/28/95
Orange	Sholars Drug	L04785	Orange	2	11/16/95
Pasadena	AES Deepwater, Inc.	L03746	Pasadena	8	11/28/95
Plano	Arco Exploration and Production Technology Company	L00134	Plano	57	11/28/95
San Antonio	All American Maintenance, Inc.	L01336	San Antonio	21	11/28/95
San Antonio	Bexar County Forensic Science Center	L04313	San Antonio	4	11/22/95
San Antonio	South Texas Interventional	L04377	San Antonio	6	11/21/95
Seguin	Guadalupe Valley Hospital	L02292	Seguin	15	11/16/95
Temple	Scott and White Memorial Hospital	L00331	Temple	50	11/21/95
Texarkana	Medical Arts Hospital	L02881	Texarkana	18	11/21/95
The Woodlands	Geneosys Biotechnologies, Incorporated	L04555	The Woodlands	2	11/22/95
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	74	11/16/95
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	75	11/28/95
Throughout Texas	Professional Service Industries, Inc.	L00203	Longview	82	11/29/95
Throughout Texas	The Methodist Hospital	L00457	Houston	79	11/28/95
Throughout Texas	Bonded Inspections, Inc.	L00693	Garland	49	11/17/95
Throughout Texas	Texas Tech University	L01536	Lubbock	52	11/29/95
Throughout Texas	Digital Surveys, Inc.	L01611	Alvin	26	11/20/95
Throughout Texas	Syncor International Corporation	L01911	Houston	90	11/29/95
Throughout Texas	Reece Albert Inc.	L02296	San Angelo	0	11/20/95
Throughout Texas	O'Malley Engineers	L02310	Brenham	12	11/20/95
Throughout Texas	Law Engineering, Inc.	L02453	Houston	20	11/22/95
Throughout Texas	ATEC Associates, Inc.	L02645	Dallas	14	11/28/95
Throughout Texas	Southern Technical Services	L02683	Lake Jackson	55	11/16/95
Throughout Texas	TEXAS WIRELINE COMPANY (TEWECO)	L02828	Granbury	10	11/28/95
Throughout Texas	Aviles Engineering Corporation	L03016	Houston	11	11/20/95
Throughout Texas	METCO	L03018	Houston	45	11/28/95
Throughout Texas	Beta Diagnostics Services	L03574	San Antonio	26	11/28/95
Throughout Texas	Global X-Ray & Testing Corporation	L03663	Aransas Pass	47	11/20/95
Throughout Texas	D-Arrow Inspection Incorporated	L03816	Houston	49	11/21/95
Throughout Texas	Dallas Water Utilities	L03829	Dallas	11	11/29/95
Throughout Texas	ProTechnics International, Inc.	L03835	Houston	26	11/20/95
Throughout Texas	Pro Inspection Incorporated	L03906	Odessa	11	11/28/95
Throughout Texas	Corpus Christi Inspection and Engineering, Inc.	L04379	Katy	41	11/16/95
Throughout Texas	SGS Industrial Services	L04460	Deer Park	23	11/21/95
Throughout Texas	The Terracon Companies, Incorporated	L04632	Dallas	2	11/21/95
Tyler	University of Texas Health Science Center at Tyler	L04117	Tyler	10	11/16/95
Tyler	NuTech Inc.	L04274	Tyler	16	11/29/95
Victoria	Karl K. Chen, M.D., Ph.D.	L04327	Victoria	4	11/22/95

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Channelview	A & B Environmental Services, Inc.	L04287	Houston	3	11/16/95
Houston	Rice University	L00311	Houston	39	11/21/95

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Odessa	Trinity Engineering Testing Corporation	L00645	Odessa	39	11/22/95

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation.*

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on December 1, 1995.

TRD-9515678 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 4, 1995

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Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to §382.096 of the Texas Clean Air Act (the Act), Health and Safety Code Chapter 382. Section 382.096 of the Act requires that the TNRCC may not approve these AO's unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the Texas Register no later than the thirtieth day before the date on which the public comment period closes, which in this case is January 10, 1996. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AO's is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed below. Written comments about these AO's should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 10, 1996. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing.

(1)COMPANY: Amigo Motors, Inc.; DOCKET NUMBER: 96-0064-AIR-E; ACCOUNT NUMBER: MQ-0496-K; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: motor vehicle sales; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(2) and §382.085(b) of the Act, offering for sale in the state of Texas a motor vehicle with faulty or missing emission control equipment or devices with which the vehicle was originally equipped. PENALTY: $0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4996, (806) 353-9251.

