

TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date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

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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

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:

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

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

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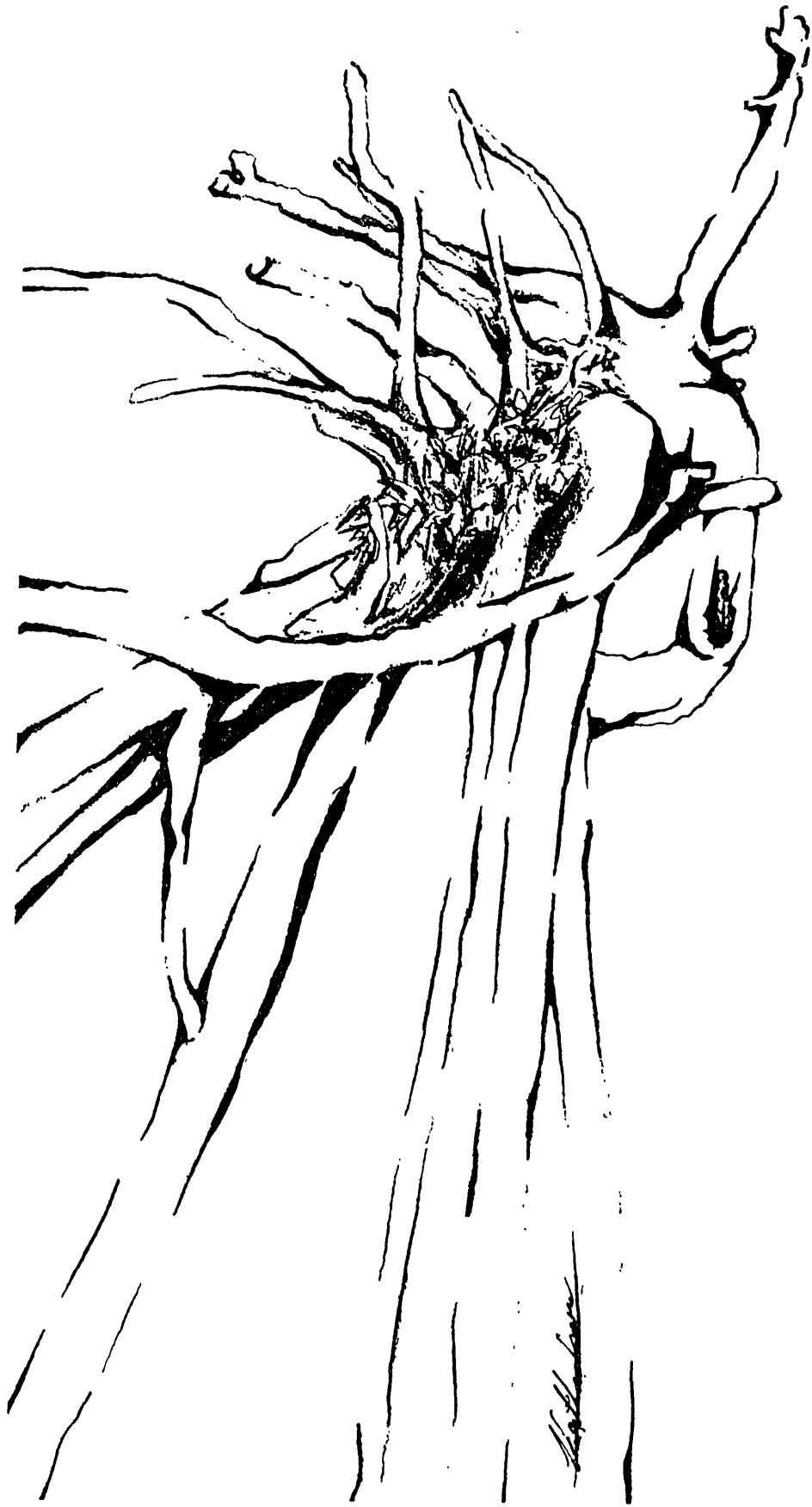
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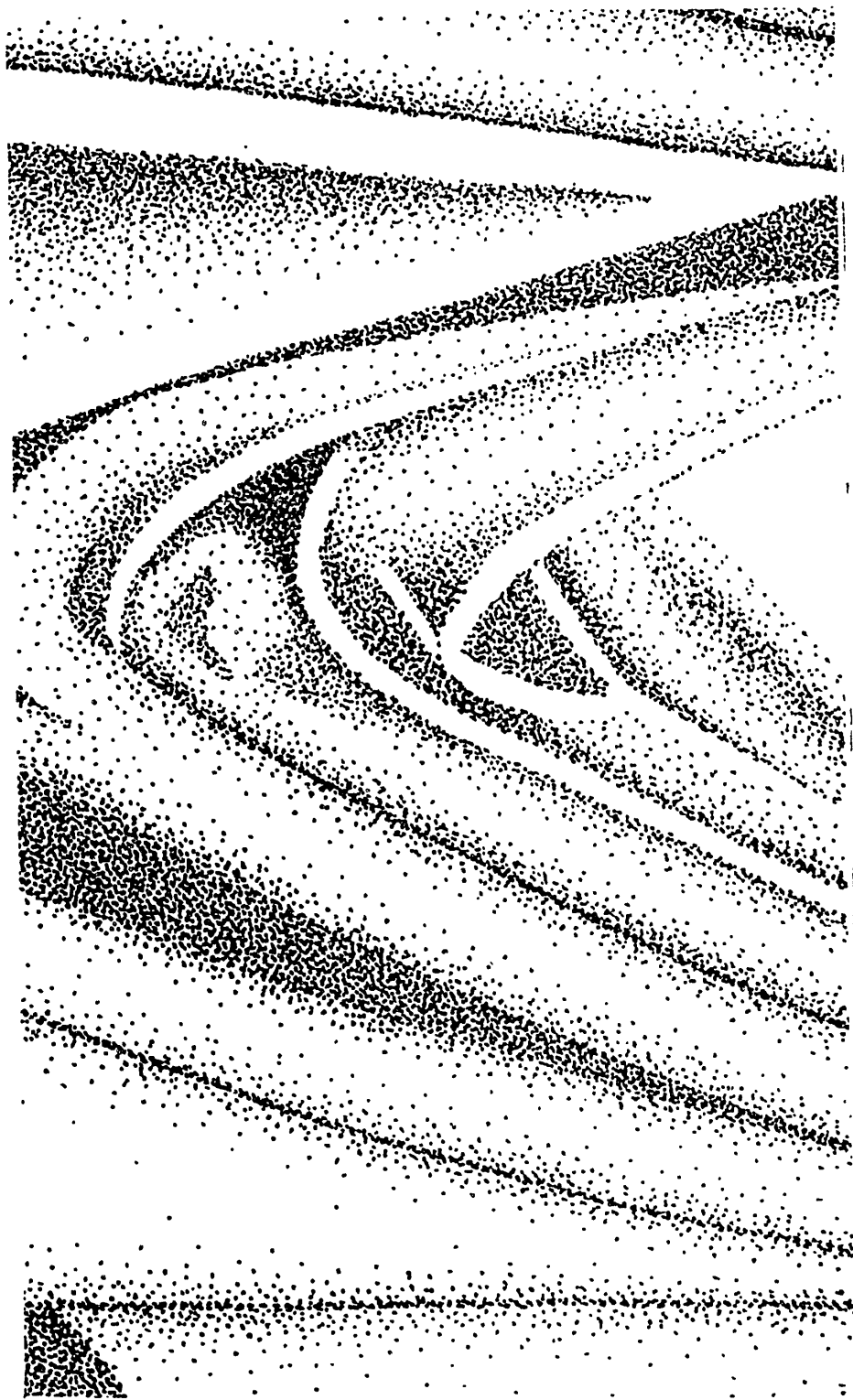
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PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

Part I. Finance

Commission of Texas

Chapter 3. Banking Section

Subchapter A. Securities Activ- ities and Subsidiaries

• 7 TAC §3.4

The Finance Commission of Texas (the Commission) proposes an amendment to §3.4, concerning foreign banking