(2)COMPANY: Amoco Oil Company; DOCKET NUMBER: 96-0065-AIR-E; ACCOUNT NUMBER: GB-0004-L; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: a petroleum refinery; RULES VIOLATED: (a) TNRCC Rule 30 TAC §101.4 and §§382. 085(a) and (b) of the Act by emitting one or more air contaminants, or combinations thereof, in such concentration and of such duration as were or tended to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property. (b) TNRCC Rule 30 TAC §101.20(1) and §382 085(b) of the Act by violating 40 CFR Part 60 [New Source Performance Standards ("NSPS")], Subpart A, which are the General Provisions, Subpart J, which are the Standards of Performance for Petroleum Refineries, and Subpart QQQ, which are the Standards of Performance for Volatile Organic Compound ("VOC") Emissions From Petroleum Refinery Wastewater Systems, promulgated by the United States Environmental Protection Agency ("EPA") pursuant to §111 of the Federal Clean Air Act, 42 U.S.C. §7411. Specifically, the Company is alleged to have violated the following rules: (1) 40 CFR §§60.13(d)(1) and 60.105(a)(12) by failing to complete quarterly accuracy determinations and daily calibration drift tests from October 1, 1991 through October 31, 1991 for the following continuous monitoring systems: AT-4231, AT-9301, A-6855, A-1600, AT-702/3, and AT-2102; (2) 40 CFR §60. 693-2(a)(4) by failing to fit emergency roof drains with a slotted fabric membrane or a flexible fabric sleeve on the east side of API VOC Water Separator Number 2 from September 1, 1992 until October 10, 1993; and (3) 40 CFR §60.693-2(a)(4) by failing to fit emergency roof drains with a slotted fabric membrane or a flexible fabric sleeve on the west side of API Separator Number 2 from September 1, 1992 until January 7, 1994. (c) TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act by violating 40 CFR Part 61 (National Emissions Standards for Hazardous Air Pollutants (NESHAP)], Subpart BB, which is the National Emission Standard for Benzene Emissions from Benzene Transfer Operations, promulgated by the United States EPA pursuant to §112 of the Federal Clean Air Act, 42 U.S.C. Section 7412. Specifically, Amoco is alleged to have violated the following rules: (1) 40 CFR §§61.302(e) and 61. 304(f)(1) by failing to pressurize (with documentation) the following barges (benzene product tanks) to not less than 1.0 psig (27.687" in water) before allowing the barges to load: H-1021, H-1029, H-1046, H-1515, H-1039, H-1059, and H-1103, and by failing to limit the loading of marine vessels to vessels that are vapor tight; and (2) 40 CFR §61.304(b) by failing to perform the following performance tests on the Dock 55 flare during three complete loading cycles with a separate test for each loading cycle: Method 22 to determine visible emissions, Method 2, 2A, 2B, or 2D to determine actual exit velocity of flares, and Method 18 to determine net heating value. (d) TNRCC Rule 30 TAC §115.132(a) and §382.085(b) of the Act from September, 1992 to December, 1993 by failing to equip the following single or multiple compartment VOC water separators with a properly operating floating roof or internal floating cover: Isom East, Isom West, ARU, Ultracracker East, Ultracracker West, Ultraformer 3 East, Ultraformer 3 West, Ultraformer 4, DDV, Pipestill 3A, Pipestill 3B North, and Pipestill 3B South. (e) TNRCC Rule 30 TAC §115.112(a) (2)(A) and §382.085(b) of the Act from September 23, 1993 until March 29, 1994 by failing to equip gasoline Tank Number 535 with a cover, seal or lid in a closed position. Specifically, the sampling hatch of Tank Number 535 was open and the cable used to operated the lid during sampling was broken. (f) TNRCC Rule 30 TAC §115.322(a)(2) and §382.085(b) of the Act in 1993 as cited in the November 3, 1993 Notice of Violation by failing to repair the following valves and pumps in VOC service within fifteen days after leaks were detected: 22 pumps on the ARU, OMCC, Alky 3 Units, and 48 valves on the PS3A, OMCC, PS3B, ISOM, UU3, and Alky 2 Units. (g) TNRCC Rule 30 TAC §115.326(a)(2) and §382.085(b) of the Act during the second quarter of 1993 by failing to maintain a leaking components monitoring log of all leaks of more than 10,000 ppmv, including the dates of repair and dates of recheck for a total of 337 components on the CFHU, Docks, Hyd 2, PWR 3, Coker, PS3A, OMCC, PS3B, RHU, ULC, DDU, ISOM, UU3, UU4, and Cat 2 Units. (h) TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by failing to perform quarterly cylinder gas audits on the three hydrogen sulfide analyzers in the Plant fuel gas system, in violation of Special Provision 5B in TNRCC Permit Number 3170, which requires that each monitor be quality assured quarterly in accordance with 40 CFR Part 60, Appendix F, Procedure 1, §5.1.2. PENALTY: $192,000; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(3)COMPANY: Anodics, Inc.; DOCKET NUMBER: 96-0046-AIR-E; ACCOUNT NUMBER: TA-2923-R; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: chrome anodizing facility; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §§382.0518(a) and 382.085(b) of the Act by constructing and operating a chrome anodizing facility without permit authorization. PENALTY: $0.00; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(5)COMPANY: Buffalo Auto Sales Inc., II; DOCKET NUMBER: 96-0047-AIR-E; ACCOUNT NUMBER: HG-2915-N; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: motor vehicle sales plant; RULE VIOLATED: TNRCC Rule 30 TAC §114. 1(c)(2) and §382.085(b) of the Act relating to the offering for sale of the following vehicle with an inoperable emission system or device on July 10, 1995: (a) 1987 Ford F-105 with vapor line disconnected, and (b) VIN#1FTDF15N8HNA90278 with the vapor cap missing from evaporative canister. PENALTY: $750; STAFF ATTORNEY: Lisa Newcombe, (512) 239-2269; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(6)COMPANY: Car Visa; DOCKET NUMBER: 96-0066-AIR-E; ACCOUNT NUMBER: EE-1552-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1), 114.1(c)(2) and §382.085(b) of the Act, offering for sale in the state of Texas motor vehicles with faulty or missing emission control equipment or devices with which the vehicles were originally equipped. PENALTY: $0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925, (915) 778-9634.

(7)COMPANY: Eddystone Enterprises; DOCKET NUMBER: 96-0048-AIR-E; ACCOUNT NUMBER: BM-0130-U; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: sandblasting plant; RULE VIOLATED: TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act; PENALTY: $0.00; STAFF ATTOR-

NEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(8)COMPANY: Exxon Chemical Americas; DOCKET NUMBER: 96-0049-AIR-E; ACCOUNT NUMBER: HG-0229-F; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: TNRCC Rule 30 TAC §101.20(2) and §382. 085(b) of the Act, by violating 40 CFR Part 61 [National Emission Standards for Hazardous Air Pollutants ("NESHAP")], Subpart Y, which is the National Emission Standard for Benzene Emissions from Benzene Storage Vessels, promulgated by the United States Environmental Protection Agency pursuant to §112 of the Federal Clean Air Act, 42 U.S.C. §7412, by failing to use either metallic shoe seals or liquid-mounted seals on external floating roof benzene Tank Numbers TK1123, TK1124, and TK1125 from September 14, 1989 to January 25, 1995. The tanks were instead equipped with vapor-mounted foam log primary seals. Exxon inaccurately stated in the December 8, 1989 and January 14, 1991 initial reports that Tank Numbers TK1123, TK1124, and TK1125 were equipped with liquid-mounted seals. PENALTY: $28,500; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(9)COMPANY: The Geon Company; DOCKET NUMBER: 96-0010-AIR-E; ACCOUNT NUMBER: HG-0193-B; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: a vinyl chloride monomer ("VCM") manufacturing plant ; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), TNRCC Agreed Order Docket Number 94-0426-AIR-E, and §382. 085(b) of the Act by allegedly violating 40 C.F.R. Part 61 [National Emissions Standards for Hazardous Air Pollutants (NESHAP)], Subpart F. Specifically, the company's alleged violations are of: (a) 40 CFR §. 61.65(a), by discharging 8717 lbs of VCM to the atmosphere on June 3, 1994; (b) 40 CFR §61.65(b)(1)(i) on June 11, 1994 for discharging 100 lbs of VCM by failing to fully close a valve on the decommissioning line of a railcar containing residual VCM; (c) 40 CFR §§61.62(a) and 61.63(a) on May 29, 1994 when the Company's A & B incinerators shut down (when the chlorine level transmitter malfunctioned) and the vent stream was diverted to the atmosphere, releasing small amounts of VCM, ethylene, and ethylene dichloride. This violates the requirement that the concentration of vinyl chloride in each exhaust gas stream from any equipment used in ethylene dichloride or vinyl chloride formation not exceed 10 ppm; and (d) 40 CFR §61.70(c)(1): the Company submitted a quarterly report for the period of March 1, 1994 through May 31, 1994; the report did not include the release which occurred on May 29, 1994, which constitutes a violation of the requirement that the owner or operator shall include in the report a record of the vinyl chloride content of emissions for each 3-hour period during which average emissions are in excess of the emission limits. PENALTY: $13,500; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(10)COMPANY: Humble Auto-Mart; DOCKET NUMBER: 96-0050-AIR-E; ACCOUNT NUMBER: HG-3584-H; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: TNRCC Rule 30 TAC §114.1, and §382.085(b) of the Act relating to the offering for sale the following vehicles with missing or inoperable emission control systems or devices are hereby settled and compromised: (a) 1984 Buick LeSabre (VIN: 1G4AP694XEX419007), involving a frozen air pump and a missing heat riser hose and pulley; and, (b) 1981 Oldsmobile Cutlass (VIN: 1G3AB47F5BR443612), involving a missing heat riser and fresh air duct. PENALTY: $500; STAFF ATTORNEY: Thomas Corwin, (512) 239-5915; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(11)COMPANY: Lilly Industries, Incorporated; DOCKET NUMBER: 96-0051-AIR-E; ACCOUNT NUMBER: DB-0308-Q; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: industrial coatings manufacturing plant; RULES VIOLATED: TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by exceeding emission and usage rates and limits for several pollutants authorized by TNRCC Permit C-19183 in 1993 and 1994. PENALTY: $18,000; STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(12)COMPANY: Modern, Inc.; DOCKET NUMBER: 96-0052-AIR-E; ACCOUNT NUMBER: HF-0057-V; LOCATION: Beaumont, Hardin County, Texas; TYPE OF FACILITY: metal fabrication plant; RULE VIOLATED: (a) TNRCC Rule 30 TAC §116.115, Texas Air Control Board (TACB) Agreed Board Order (ABO) Number 88-06(i), and §382. 085(b) of the Act by conducting painting and coating operations at the plant without a TNRCC permit and in violation of the requirements of TNRCC Standard Exemption Number 75. Specifically, using paints containing chromates when applying surface coatings outdoors, failing to maintain required records of operations; and (b) TNRCC Rule 30 TAC §116.15, TACB ABO Number 88-06(i), and §382.085(b) of the Act by failing to maintain records of operation as required by TNRCC Standard Exemption Number 75 for a period of 69 days from and including August 20, 1993, until and including October 27, 1993. PENALTY: $8,300; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1830, (409) 898-3838.

(13)COMPANY: OEM, Inc.; DOCKET NUMBER: 96-0053-AIR-E; ACCOUNT NUMBER: TA-1268-O; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: extrusion and profile machinery plant; RULE VIOLATED: TNRCC Rule 30 TAC §116. 110(a) and §382.0518(a) and §382.085(b) of the Act by failing to obtain a permit or satisfy the conditions for an exemption, prior to the construction and operation of a facility that may emit contaminants into the air of the state. PENALTY: $0.00; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(14)COMPANY: Pioneer Concrete of Texas, Inc.; DOCKET NUMBER: 96-0073-AIR-E; ACCOUNT NUMBER: TA-2612-O; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: TNRCC Rule 30 TAC §116.115, Stipulation Number 8 of TNRCC Agreed Order Number 94-0191-AIR-E, TNRCC Permit Number 23231, and §§382.085(a) and (b) of the Act by (a) operation of the Plant without required water sprays installed on December 20, 1994; (b) failure to have available production/maintenance records at the Plant site on December 20, 1994; and