Section 3.4 was proposed and adopted by the Commission in 1985 (10 TexReg 2543) to permit state banks to engage in foreign banking "as allowed for national banks, in an effort to achieve competitive equality in the dual banking system." The language of the rule in fact tracks the language used in 12 United States Code, §601, the provision authorizing national banks to engage in foreign banking. However, in connection with the recent passage of the North American Free Trade Agreement (NAFTA), questions have arisen regarding the interpretation of §3.4(a)(2) and whether it overrides the 10% investment limitation of Texas Civil Statutes, Article 342-513(a)(1). Terms used in the rule and the statute are similar but not identical because the rule tracks federal law without regard to terms used in the state statute, leading to some confusion. Specifically, a person has questioned whether §3.4(a)(2) authorizes an investment of up to 25% of a state nonmember bank's capital and surplus in a foreign bank subsidiary as would be permitted by the Federal Deposit Insurance Corporation (FDIC), 12 Code of Federal Regulations, §347.4. National banks (and state member banks) are not subject to any percentage limitation as the Board of Governors of the Federal Reserve System (the Fed) apparently chose to restrict and regulate specific activities rather than limit the amount of investment, 12 Code of Federal Regulations, Part 211, Subpart A

In any event, a state nonmember bank would be required to obtain FDIC approval to invest in a foreign bank, and would be subject to the FDIC investment limitation. A state member bank would be subject to Fed activity restrictions. The purpose of §3.4 should be to facili-

tate foreign banking by state banks to the extent permitted by federal banking regulators.

The proposed amendment to §3.4 will clarify that the investment limitations of Article 342-513(a)(1) do not apply to investments authorized by the section, broaden the Commissioner's discretion, forward the original purpose of the rule, and facilitate the implementation of NAFTA.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the amendment as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr Jobe also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering this section is the enhancement of competitive equality of state banks to national banks. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

The amendment is proposed under Texas Civil Statutes, Article 342-113(4), which provide the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks.

The articles and sections that are affected by the amended §3.4 are Texas Constitution, Article XVI, §16, and Texas Civil Statutes, Articles 342-512 and 342-513.

§3.4 Foreign Banking.

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

(c) The investment limitation of Texas Civil Statutes, Article 342-513(a)(1) does not apply to an investment made pursuant to this section. The banking commissioner may approve any activity or investment authorized by this section subject to such restrictions as the

banking commissioner deems advisable and consistent with safe and sound banking practices, and may require any investment pursuant to paragraphs (a)(2) or (a)(3) of this section to constitute a majority interest in the voting securities of the bank or corporation acquired.

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439675

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Subchapter B. General

• 7 TAC §3.21

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

The Finance Commission of the State of Texas (the Commission) proposes the repeal of §3.21 concerning the exemption of vehicles (automobiles) owned by the Texas Department of Banking (the Department) from state vehicle identification requirements and the use and operation of exempt vehicles. Pursuant to Senate Bill 1, 70th Legislature, Second Called Session (General Appropriations Act), the Legislature provided that none of the funds appropriated could be used by the Department "for the purchase and/or maintenance of any additional or replacement automobiles during the biennium." The biennium was for the period from September 1, 1987 to August 31, 1989. Subsequent appropriations acts have contained the same prohibition. Further, Senate Bill 1, as enacted by the 70th Legislature, provided that it was the intent of the Legislature that the Department's fleet of vehicles be "phased out over a period not to exceed three years, and that the agency begin reimbursing its personnel on a

standard mileage basis * The Department has completed this phase-out process and no longer owns any automobiles or other vehicles. As there is no longer an underlying basis for §3 21, it should be repealed

Sammie K Glasco, Assistant General Counsel, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of repealing this section

Sammie K Glasco, Assistant General Counsel, also has determined that, for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be that superfluous rules will be eliminated There will be no effect on small businesses No economic cost will result to entities as a result of the repeal of §3 21

Comments on the proposed repeal may be submitted in writing to Sammie K Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

The repeal of this section is proposed pursuant to the Banking Code, Article 342-103, which gives the Commission the authority to "adopt rules and determine general policies for the regulation of state banks, state associations, savings banks, and the consumer credit industry of the state"

No statute will be affected by the repeal

§3 21 Exempting Vehicles Owned by the Banking Department of Texas from Requirements of Identification Inscriptions

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439680 Everette D Jobe
General Counsel
Department of Banking

Proposed date of adoption June 17, 1994

For further information, please call (512) 475-1300

• 7 TAC §3.27

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

The Finance Commission of the State of Texas (the Commission) proposes the repeal of §3 27 concerning the enforcement of final judgment against state banks Section 3 27, effective January 12, 1988, provides that no attachment, injunction or execution against a state bank or its property would be effective if issued before a final judgment This rule has been codified in Article 342-609 of the Banking Code, effective June 16, 1989, which provides that no attachment, injunction, or

execution issued on or after September 1, 1989, shall be enforced against a financial institution until all appeals have been exhausted or foreclosed by law

As §3 27 has been superseded by Article 342-609 of the Banking Code which covers the same subject matters, §3.27 should be repealed.

Sammie K. Glasco, Assistant General Counsel, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of repealing this section

Sammie K Glasco, Assistant General Counsel, also has determined that, for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be that there will be no unnecessary duplication of rules and statutes There will be no effect on small businesses No economic cost will result to entities as a result of the repeal of §3 27.

Comments on the proposed repeal may be submitted in writing to Sammie K Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal of this section is proposed pursuant to the Banking Code, Article 342-103, which authorizes the Commission to "adopt rules and determine general policies for the regulation of state banks, state associations, savings banks, and the consumer credit industry in the state"

The Banking Code, Article 342-609, is the only existing statute related to the proposed repeal No statute will be affected by the repeal

§3 27 Enforcement of a Final Judgment Against a State Bank

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439679 Everette D Jobe
General Counsel
Department of Banking

Proposed date of adoption June 17, 1994

For further information, please call (512) 475-1300

• 7 TAC §3.33

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

The Finance Commission of the State of Texas (the Commission) proposes the repeal of §3 33 concerning notice and processing times for certain applications by banks and trust companies Existing §3 33 contains pro-

visions regarding notice and processing times for foreign bank agencies which would be more appropriately located in Subchapter C of Chapter 3. Accordingly, the Commission proposes a new §3.45 in conjunction with this repeal that establishes notice and processing times for foreign bank agencies. In addition, §3 33 includes notice and processing times for applications other than those to engage in a business. Because such applications do not fall within the parameters of the Texas Government Code, §2005.003 and §2005.006, provisions in §3.33 relating to them are not required by law and should be repealed.

Allen Barr, Deputy Director of Corporate Activities, Texas Department of Banking, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of repealing this section

Mr. Barr, also has determined that, for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be that this section, which sets unnecessary notice and processing times and contains subject matter that can be located more appropriately elsewhere, will be eliminated There will be no effect on small businesses No economic cost will result to entities as a result of the repeal of §3 33.

Comments on the proposed repeal may be submitted in writing to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

The repeal of this section is proposed pursuant to the rulemaking authority under the Texas Government Code, §2005.003, which requires a state agency that issues permits to "adopt procedural rules for processing permit applications and issuing permits," and pursuant to the Texas Banking Code, Article 342-103, which gives the Commission the authority to "adopt rules and determine general policies for the regulation of state banks, state associations, savings banks, and the consumer credit industry of the state."

Texas Civil Statutes, Articles 342-1005-342-1007, and Texas Government Code, §2005.003 and §2005.006. No statute will be affected by the repeal

§3 33. Notices to Applicants, Application Processing Times, Appeals

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439678 Everette D Jobe
General Counsel
Department of Banking

Proposed date of adoption June 17, 1994

For further information, please call (512) 475-1300

• 7 TAC §3.36

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

The Finance Commission of the State of Texas (the Commission) proposes the repeal of 7 TAC §3.36 concerning the operation of banks and trust companies under the same conditions as national banks. Section 3.36 was adopted effective March 26, 1992, in order to resolve the potential conflict between Article XVI, §16(c) of the Constitution of the State of Texas which provides, in part, that state banks shall have "the same rights and privileges that are or may be granted to national banks of the United States" domiciled in Texas and Article 342-910a of the Banking Code, which established mandatory legal holidays for state banks and trust companies. National banks are permitted to close or remain open on any state designated holiday unless the Comptroller of the Currency directs otherwise by written order, and the purpose of §3.36 was to put state banks in parity with national banks in terms of holiday closings. Article 342-910a of the Banking Code was repealed effective September 1, 1993. As a result, there are no longer mandatory state bank holidays. As there is no longer an underlying statutory basis for §3.36, it should be repealed.