(c) failure to have a copy of TNRCC Permit Number 23231 available at the Plant on December 20, 1994, as required. PENALTY: $2,500; STAFF ATTORNEY: Thomas Corwin, (512) 239-5915; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(15)COMPANY: Quantum Chemical Corporation; DOCKET NUMBER: 96-0068-AIR-E; ACCOUNT NUMBER: HG-0770-G; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: a synthetic organic chemicals manufacturing plant; RULES VIOLATED: TNRCC Rule 30 TAC §101.20(1) and §382.085(b) of the Act by violating 40 CFR Part 60 New Source Performance Standards (NSPS), Subpart A, which are the General Provisions; Subpart VV, which are the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI); and Subpart NNN, which are the Standards of Performance for VOC Emissions from SOCMI Distillation Operations, promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111 of the Federal Clean Air Act, as amended. In particular, Quantum is alleged to have violated the following: (1) 40 CFR §§60.18(f)(1), 60.482-10(d), 60.485(g)(1) and (4), and 60.664(c) by failing to perform a two hour visual observation of the elevated flare and the ARU flare at the QE-1 Unit in accordance with Method 22 to determine compliance with the visible emissions provisions of NSPS Subpart A from January 31, 1991 through December 30, 1992. This is also a violation of Special Provision 10 of TNRCC Permit Number C-18978 and 30 TAC §116.115; (2) 40 CFR §60.482-2(c)(1) by failing to repair 8 leaking pumps, between August 8, 1991 through June 30, 1992, at the QE-1 Unit within fifteen days after the leaks were detected; (3) 40 CFR §60.482-7(d)(1) by failing to repair 141 leaking valves, between August 8, 1991 through June 30, 1992, at the QE-1 Unit within fifteen days after the leaks were detected; (4) 40 CFR §60.482-8(c)(1) by failing to repair 4 leaking flanges, between August 8, 1991 through June 30, 1992, at the QE-1 Unit within fifteen days after the leaks were detected; (5) 40 CFR §§60.486(d)(3)-(5) by failing to maintain records for the closed vent systems at the QE-1 Unit from January 31, 1991 through March 12, 1993, including the parameters to be monitored, periods when the systems were not operated, and dates of startups and shutdowns; (6) 40 CFR §60.487(a) by failing to submit an initial report on July 29, 1991, and three subsequent semiannual reports beginning six months after startup of the QE-1 Unit, containing information identifying: valves and pumps subject to the requirements of NSPS Subpart VV; leaking valves and pumps; and repair of such valves and pumps; (7) 40 CFR §60.665(a) by failing to notify the EPA Administrator before July 29, 1991 of the specific provisions of 40 CFR ™60. 662 (standards for flares) with which the QE-1 Unit would comply; (8) 40 CFR §60.665(1) by failing to submit the initial report on July 29, 1991, and three subsequent semiannual reports beginning six months after operations commenced at the QE-1 Unit, containing information about operation of the flares, including periods when the vent stream was diverted from the flare or had no flow rate, and periods when the pilot flare was out. The alleged violations described previously in subsections (1), (2), (3), (4), (5), and (6) are also alleged violations of TNRCC Rule 30 TAC §116.115 for failing to comply with Special Provision 13 of TNRCC Permit Number C-18978, and of TACB ABO Number 92-02(cc), which requires compliance with TNRCC Rule 30 TAC §116. 