Sammie K. Glasco, Assistant General Counsel, has determined that, for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of repealing this section.

Sammie K. Glasco, Assistant General Counsel, also has determined that, for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of the repeal will be that superfluous rules will be eliminated. There will be no effect on small businesses. No economic cost will result to entities as a result of the repeal of §3.36.

Comments on the proposed repeal may be submitted in writing to Sammie K. Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

The repeal of this section is proposed pursuant to Article 342-103 of the Banking Code, which authorizes the Commission to "adopt rules and determine general policies for the regulation of state banks, state associations, savings banks, and the consumer credit industry in the state."

Article 342-910a of the Banking Code repealed by Acts 1993, 73rd Legislature, Chapter 254, §1, is the only statute related to the proposed repeal. No statute will be affected by the repeal.

§3.36. Operation of Banks and Trust Companies Under the Same Conditions as National Banks.

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439677

Everette D. Jobe
General Counsel
Department of Banking

Proposed date of adoption. June 17, 1994

For further information, please call: (512) 475-1300

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Subchapter C. Foreign Bank Agencies

• 7 TAC §3.45

The Finance Commission of Texas proposes new §3.45 concerning notice and processing times for license applications by foreign bank agencies. Existing §3.33, which contains similar information, is proposed for repeal in this issue of the *Texas Register*. Proposed §3.45 incorporates those portions of §3.33 which pertain to foreign bank agencies; clarifies and corrects them as necessary, and places the new provisions with other rules on foreign bank agencies.

The Department has received no original permit applications for foreign bank agencies within the 12-month period preceding publication of this proposed section. The Department's processing times for renewal applications for foreign bank agencies over this same 12-month period is as follows: the minimum time is nine days from the date the completed application is received, the maximum time, 50 days; and median time, 26 days

Allen Barr, Deputy Director of Corporate Activities, Texas Department of Banking, has determined that, for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of amending this section

Mr. Barr also has determined that, for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of the amendment will be that this section will accurately and cogently reflect the law and departmental procedures regarding notices and processing times affecting license and license renewal applications of foreign bank agencies. There will be no effect on small businesses. No economic cost is anticipated to result to entities as a consequence of the adoption of §3.45.

Comments on the proposed amendment may be submitted in writing to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed pursuant to the rulemaking authority under the Texas Government Code, §2005.003, which requires a state agency that issues permits to adopt procedural rules for processing permit applications and issuing permits

Texas Civil Statutes, Articles 342-1005-342-1007; and the Texas Government Code, §2005.003 and §2005.006.

§3.45 *Application to Engage in Business as a Foreign Bank Agency: Notices to Applicants, Application Processing Times, Appeals.*

(a) Form of Application. An application for authorization to engage in business as a foreign bank agency under Texas Civil Statutes, Article 342-1001, et seq, must be filed on a form prepared and prescribed by the Banking Commissioner

(b) Notice to Applicant. The Department of Banking shall issue a written notice within ten days of receipt informing each applicant either that the application is complete and accepted for filing, or that the application is deficient and specific additional information is required

(c) Action on Foreign Bank Agency Applications

(1) Application for License. Once a completed foreign bank agency application for license has been accepted for filing, the Banking Commissioner shall determine whether to approve or deny the application within 45 days; provided that if, within that period, the Commissioner determines there should be a hearing on the application, a hearing will be set and a decision made in accordance with Chapter 13 of this title

(2) Application for License Renewal. Once a complete foreign bank agency application for license renewal has been accepted for filing, the Banking Commissioner shall determine whether to approve or deny the application within 30 days. If the Commissioner determines there should be a hearing on the application, a hearing will be set and a decision made in accordance with Chapter 13 of this title.

(d) Violation of Notice and Processing Times. An applicant may appeal directly to the Banking Commissioner for a timely resolution of a dispute arising from a violation of the periods set forth in this section. An applicant shall perfect an appeal by filing with the Department a written request for appeal within 30 days of the date a decision is made on the application, requesting review by the Banking Commissioner to determine whether the established period for granting or denying the application has been exceeded. The decision on the appeal shall be based on the written appeal filed by the applicant and any response by the Department and, if the Banking Commissioner deems necessary, a hearing may be set to take evidence on the matter

(e) Decision on Appeal. The Banking Commissioner shall decide the appeal in the applicant's favor if the Commissioner

determines that the time periods established in this section have been exceeded and the Department has failed to establish good cause for the delay. The Banking Commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in an applicant's favor, the applicant will be reimbursed the application fee which the applicant has paid to the Department under Texas Civil Statutes, Article 342-1005(4) or Article 342-1007(c), as the case may be. A decision in favor of the applicant under this subsection does not affect any decision to grant or deny the application, which shall be based on applicable substantive law without regard to whether the application was timely processed.

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439676

Everette D Jobe
General Counsel
Department of Banking

Proposed date of adoption June 17, 1994

For further information, please call (512) 475-1300

Chapter 4. Currency Exchange

• 7 TAC §4.1

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

The Finance Commission of the State of Texas proposes the repeal of §4.1 concerning the issuance of provisional licenses under the Currency Exchange Act, Texas Civil Statutes, Article 350 (the Act). Section 4.1, effective March 26, 1992, provides that the Banking Commissioner of Texas (the Commissioner) may grant a provisional license to any person who has filed a completed application with the Department of Banking on or before December 31, 1991. It also allows the Commissioner to issue a provisional license to any person who makes a good faith effort to comply with Act. The purpose of this section was to allow the Commissioner to issue provisional licenses to businesses already in operation as of the effective date of the Act, January 1, 1992, to prevent disruption or interruption of the activities of these businesses and the services they provided to the public.

The Act has been in effect for more than two years. The purpose served by this section has been fulfilled and no provisional licenses are in effect at this time. Section 4.1 should therefore be repealed.

Brian R. Herrick, assistant general counsel, has determined there will be no fiscal implications for state or local government as a result

of repealing this section for the first five-year period after the repeal.

Mr. Herrick, also has determined that for each year of the first five-year period the repeal as proposed will be in effect the public benefit anticipated as a result of the repeal will be the elimination of confusion with respect to the availability of provisional licenses under this section. There will be no effect on small businesses. No economic cost will result to entities as a result of the repeal of §4.1.

Comments on the proposed repeal may be submitted in writing to Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal of this section is proposed pursuant to Texas Civil Statutes, Article 350, §7, which authorize the Finance Commission to adopt rules necessary to implement Article 350.

Article 350 of the Banking Code is the only statute related to the proposed repeal. No statute will be affected by the repeal.

§4.1. Provisional License.

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

Issued in Austin, Texas, on April 22, 1994.

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Everette D Jobe
General Counsel
Department of Banking

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For further information, please call (512) 475-1300

• 7 TAC §4.7

The Finance Commission of Texas proposes an amendment to §4.7, concerning bonding requirements under the Currency Exchange Act, Texas Civil Statutes, Article 350 (the Act), to allow the Banking Commissioner of Texas (the Commissioner) to review the amount of the bond during or after an examination of a licensee under the Act or a review of the quarterly reports submitted by a licensee under 7 TAC §4.3.

Pursuant to the Act, §10, the Commissioner is required to determine the appropriate level of bonding for a licensee. Existing §4.7 was adopted to set forth the method for setting bond amounts under the Act, and subsection (e) provides that the Commissioner will review the bond amount each year when the license is renewed, or at any time after there is a change in the manner in which the licensee conducts business or a change in the ownership or management of the licensee's business. Experience has proven that the Commissioner needs the flexibility, in situations where licensees have underestimated or understated their volume of business, to change the required amount of the bond to ensure the public is adequately protected in the event of a violation of law or a defalcation by a licensee.

The proposed amendment to §4.7(e) will give the Commissioner the power to reset or adjust the required bond amount during or subsequent to an examination of a licensee or after a review of the quarterly reports submitted by a licensee, if the bond is found to be inadequate based on findings of the examination or review of the quarterly reports.

Brian R. Herrick, assistant general counsel, Texas Department of Banking, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Herrick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced protection of the public through bonding requirements that more closely reflect the current volume of a licensee's business.

The economic cost to persons required to comply with the section as proposed is difficult to quantify. In most instances, the amendments would be affecting only those licensees who provided inaccurate or incorrect data to the Department when their bond amounts were set or last adjusted. The rule would allow the Commissioner to re-set the bond amount to the level at which it should have been set to begin with. In those cases, the licensee would simply be incurring a cost it should already have incurred, but delayed as a result of its error or misrepresentation. The cost to those licensees who actually experience significant fluctuations in business volume triggering adjustment of the bond amount under the amendments would be the time value of money of the additional premium cost of the increased bond for the period of time between the date on which the increase is required under the amended rule and the date it would have been required under the current rule. Under the current rule, the bond would be reviewed and adjusted annually. The amendment would allow it to be reviewed, at most, quarterly, and then adjusted only if it is less than 90% of the amount required under this section. Therefore, on the average, bonds subject to adjustment would be increased 4.5 months earlier under the amended rule. The premium for currency exchange bonds averages 5.0% to 10% per \$1,000 of coverage. The difference in premium charges depends upon the financial stability of the licensee, its credit history, whether and to what extent the bond is collateralized, and the individual policies and philosophies of the underwriters.

The cost of compliance will be approximately the same for small businesses and the largest businesses.

Comments on the proposal may be submitted to Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 350, §7, which require the Commission to adopt rules necessary to implement Article 350, and under §10, which gives the Commissioner the power to set the bond amount.

Texas Civil Statutes, Article 350 and Article 489d are affected by the proposed amendment of §4.7.

§4.7. Bond Requirements; Deposit in Lieu of Bond.

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

(e) Review.

(1) The Commissioner shall review the bond amount each year when the licensee's license is renewed and adjust the bond amount in accordance with subsection (a), (b), or (d) of this section [The bond amount will be set based on volume of business in the previous four calendar quarters.]

(2) The Commissioner may review and adjust the bond amount at any time if:

(A) there is a change in the manner in which the licensee conducts business; [or]

(B) there is a change in the ownership or management structure of licensee's business, including a change in principal; or

(C) the Commissioner finds that the amount of bond posted by the licensee is less than 90% of the amount required under subsection (a), (b), or (d) of this section during or after an examination of a licensee's business or review of a licensee's quarterly reports submitted in accordance with §4.3 of this title (relating to Reporting and Recordkeeping).

(3) The adjusted bond amount will be based on the volume of licensee's currency exchange and transmission business in the previous four calendar quarters.

(f) (No change.)

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

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Everette D Jobe
General Counsel
Texas Department of
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For further information, please call (512) 475-1300



Part II. Banking Department of Texas

Chapter 10. Trust Companies

• 7 TAC §10.1

The Finance Commission of Texas (the Commission) proposes new §10.1 to establish minimum capital requirements for a trust company to do business with the general public. Section 10.1 was originally proposed in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1618), and such proposal is withdrawn in this issue of the *Texas Register*.

Texas Civil Statutes, Articles 342-1101, §2(b), and 342-1108(b) authorize the Commission to adopt rules regarding and the Banking Commissioner of Texas (the Commissioner) to require additional capital of a trust company as may be necessary to protect the safety and soundness of the trust company. The experience of the Commissioner and her predecessor in office over the last several years in closing and liquidating insolvent trust companies has convinced her and the Commission that the minimum capital required under the Banking Code is insufficient to protect the safety and soundness of a trust company and to protect those members of the general public that do business with a trust company.

Adequate protection is not provided to trust company customers through directors and officers liability insurance policies and blanket bonds. Several commenters disagreed with this statement based on discussions with insurance agents and companies, but the case law suggests otherwise. Such policies and bonds almost universally contain a "regulatory exclusion" clause that prohibits claims brought by a regulatory agency in any capacity (including as receiver for the purpose of restoring losses to customers) and a "regulatory takeover" clause that effectively cancels the policy or bond, no matter who a subsequent claimant might be, at the moment the regulator first takes action to control the institution to correct a deteriorating financial condition. *United States Fire Insurance Company v Federal Deposit Insurance Corporation*, 981 F.2d 850 (5th Cir. 1993), holds that even the appointment of a supervisor by agreement constituted a takeover by state officials sufficient to invoke automatic cancellation of a standard Form 24 bond. Regulators have argued that regulatory exclusion and regulatory takeover clauses should be void as against public policy, to no avail. *Federal Deposit Company of Maryland v Conner*, 973 F.2d 1236 (5th Cir. 1992), *Sharp v Federal Savings and Loan Insurance Corporation*, 858 F.2d 1042 (5th Cir. 1988).

Given the illusory protections afforded by insurance, increased capital standards are necessary to provide an adequate cushion to members of the general public against operating and investment errors, whether intentional or otherwise, fraud and defalcations by trust company employees. Contrary to the belief of some commenters, the Commissioner does not seek insurance recoveries on behalf of the regulator, but rather solely to recover funds for the purpose of restoring

losses caused to trust company customers by mismanagement or fraud.

As originally proposed, §10.1 set a minimum capital standard of the greater of \$1.5 million or 0.25% of the value of fiduciary assets under management. Existing trust companies would have been required to raise their capital levels ratably over a three year period, subject to extensions of time at the discretion of the Commissioner upon application. The amount of required minimum capital and the time within which to make required adjustments could, in the discretion of the Commissioner upon written application, be reduced or increased as the particular circumstances of a trust company may justify or require.

The Texas Department of Banking (the Department), on behalf of the Commission, received 55 comment letters, excluding from such count early comment letters received from persons that have been superseded by later comment letters from these same persons. While all comments opposed the current proposal, approximately 50% expressed the belief that an increase in capital requirements was probably warranted, and about 50% opposed any rule at all. Those that suggested a specific capital increase supported a \$1 million capital level with a five year phase-in period, although six commenters suggested a tiered structure of discrete capital levels based on fiduciary assets under management, with a ceiling of from \$1 million to \$1.5 million.

All commenters opposed any capital standard expressed as a percentage of fiduciary assets under management, although one commenter included an interesting, December 1993 study, by a consulting group on behalf of Bankers Roundtable, which concludes that appropriate economic capital ratios for fiduciary services are 2-4 basis points (0.02%-0.04%) for non-discretionary assets and 5-9 basis points (0.05%-0.09%) for discretionary assets. That commenter argues that, if the Commission must use a percentage formula in the rule, the rule should use three and seven basis points for non-discretionary and discretionary assets, respectively, in reliance on the study.

Only about 36% stated that the proposal was anti-competitive in that banks and other financial service providers were not subject to the rule or that it discriminated against small trust companies, but the sentiment clearly is present in a majority of comments. One commenter supported the capital requirements of the rule if the phase-in period could be longer. Several commenters supported the concept of a guaranty fund, which would require legislative action.

A number of commenters opined that the Commission was without authority to adopt the rule, arguing that the intent of the Legislature was to impose a capital standard of \$500,000 and to grant the Commissioner the power to increase capital as to any particular trust company based only on the specific facts of that case. The Commissioner does have that authority, Texas Civil Statutes, Article 342-1108(b). The Commission, however, has the authority to adopt rules "as may be necessary to accomplish the purposes" of trust company regulation, Texas Civil Stat-

utes, Article 342-1106(b) The Department believes this grant of authority is broad enough to encompass the proposed §10.1, especially because the Commissioner believes the \$500,000 standard is inadequate to protect the safety and soundness of any of the trust companies within her jurisdiction. While the Commissioner could elect to increase capital for each trust company pursuant to individual action, adoption of the higher capital standard by rule, with discretion to lower the standard where warranted, is a more efficient and effective process.

Finally, a substantial minority of commenters suggested increased reliance on insurance, and either rejected the Department's analysis of insurance limitations or proposed the required deletion of regulatory exclusion and regulatory takeover clauses. The Department will continue to investigate the potential for a rule requiring insurance but believes the minimum capital rule as revised should be considered separately.