115. In addition, the alleged violations described above in subsections (2), (3), and (4) are also alleged violations of TNRCC Rule 30 TAC §115.332(2) for failure to repair leaking components within fifteen days after leaks were detected. TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act by violating 40 CFR Part 61 (NESHAP), Subpart V, which are the National Emission Standards for Equipment Leaks--Fugitive Emission Sources, promulgated by the United States EPA pursuant to §112 of the Federal Clean Air Act, as amended. The following violations are also violations of TNRCC Rule 30 TAC §116.115 for failure to comply with Special Provision 14 of TNRCC Permit Number C-18978, and of TACB ABO Number 92-02(cc), which requires compliance with TNRCC Rule 30 TAC §116.115. In particular Quantum is alleged to have violated the following: (1) 40 CFR §61.247(a)(1) by failing to submit before July 29, 1991, a written statement to the EPA Administrator that the requirements of NESHAP Subpart V were being implemented at the QE-1 Unit; and (2) 40 CFR §61. 247(b) by failing to submit three semiannual reports containing information about leaking valves, and repairs to leaking valves, at the QE-1 Unit from July 29, 1991 to March 12, 1993. TNRCC Rule 30 TAC §101.20(1) and §382. 085(b) of the Act by violating 40 CFR Part 60 NSPS, Subpart Kb, which are the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984, promulgated by EPA pursuant to §111 of the Federal Clean Air Act, as amended. In particular, Quantum is alleged to have violated 40 CFR §60.115b(a)(1) by failing to submit a report describing the control equipment on Tank V-5521 and demonstrating how that control equipment complies with 40 CFR §§60.112b(a)(1) and 60.113b(a)(1), from May 6, 1991 through December 17, 1992. TNRCC Rule 30 TAC §115.126(2) and §382.085(b) of the Act from September 16, 1992 to April 22, 1993, by failing to maintain records for the process vent on the Petro S-2 recycle water tank to demonstrate compliance with the applicable exemption limits in TNRCC Rule 30 TAC §115.127. TNRCC Rule 30 TAC §115.136 and §382.085(b) of the Act from September 16, 1992 to March 22, 1993, by failing to maintain records demonstrating exemption status for a VOC water separator. TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by failing to monitor VOC emissions from the S-1 Cooling Tower monthly, from June, 1992 until November 19, 1992, in violation of General Provision 8 of TNRCC Permit Number R-3690. TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by exceeding the 3000 pounds per hour flow rate of carbon monoxide from the Acetic Acid Unit Secondary Light Ends Recovery System to the G-Boiler, in violation of Special Provision 4 of TNRCC Permit Number R-5040. TNRCC Rule 30 TAC §101.20(1) and §382.085(b) of the Act by violating 40 CFR Part 60 NSPS Subpart NNN, promulgated by EPA pursuant to §111 of the Federal Clean Air Act, as amended. In particular, Quantum is alleged to have violated 40 CFR §60.663(b)(2) and §60.665(d) by failing to record, at least once every hour, the vent stream flow from the A/B Ethylene Recovery System at the Vinyl Acetate Unit to the flare from October 8, 1993 to November 1, 1993. This is also a violation of Special Provision 10 of TNRCC Permit Number 4751 which requires compliance with NSPS Subpart NNN. TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by failing to conduct quarterly cylinder gas audits on the carbon monoxide monitor, in violation of Special Provision 5D of TNRCC Permit Number R-5040. PENALTY: $38,000; STAFF ATTORNEY:

Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(16)COMPANY: Shell Oil Company; DOCKET Number: 96-0054-AIR-E; ACCOUNT NUMBER: HG-0659-W; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: a chemical plant and petroleum refinery; RULES VIOLATED: (a) TNRCC Rule 30 TAC §115.112(a) and §382.085(b) of the Act by failing to maintain a minimum control efficiency of 90% on Tank Numbers D-398 (controlled with an efficiency of 40%) and EX-69 (controlled with an efficiency of 77%) at the Phenol Acetone Unit from August 1, 1992 until April 20, 1993. (b) TNRCC Rule 30 TAC §116.116(a) and §382.085(b) of the Act by failing to represent accurate information in its application for TNRCC Permit Number R-3179. Specifically, the permit application for TNRCC Permit Number R-3179 provided that an accumulator vent from the Phenol Acetone Unit would be routed to a furnace and that the efficiency of the condenser on Tank Number D-398 was 82%. Instead, the Company routed the vent to the headspace of Tank Number D-398. (c) TNRCC Rule 30 TAC §101.20(1) and §382.085(b) of the Act by violating 40 CFR Part 60 [New Source Performance Standards], Subpart A, which are the General Provisions; Subpart J, which are the standards of Performance for Petroleum Refineries; and Subpart Kb, which are the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984, promulgated by the United States Environmental Protection Agency pursuant to §111 of the Federal Clean Air Act, 42 U.S.C. §7411. Specifically, Shell is alleged to have violated 40 CFR §§60.7(a)(3), 60.105(a)(3), 60.113b(a)(5), and 60.115b(a)(1). (d) TNRCC Rule 30 TAC §101. 20(2) and §382.085(b) of the Act by violating 40 CFR Part 61 [National Emissions Standards for Hazardous Air Pollutants], Subpart Y, which is the National Emission Standard for Benzene Emissions from Benzene Storage Vessels, promulgated by the United States EPA pursuant to §112 of the Federal Clean Air Act, 42 U.S.C. §7412. Specifically, Shell is alleged to have violated 40 CFR §61.275(a) by failing to timely submit the reports describing the results of the 1992 annual inspection of the internal floating roofs of benzene storage Tank Numbers D-380, F-359, F-360 and F-361. PENALTY: $81,350. $30,000 of this penalty will be deferred pending completion of a Supplemental Environmental Project. STAFF ATTORNEY: Lisa Uselton Dyar, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(17)COMPANY: Sun City Redi-Mix, Inc.; DOCKET NUMBER: 96-0069-AIR-E; ACCOUNT NUMBER: 92-0634-H; LOCATION: Highway 180 East, El Paso County, Texas; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: (a) TNRCC Rule 30 TAC §116. 115(a), and §382.085(b) of the Act by failing to comply with paragraph (b) of TNRCC Standard Exemption Number 73 which states that "...All in-plant haul roads and stockpiles are sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions; and (b) failing to comply with paragraph (c) of TNRCC Standard Exemption Number 73 which states that "... Water sprays are located at all belt transfer points, shaker screens, and inlet and outlet of all crushers and used as necessary to achieve maximum control of dust emissions." PENALTY: $0.00; STAFF ATTORNEY: Linda Sorrells, (512) 239-3408; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925, (915) 778-9634.