The Department has carefully reviewed all comments and has revised the proposal to require a capital level of \$1 million plus \$25,000 for each \$50 million, or portion thereof, of total fiduciary assets under management by the trust company in excess of \$1 billion, with a five year phase-in period. The definition of trust company has also been expanded in the revised proposal to include state banks with only trust powers.

The incremental, add-on portion of capital is equivalent to 0.05% (five basis points) of fiduciary assets under management in excess of \$1 billion, but tiered to provide greater ease of calculation and capital management. The amount of required minimum capital and the time within which to make required adjustments could, in the discretion of the Commissioner upon written application, be reduced or increased as the particular circumstances of a trust company may justify or require. Trust companies subject to the incremental, add-on portion of capital will have two quarters to increase capital to the required level indicated by a four quarter moving average of fiduciary assets under management.

The Commissioner and the staff of the Department of Banking (the Department) find the December 1, 1993, study prepared by First Manhattan Consulting Group on behalf of The Bankers Roundtable to be highly persuasive. The study is available from the Department for \$7.20, the cost of duplication and mailing. According to the study, for fiduciary services the principal causes of loss are operating risks which can be grouped into seven categories: investment management decisions; operations errors; fraud and embezzlement; technical failures, legal liabilities; natural hazards (e.g., fire, earthquake, flood), and others (e.g., environmental risk).

The key operational risks for fiduciary services include the failure to clear and settle customer-directed trades on a timely basis, properly hold collateral for loan securities, manage trust assets to preserve capital or according to the stated purpose of the trust, maintain accurate records of customer activities, properly account for, or notify clients of, corporate actions (e.g., dividends or stock splits); and issue tax or government required forms in an accurate and timely manner.

Businesses can take action to limit operating risks such as through the purchase of insurance, adjustment of cost structures, and use of internal and external audit and examination procedures, but a residual amount of operating risk remains for which capital should be calculated and assigned. The study concluded by recommending economic capital ratios of 0.05% to 0.09% for discretionary assets and 0.02% to 0.04% for nondiscretionary assets. Over 95% of commenters on the proposed §10.1 strongly opposed any distinction between discretionary and nondiscretionary assets, and the Department believes that such a distinction would be difficult and complex to administer. Accordingly, the revised proposal does not make the distinction, although the rule proposal specifies that the Commissioner can take the degree of discretion vested in the trustee into account regarding an application to alter the required minimum capital level.

Based on trust company equity capital and fiduciary assets under management as of September 30, 1993, the new proposed capital standard would apply to 39 trust companies, 13 of which already have capital and surplus in excess of the proposed requirement. The new proposed standard would also apply to one state bank, which meets the capital requirement. Three trust companies have in excess of \$1 billion under management and would be subject to the variable addition to capital, with deficiencies ranging from \$390,000 to \$1,986,000. The remaining 23 trust companies would have deficiencies in capital ranging from \$129,000 to \$500,000, with an average deficiency of \$300,000. Each trust company with a deficiency in capital would be required to raise capital to the required level over a five-year period with possible extensions available.

Several commenters also requested greater discretion in investing capital in excess of \$500,000 than is currently permitted. The Department believes that due consideration should be given to the suggestion and will examine its options in this regard.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that, for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section. While trust companies both large and small will be required to raise capital either through retained earnings or contributions by shareholders, the increase in capital is not an expense or cost, but rather remains the property of the trust company.

Mr. Jobe also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as result of enforcing or administering this section is the enhanced protection of the general public and a substantially reduced risk of loss of fiduciary assets in the event of an involuntary liquidation, as has frequently occurred in prior trust company closings. There will be no effect on small businesses. No economic cost will result to entities as a result of complying with the proposed section. An economic cost will accrue to the shareholders of each affected trust company, as dividends will be

restricted for a period of years or capital calls will be made in order to increase capital.

Comments on the proposal may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-1101, §2(b), which provide the Commission with the authority to prescribe regulations to require additional capital, and under Article 342-1106, which provides the Commission with the authority to promulgate and adopt rules and regulations as may be necessary to accomplish the purposes of Chapter XI of the Banking Code (Texas Civil Statutes, Article 342-1101 et seq.).

The following are the articles and sections that are affected by the proposed new §10.1: Texas Civil Statutes, Articles 342-1101 and 342-1108.

§10.1. Minimum Required Capital for a Trust Company.

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

(1) Beginning restricted capital—The initial level of restricted capital of a trust company as determined by the first quarterly report filed by the trust company after the effective date of this section, or annual report if the effective date is in the fourth quarter, subject to correction or re-statement as a result of examination.

(2) Capital—The aggregate amount paid in by shareholders for the par or stated value of the shares of capital stock of a trust company, in consideration for such shares.

(3) Certified surplus—That amount of surplus of the trust company that is designated in writing by the board of directors or managers as certified and disclosed on periodic quarterly and annual reports delivered to the Commissioner.

(4) Commissioner—The Banking Commissioner of Texas.

(5) Restricted Capital—The sum of capital and certified surplus.

(6) Surplus—The aggregate amount paid in by shareholders in excess of the par or stated value of the shares of capital stock of a trust company in consideration for such shares, plus undivided profits.

(7) Total fiduciary assets under management—The aggregate of assets held by a trust company in any fiduciary capacity, including but not limited to the capacity of trustee, executor, administrator, guardian, custodian, or agent, or another capacity in which the trust company has legal but not

beneficial title, regardless of the degree of discretion vested in the trust company. For purposes of this section, a trust company shall calculate total fiduciary assets under management as the average of fiduciary assets under management for the preceding four quarters, as reported in quarterly and annual reports filed by the trust company, subject to correction or restatement as a result of examination.

(8) Trust company—A corporate entity that possesses a Texas charter to do business as a trust company, issued by either the State Banking Board pursuant to Texas Civil Statutes, Article 342-1101, §1(b), or the Commissioner pursuant to Texas Civil Statutes, Article 342-1101, §4; or a state bank with only trust powers.

(b) Minimum Restricted Capital. Except as otherwise provided in this section, the minimum restricted capital of a trust company must be not less than \$1 million plus \$25,000 for each \$50 million, or portion thereof, of total fiduciary assets under management by the trust company in excess of \$1 billion, as determined on a quarterly basis. Subject to subsection (c) of this section, a trust company has two quarters to fund an increase in minimum restricted capital caused by an increase in total fiduciary assets under management.

(c) Implementation.

(1) Any trust company with beginning restricted capital that is less than the minimum restricted capital required by subsection (b) of this section must increase its restricted capital annually thereafter, by each anniversary date of the quarterly or annual report upon which the initial determination of beginning restricted capital is made, according to the following schedule:

(A) year 1—by a sufficient amount to cause restricted capital to equal such company's beginning restricted capital plus at least 20% of the difference between the minimum restricted capital required at that time and such company's beginning restricted capital;

(B) year 2—by a sufficient amount to cause restricted capital to equal such company's beginning restricted capital plus at least 40% of the difference between the minimum restricted capital required at that time and such company's beginning restricted capital;

(C) year 3—by a sufficient amount to cause restricted capital to equal such company's beginning restricted capital plus at least 60% of the difference between the minimum restricted capital required at that time and such company's beginning restricted capital;

(D) year 4—by a sufficient amount to cause restricted capital to equal such company's beginning restricted capital plus at least 80% of the difference between the minimum restricted capital required at that time and such company's beginning restricted capital; and

(E) year 5—by a sufficient amount to cause restricted capital to equal at least the minimum restricted capital required at that time by subsection (b) of this section. Thereafter, the trust company shall have and maintain at least the minimum restricted capital.

(2) The implementation schedule set forth in paragraph (1) of this subsection is a minimal requirement, and does not authorize a reduction of capital and surplus for a trust company that has more capital and surplus than is required for restricted capital under the implementation schedule but less than is required under subsection (b) of this section. Any trust company that possesses restricted capital in excess of minimal requirements or achieves the minimum restricted capital level prior to the required deadlines in the implementation schedule may not thereafter reduce its restricted capital without the express written consent of the Commissioner.

(d) Certified Surplus. Except to absorb losses in excess of uncertified surplus, certified surplus shall not be reduced without the prior written consent of the Commissioner. The board of directors shall, in connection with each transfer to or reduction in certified surplus, promptly file with the Commissioner its certificate reflecting such transfer or reduction. An increase in certified surplus is effective immediately upon the approval of an appropriate resolution by the board of directors.

(e) Extensions of Time. Upon application by a trust company subject to subsection (c) of this section, the Commissioner, in the exercise of discretion, may grant one or more extensions to a trust company to permit additional time to achieve the required restricted capital levels if, in the Commissioner's opinion, the trust company has made a good faith effort to achieve such restricted capital levels.

(f) Modifications in Minimum Restricted Capital. Notwithstanding subsection (b) of this section, the Commissioner may, on a case by case basis and in the exercise of discretion consistent with protecting safety and soundness, reduce or increase the amount of minimum restricted capital, or may grant extensions of time to achieve required, periodic adjustments in the minimum restricted capital for such trust company. Among the safety and soundness factors to be considered by the Commis-

sioner in the exercise of discretion are the nature and type of business conducted; the amount of fiduciary assets under management; the type of fiduciary assets held and the depository of such assets; the complexity of fiduciary duties and degree of discretion undertaken; the competence and experience of management; the extent and adequacy of internal controls; the presence or absence of annual unqualified audits by an independent certified public accountant; the reasonableness of business plans for retaining or acquiring additional restricted capital; and the existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its customers, beneficiaries and grantors.

(g) This section does not create any presumption regarding the adequacy of the capital structure proposed for a new trust company in a charter application to the State Banking Board.

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439693

Everette D Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

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Chapter 11. Miscellaneous

General

• 7 TAC §11.27

The Texas Commissioner of Banking and the Finance Commission propose new §11.27 to establish procedures and fees for inspection and photocopying of public records under Chapter 552 of the Texas Government Code, commonly known as the Texas Open Records Act.

Pursuant to Acts 1993, 73rd Legislature, Chapter 428, §5, and amendments to the Texas Open Records Act made therein (see text following the Government Code, §552.281), each agency must adopt rules specifying its charges in an effort to recover the agency's full cost of providing copies of public records. Proposed §11.27 will accomplish this objective.

David Speer, Director, Budget and Planning Division, Texas Department of Banking, has determined that, for the first five-year period the proposed new section will be in effect there will be no fiscal implications for state government, local government. The proposed rule will formalize pre-existing agency policy regarding copy charges and will not result in an increase in revenue to state government.

Mr. Speer also has determined that, for each year of the first five years the proposed new

section is in effect, the public benefit anticipated as a result of enforcing this section is the publication of the means by which public information maintained by the Department of Banking may be accessed by members of the general public. There will be no effect on small businesses.

Mr. Speer estimates that no increased economic costs to persons required to comply with the proposed section will be incurred.

Comments on the proposal may be submitted in writing to Everette Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705

The new rule is proposed under the provisions of Acts 1993, 73rd Legislature, Chapter 428, and Government Code §§552.230, 552.261, and 552.263, which authorize the agency to promulgate reasonable rules of procedure under which public records may be inspected efficiently, safely, and without delay, and which require the agency to prescribe rules specifying the charges the agency will make for copies of public records

The following statutes are affected by this rule: Government Code, Chapter 552.

§11.27. Open Records Requests; Charges.

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

(1) Commissioner—The Banking Commissioner of Texas.

(2) Department—The Texas Department of Banking.

(3) Readily available information—Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programing, but not information that requires more than 30 minutes to prepare for release as a result of required redaction for the purpose of deleting information that is confidential by law.

(4) Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides shall be counted as two copies.

(b) The request. Upon receipt of a written request from a requesting party, including another state or federal agency, which clearly identifies the public records requested to be copied or examined pursuant to Chapter 552 of the Government Code (the Texas Open Records Act), the Department shall make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities, provided that information that is confidential by law will not be provided except under court order, Attorney General direc-

tive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced in the discretion of the Banking Commissioner, provided that no fee will be charged for requests for less than five standard-size copies

(c) Copy and service charges

(1) A charge of \$0.10 per page will be collected from the requestor and recipient of standard-size copies

(2) For standard-size copies of more than 50 pages of readily available information, a charge of \$15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection shall be added to the copy charges specified by paragraph (1) of this subsection (c)

(3) For standard-size copies of information that is not readily available, a charge of \$15 per hour of personnel time spent locating, copying, redacting confidential information, and preparing the information for delivery or inspection, plus \$3 00 per hour for overhead, plus \$0 50 per minute of computer time (if applicable) shall be added to the copy charges specified by paragraph (1) of this subsection (c)

(4) If certification of copies is requested, an additional charge of \$5 00 per document will be added to the computed fee.

(5) The cost for non-standard-size copies shall be determined by reference to any recommended standards promulgated by the General Services Commission, Title 1, §§111 61-111 70

(6) If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the Department may require a bond for payment of costs or cash prepayment equal to the total anticipated charges prior to release of the requested information

(d) Delivery charges.

(1) U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee

(2) Expedited delivery. When copies are required to be sent by overnight courier or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor furnishes a recipient billing number for use by the Department in delivering the copies to the carrier.

(3) Faxing. The charge for faxing copies is \$0 10 per page for local telephone delivery, \$0 50 per page for telephone delivery within the same area code, and \$1.00 per page for telephone delivery to a different area code. The Department may not be required to fax 20 or more pages of

information and may require another form of delivery.

(e) Inspection of records. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the Department. However, if the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees shall be provided.

(f) Department coordinator. The open records coordinator for the Department is the Commissioner or designee.

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439673

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Chapter 25. Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

• 7 TAC §25.23

The Texas Department of Banking (the Department) proposes an amendment to 7 TAC §25.23, governing fees applicable to the regulated prepaid funeral services and merchandise industry, sometimes referred to as the prepaid funeral benefits industry, pursuant to Texas Civil Statutes, Article 548b (the Act), to reduce the insurance conversion fees in certain circumstances.

The Department adopted §25.23 to be effective February 24, 1994 (19 TexReg 1037). One comment regarding an earlier version of proposed §25.23 criticized the \$1,000 fee for applications to convert from a trust-funded plan to an insurance-funded plan. The Department responded that even the \$1,000 fee was insufficient to recover the costs associated with processing the application because of the complexity and variety of insurance products and problems uncovered by the Texas Department of Insurance. However, the Department committed to lowering the fee by amendment at some future date if it can bring down the cost of processing through experience and developed expertise in insurance conversions. The proposed amendment is designed to provide such a reduction in the case of conversion applications involving certain insurance products.

Stephanie Newberg, director, Special Audits Division, Texas Department of Banking, has

determined that for each year of the first five years the proposed section will be in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Newberg also has determined that, for each year of the first five years the section as proposed will be in effect, the public benefit anticipated as a result of enforcing the section is reduced application fees for a limited number of applications. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal to be considered by the Texas Department of Banking should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 548b, §1A(d) and §2, which empower the Department to set fees for insurance conversion applications.

Texas Revised Civil Statutes, Article 548b, is affected by the proposed rule.

§25.23. Application Fees.

(a) (No change.)

(b) Application Fees. The application fees set forth in this subsection have been set in accordance with the Act for the purpose of defraying the cost of administering this Act. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

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

(3) Conversion Application Fee.

An applicant for the conversion of a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation shall pay a \$1,000 fee per application, provided that, if the conversion will result in the issuance of an annuity product identical in form to one that has been approved by the Department after December 1, 1993, in response to a substantially similar application, the applicant shall submit a \$500 fee per application. In the event additional processing time is required because the application is incomplete, the applicant shall pay the addition processing costs incurred in excess of the filing fee originally submitted, at the rate of \$500 per eight-hour employee day, provided that the total fee cannot exceed \$1,000. Until any such additional fee has been paid by the applicant, the application will be deemed incomplete and will not be considered.

(c) (No change.)

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439694

Everette D Jobe
General Counsel
Texas Department of
Banking

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For further information, please call: (512) 475-1300

Subchapter B. Regulation of Licenses

• 7 TAC §25.25

The Banking Department of Texas (the Department) proposes new §25.25 concerning the conversion of prepaid funeral contracts from trust funded benefits to insurance funded benefits, as provided for under Texas Civil Statutes, Article 548b, §1A (the Act).