(18)COMPANY: Texmark Chemicals, Inc.; DOCKET NUMBER: 96-0055-AIR-E; ACCOUNT NUMBER: HG-0134-R; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: (a) TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by failing to vent all dicyclopentadiene (DCPD) vapors from the railcar loading and the tank-truck loading areas to the Vapor Recovery System (VRS), as required by Special Provision Number 21 of TNRCC Permit Number 21472; and (b) TNRCC Rule 30 TAC §116.116(a) and §382.085(b) of the Act by inaccurately representing the VRS from the tank-truck and railcar loading areas in the application for TNRCC Permit Number 21472. Specifically, the vent collection system for DCPD tank-truck and railcar loading was not constructed as represented in the Company's permit application. PENALTY: $4,000; STAFF ATTORNEY: Shannon Kilgore, (512) 239-3419; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(19)COMPANY: Union Carbide Corporation; DOCKET NUMBER: 96-0056-AIR-E; ACCOUNT NUMBER: GB-0076-J; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: a chemical manufacturing plant; RULE VIOLATED: (a) TNRCC Rule 30 TAC §101.20(1), Texas Air Control Board Agreed Board Order Number 89-06(z), and §382.085(b) of the Act, by violating applicable New Source Performance Standards (NSPS) at Subpart NNN (Standards of Performance for VOC Emissions from synthetic Organic Chemical Manufacturing Industry Distillation Operations) ; 40 CFR §60.665(l) by failing to submit complete required semiannual reports for distillation operations at its Oxo and ethanol units from June 29, 1990 to July 25, 1994; (b) TNRCC Rule 30 TAC §115.112(a)(3) and §382.085(b) of the Act in that a condenser--used to control VOC emissions from several tanks in the Solution Vinyl Resins (SVR)-1 Unit--failed to meet the required 90% control efficiency; (c) TNRCC Rule 30 TAC §115.116(a)(3)(B) and §382. 085(b) of the Act by failing to continuously monitor and record the exhaust gas VOC temperature for a condenser (from November 16, 1992 to September 6, 1994), and for another condenser used to control VOC emissions from several tanks in the Vinyl Acetate Unit (from November 16, 1992 to June 6, 1994); and (d) TNRCC Rule 30 TAC §115.126(a)(1)(C) and §382.085(b) because the continuous emissions monitoring system (CEMS) for the SVR-2 Unit, which measures the exhaust gas VOC concentration of the carbon absorption system, was down for maintenance approximately 15% of the time between November 11, 1992 and July 22, 1994. PENALTY: $50,625; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(20)COMPANY: Vulcraft; DOCKET NUMBER: 96-0057-AIR-E; ACCOUNT NUMBER: HS-0017-K LOCATION: Grapeland, Houston County, Texas; TYPE OF FACILITY: metal fabrication plant RULE VIOLATED: TNRCC Rule 30 TAC §116.110 and §§382. 0518(a) and 382.085(b) of the Act by operating the Plant without a permit. PENALTY: $31,500; STAFF ATTORNEY: Paul Sarahan, (512) 239-3422; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1830, (409) 898-3838.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515849 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 5, 1995

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Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning proposed rules relating to the management of whole used or scrap tires and the waste tire recycling fund program.