The conversion of prepaid funeral contracts to insurance funded benefits from trust funded benefits is permissible under §1A of the Act if the insurance funded arrangement will safeguard the rights and interests of the individual prepaid funeral contract purchasers to substantially the same or greater degree as the trust funded arrangement. In the past, the Department has reviewed insurance conversion applications and based its determination on the quality and extent of benefits under the insurance policy, as well as the status and condition of the applicant funeral home and the insurer, as a way of determining whether the proposed insurance funded arrangement would safeguard the rights and interests of the individual prepaid funeral contract purchasers to the same degree as or a greater degree than provided under the existing trust funded arrangement. (See Opinion Texas Attorney General Number MW-336 (1981)). While relatively few insurance companies have been involved in these conversions in the past, interest in insurance conversions has grown among insurers in Texas.

The Department proposes to adopt §25.25 in order to more clearly outline the basic requirements for an application for conversion under §1A of the Act. As proposed, §25.25 would also set forth the standards for approval of the conversion application and the required documentation that must accompany an application for conversion, as well as information relevant to requesting a hearing on an application prior to final denial by the Department.

Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, has determined that for each year of the first five years the proposed rule is in effect there will be no fiscal implications that will result from enforcing or administering the section. The proposed amendment will have no effect on state or local government.

Mr. Herrick also has determined that, for each of the first five years the proposed amend-

ment will be in effect, the public benefits anticipated as a result of enforcing the proposed amendment will be the clarification and streamlining of the conversion application process under §1A of the Act. This should enhance the orderly administration of the Act and ensure that the purposes of the Act, as they relate to the conversion of prepaid funeral contracts from trust funded benefits to insurance funded benefits, are substantially fulfilled. There will be no effect on small businesses.

There will be no greater economic cost to persons who choose to apply for conversion under the Act, §1A. Proposed §25.25 should shorten the time period required to process and approve or reject an application by setting forth the requirements for applications and the standards against which those applications will be measured.

Comments on the proposal may be submitted to Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

This section is proposed under Texas Civil Statutes, Article 548b, §2, which authorize the Department to prescribe reasonable rules and regulations concerning all matters incidental to the enforcement and orderly administration of Article 548b.

Texas Civil Statutes, Article 548b, is affected by the newly proposed §25. 25.

§25.25. Conversion From Trust to Insurance Funded Benefits.

(a) Purpose. Existing prepaid funeral contracts that utilize trust funded benefits may be converted to an insurance funded benefits arrangement pursuant to Texas Civil Statutes, Article 548b, §1A(d) (the Act). Application for conversion must be made on forms prescribed by the Texas Department of Banking (the Department) and must meet the requirements of the Act and this section.

(b) Applications.

(1) A funeral home applying for permission to convert trust funded benefits under existing prepaid funeral contracts to insurance funded benefits must, at a minimum:

(A) hold a valid permit issued by the Department under the Act;

(B) be in good standing with the Department;

(C) have been examined by the Department at least once within the 24 month period immediately preceding the date of the application and not have been found to be in violation of any applicable laws or regulations, or to have any other deficiencies of any significance which have not been remedied or corrected to the satisfaction of the Department; and

(D) submit a completed conversion application with the Special Audits Division of the Department.

(2) Each application for conversion must be accompanied by:

(A) a copy of a letter from an insurance company authorized to do business in Texas to the applicant that:

(i) sets forth the insurance company's agreement to issue insurance policies to convert the prepaid funeral contracts from trust funded benefits to insurance funded benefits; and

(ii) identifies all of the permit holders with whom the insurance company has contracted during the previous two years for conversion of prepaid funeral contracts from trust to insurance funded benefits;

(B) a copy of the agreement between or among the insurance company, the applicant, and the permit holder who will hold and administer the insurance funded prepaid funeral contracts after conversion (if other than the insurance company), regarding the transfer, receipt, and application of the trust funds upon conversion, which agreement must:

(i) include the full name of the agent or agents who will be receiving the commission and their respective Texas Department of Insurance (TDI) license numbers; and

(ii) require that a copy of the policies issued be furnished to the respective prepaid funeral contract purchasers;

(C) a pre-enhancement summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information, as well as aggregated totals for each category of information, if appropriate:

(i) purchaser's name and date of birth;

(ii) date of issuance;

(iii) face amount;

(iv) amount paid in and amount left owing;

(v) accumulated earnings;

(vi) cancellation benefit and death benefit; and

(vii) portion of face amount retained by the applicant;

(D) a post-enhancement summary of the individual prepaid funeral contracts, which must include, at a mini-

mum, the following information, as well as aggregated totals for each category of information, if appropriate:

(i) insured's name;

(ii) amount paid in;

(iii) amount applied to the purchase of the insurance policy;

(iv) cancellation benefit and death benefit under the insurance policy; and

(v) portion of face amount retained by the applicant;

(E) a copy of the form of insurance policy to be issued upon conversion showing the approval stamp of TDI;

(F) a copy of a letter from TDI approving the use of the specific policy for prepaid funeral contract conversions;

(G) a copy of the proposed negative response notification letter to the prepaid funeral contract purchasers containing a statement explaining the purchaser has only 30 days to file a request with the Department of Banking to have the contract converted back to trust funded benefits;

(H) if the insurance company is not rated in Best's Agents Guide, current financial statements for the insurance company (dated no more than 18 months prior to the date of the application) and a copy of the insurance company's most recent National Association of Insurance Commissioner's report;

(I) a copy of the insurance company's most recent TDI examination report, dated no more than 36 months prior to the date of the application;

(J) a copy of the insurance company's most recent independent actuarial certification, dated no more than one year prior the date of application;

(K) a copy of the proposed notification letter from the insurance company to the prepaid funeral contract purchasers regarding the conversion;

(L) a statement defining the insurance policy load, including the percentage and dollar amount of the load and how the load will be distributed;

(M) a copy of the mortality tables for life insurance products issued in connection with the conversion, which must

include cash surrender values, cash reserves, and derived premiums;

(N) a statement from the insurance company that the reserves for each policy will equal the cancellation benefits of the insurance policy; and

(O) the conversion application fee prescribed in §25.23 of this chapter.

(c) Standards for Approval of Application.

(1) Applications for conversion will be approved by the Department if, in the Department's opinion, the rights and interests of the prepaid funeral contract purchasers under the insurance funded benefits arrangement will be safeguarded to the same degree as or to a greater degree than provided under the trust funded benefits arrangement.

(2) In order for insurance benefits under an application for conversion to be considered to safeguard the rights and interests of the prepaid funeral contract purchasers to the same degree as or a greater degree than the trust funded benefits, the insurance benefits must comply with this subsection.

(A) The insurance funding vehicle must provide the prepaid funeral contract purchaser with a cancellation benefit that is greater than or equal to the cancellation benefit provided for under the trust funded arrangement.

(B) The cancellation benefit must be the obligation of the insurance company and not a third party.

(C) The initial transfer of the trust funds to the insurance company must include the full sum collected by the applicant as principal on the trust funded prepaid funeral contracts proposed for conversion, plus all earnings accumulated with respect thereto, as of the transfer date. No load, commissions, or other fees or expenses may be paid from the trust funds transferred pursuant to the conversion application.

(D) No provision may appear in the insurance policy that provides or allows for contesting coverage, limited death benefits in the case of suicide, or makes reference to a physical examination, or any other provision that contradicts the original trust funded prepaid funeral contract or the benefits provided thereunder.

(E) The death benefit under the insurance policy must be no less than the death benefit prior to conversion.

(F) The insurance policy must provide for guaranteed growth beginning in the first year of the policy, both in the death benefit and cash surrender value.

(G) The insurance company must pay all death and cancellation claims in accordance with the provisions of the Act.

(H) The insurance company, or an agency or subsidiary of the insurance company, must have a current valid permit issued by the Department under the Act to hold the post-conversion insurance funded contracts, and must be in good standing with the Department.

(I) The permit holder of the post-conversion prepaid funeral contracts must have been examined by the Department at least once within the 24 month period immediately preceding the date of the application and not have been found to be in violation of any applicable laws or regulations, or to have any other deficiencies of any significance which have not been remedied or corrected to the satisfaction of the Department.