TNRCC proposes the repeal of §§330.821-330.828, 330.836, 330.837, 330.839, 330.851-330.858, 330.874, 330.877, and 330.879 in Subchapter R, and §§330. 900-300.917 and §§330.920-330.939 in Subchapter X, Management of Whole Used or Scrap Tires or Shredded Tire Pieces, concerning the Waste Tire Recycling Fund Program. Also the TNRCC proposes amendments to §§330.802, 330.803, 330. 805-330.813, 330.815, 330.818, 330.831-330.833, 330.835, 330.838, 330.841-330. 846, 330.848, 330.849, 330.861-330.873, 330.875, 330.876, 330.878, 330.880-330. 883, 330.885, 330.886, and 330.889; and new §§330.820-330.830, 330.836, 330. 850-330.859, 330.874, 330.877, 330.879, and 330.884, Subchapter R, Management of Whole Used or Scrap Tires, concerning the Waste Tire Recycling Fund Program.

The purpose of the proposed changes is to effectuate its powers, responsibilities, and authorities under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provides the TNRCC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

A public hearing on the proposal will be held on December 21, 1995, at 10: 00 a.m. in Room 131E of Building C of the TNRCC Park 35 Office Complex located at 12100, Part 35 Circle, North IH-35, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 95142-330-WS and may be delivered to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, 12100 Park 35 Circle, North Interstate 35, Building F, Room 4101 or mailed to her at P.O. Box 13087, Austin, Texas 78711-3087. Written comments must be received by 5:00 p.m., 45 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Jennifer A. Sidnell, Manager, Automotive Waste Management Programs Section, Municipal Solid Waste Division, at (512) 239-6824.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

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

TRD-9515618 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 4, 1995

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The University of Texas System
Request for Proposal

The University of Texas System Administration, in accordance with the provisions of Government Code, Chapter 2254, solicits to contract with a qualified and experienced firm for information technology planning and development consulting services.

PROJECT DESCRIPTION. The consultant selected shall provide The University of Texas System with managerial and technological expertise in planning, developing and utilizing information technology to enhance the basic missions of the University. In performing this service, the consultant is expected to analyze information technology in three essential areas: Education. How can the U. T. System use information technology to: Maximize learning? Improve graduation rates? Shorten the time to obtain a degree? Promote sharing of resources? Reduce instruction costs? Increase the representation of underrepresented groups in the educational pipeline? Reach under-served areas? Promote lifelong learning? Support development of new knowledge and new technology? Patient Care and Clinical Activities. How can the U. T. System use information technology to: Reach under-served areas? Extend the reach of health care professionals in specialty areas? Increase the accuracy and timeliness of diagnoses? Improve the dissemination of health care and wellness information throughout Texas? Improve the creating, preservation, and utilization of patient and medical databases? Administrative Processes. How can the U. T. System use information technology to: Improve productivity of faculty, staff, and students? Lower barriers between customers and service providers? Reduce the cost of administrative procedures? Reduce duplication? Improve the creation and maintenance of records? Minimize the time required to respond to applications for admission, financial aid, degree checks, and so forth? Promote standardization and distribution of student, patient, staff, and faculty records while preserving confidentiality? Improve the ability of administrative offices to communicate with their constituencies? Simplify the submission of recurring reports? Protect the accuracy, integrity, and security of information assets? In the process of seeking answers to these and related questions, one key factor must be considered-our recognition that information technology will enable the U. T. System to do things we are not doing now, and to improve on what we are currently doing well. Thus, U. T. System's information technology infrastructure must be able to respond to the unknown in a timely manner without major and costly upheavals.

CONTACT. Information concerning the proposal may be obtained from Dr. Mario Gonzalez, Associate Vice Chancellor for South Texas/Border Area Development, The University of Texas System Administration, 601 Colorado Street, Austin, Texas 78701, (512) 499-4207, Fax (512) 499-4215.

PROCEDURE FOR SELECTION OF CONSULTANT. Proposals will be evaluated by U. T. System Administration and selection will be based overall upon criteria specified in Section 2.8 of the Request for Proposal dated December 1, 1995, and that considered most advantageous to U. T. System. **DUE DATE** Proposals must be received by The University of Texas System by 3:00 p.m. on January 9, 1996.

Issued in Austin, Texas, on December 1, 1995.

TRD-9515767 Arthur H. Dilly
Executive Secretary
The University of Texas System

Filed: December 5, 1995