(3) The Department may require that the trust funds transferred to the insurance company pursuant to the conversion be segregated and held in safekeeping by a trust company or a state or federally chartered bank if deemed necessary to adequately safeguard the rights of the prepaid funeral contract purchasers in accordance with paragraph (1) of subsection (c) of this section.

(d) Examination. The Department, pursuant to the Act, §(8)(b), may conduct an examination of the applicant if deemed necessary to protect the interests of the prepaid funeral contract purchasers. In the event the annual examination of the applicant permit holder has already been completed by the Department when an application is accepted for filing, notwithstanding the provisions of §25.24 of this chapter, the applicant permit holder must reimburse the Department for all reasonable costs and expenses associated with any examination related to the conversion application or subsequent voluntary cancellation of the applicant's permit.

(e) Hearings. The Commissioner may order a hearing on the application. A hearing, if ordered, shall be conducted pursuant to the Department of Banking's rules governing hearings. The applicant shall have the burden to demonstrate the existence of all factors necessary to entitle the applicant to convert to insurance funded benefits from trust funded benefits by a preponderance of the evidence.

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439687

Everette D Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Chapter 26. Perpetual Care Cemeteries

• 7 TAC §26.1

The Texas Department of Banking (the Department) proposes an amendment §26.1, concerning fees and assessments, to change the financial base used for determination of examination fees assessed against regulated perpetual care cemetery trust funds pursuant to the Health and Safety Code, Chapter 712.

Adopted to be effective March 7, 1994 (19 TexReg 1213), §26.1 established through various fees a funding mechanism to defray the cost of administering the law governing perpetual care cemetery trust funds, as mandated by the Health and Safety Code, §712.042 and §712.044(b). In addition to specified application fees, an examination fee is collected based on the book value of the total assets in each trust fund. The assessment base for the examination fee has been criticized as discouraging voluntary contributions to the trust fund in excess of statutory requirements. Commenters have argued that excess contributions are necessary to adequately maintain a perpetual care cemetery, but that such contributions would cease if subject to assessment. The Department agrees that assessments should be based on required contributions to the trust fund rather than the absolute size of the trust fund in order to continue to encourage voluntary, excess contributions. Because aggregate trust funds have grown since §26.1 was initially proposed, a change in the assessment rate is unnecessary.

Commenters had also urged the Department to consider a tiered structure of fees based on the size of the affected business, and the Department had indicated that it would consider doing so. The Department has concluded that a tiered structure of fees based on the size of the affected business is not presently feasible because the Department does not keep records to support such a determination. The Department solicits comments on what data should be collected and its authority to collect such data to permit a tiered system of fees.

Stephanie Newberg, director, Special Audits Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Ms. Newberg also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the removal of a disincentive to voluntary, excess contributions to perpetual care cemetery trust funds and the consequent enhancement to protection of the interests of cemetery plot owners. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705

The amendment is proposed pursuant to the Health and Safety Code, §714.044(b), which empowers the Department to set fees in sufficient amount to defray the cost of administering the Health and Safety Code, Chapter 712.

The following statutes are affected by this rule: Chapter 712 of the Health and Safety Code.

§26.1. Fees and Assessment.

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

(c) Examination Fees. The Department shall assess and collect nonrefundable examination fees in accordance with this subsection. Except as otherwise provided in this section, any assessed fee or an installment payment as part of a fee is due at the time of billing. The Department shall annually assess each Corporation an examination fee, not to exceed \$5,000 in a fiscal year, at a rate of not more than \$0.0012 per dollar of the aggregate of required deposits to [book value of the total assets in] the Fund from inception of the Fund to the date of the most recent examination report, as determined pursuant to the Health and Safety Code, §712.028 and reflected in the examination report. The Department may levy this fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to defray the costs of examination and the administration of the Act. If the examination fee as computed in this subsection is less than \$25, a minimum examination fee of \$25 shall be levied and collected.

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

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439695

Everette D Jobe
General Counsel
Department of Banking

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For further information, please call: (512) 475-1300

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 162. Texas Exporters Loan Fund

• 10 TAC §§162.1, 162.3-162.6, 162.8-162.10

The Texas Department of Commerce proposes amendments to §§162.1, 162.3-162.6, and 162.8-162.10, concerning the Texas Exporters Loan Fund authorized by the Texas Government Code, Chapter 481, Subchapter D.

Section 162.1, General Provisions, is being changed in several ways. Section 162.1(a) is being changed to correctly cite and refer to the Administrative Procedure Act, which was renamed and moved into the Texas Government Code last legislative session. Several definitions are being changed to standardize language within the rules and to make corrections and clarifications to the definitions. Section 162.1(d)(2) is being amended to refer to the "export business" rather than to the "exporter." While the terms mean the same thing, the term "export business" is consistent with the definition in the Texas Exporters Loan Fund Act (the "Act") at §481.042(1) of the Commerce Act. The subsection is also being amended to delete the word "private" so that the definition will refer to a "lender" rather than to a "private lender." This amendment is being proposed in order to be consistent with the Act, which defines the term "lender", but does not define the term "private lender" at §481.042(2). Section 162.1(d)(4) is being amended to define "Board" as the Policy Board of the Texas Department of Commerce, because the Policy Board is the governing board of the Agency. Section 162.1(d)(7) is being amended to refer to the "export business" rather than to the "exporter."

Section 162.1(d)(11) is being amended to delete the definition of FCIA in its entirety, because it is no longer necessary due to the dissolution of the previous relationship between the Eximbank and the FCIA. Section 162.1(d)(12)-(22) is being renumbered as §162.1(d)(11)-(21) due to the deletion of §162.1(d)(11). Section 162.1(d)(12) is being amended to enable the Texas Department of Commerce to guarantee up to 90% of a loan. This change comports with §481.059(d) of the Act which allows the Agency to guarantee up to 90% of a loan. Section 162.1(d)(14) is being amended to expand the definition of "lender" to include other providers of working capital loans which the Texas Department of Commerce may approve. This change is being made to give export businesses a larger pool of lenders.

The definition of loan review committee at §481.162.1(d)(15) is being amended to allow the Executive Director of the Texas Department of Commerce to appoint the committee. There is no requirement in the Act that the committee be approved by the Policy Board,

and the Policy Board wants to allow the Executive Director to appoint the loan review committee.

Sections 162.1(e)(1) and (2) are being amended to add the Executive Director of the Texas Department of Commerce to the list of individuals to which the conflict of interest provision applies. This change is necessary because the 73rd Legislature amended §481.050 of the Act to include the Executive Director. These subsections are also being amended to refer to members of the "loan review committee" rather than to members of the "committee" for clarification.

Section 162.1(g) is being amended to correct the name of the Texas Open Records Act and to provide the new citation to the Texas Open Records Act, which is now codified in the Texas Government Code. This subsection is also being amended to delete the requirements that the party requesting to examine a document state the specific nature of the document to be viewed and that the appropriate fee accompany the request. The deletion is being proposed because the Agency's Open Records policy will be covered in another, more general, portion of its rules.

Section 162.1(h) is being amended to delete the reference to the Finance Division, which no longer exists, and to refer instead to the Export Finance Office, which administers the Exporters Loan Fund Program.

Sections 162.3(a) and (a)(4), Eligibility Requirements, are being amended to make grammatical and clarifying changes. Similarly, §162.3(b)(1) is being amended to clarify that it refers back to the General Provisions of the rules.

Section 162.4(a), Filing Requirements and Consideration of Applications, is being changed to substitute the term "export business" for the word "applicant" and to delete the words "during a business day" from the end of the sentence. These changes should provide greater clarity to this subsection of the rules. Subsection (b) of §162.4 is being amended to add the words "relating to Criteria for Approval of Loan Guaranty" to the end of the subsection. This change is being proposed to provide greater clarification. Subsection (d) of §162.4 is being amended to remove an unnecessary comma after the word "may" in the last sentence.

New §162.4(e) is being added to enable the Texas Department of Commerce to assist export businesses which have not found a lender. This subsection will allow the Agency to provide the export business a letter which the business may present to potential lenders indicating that the Texas Department of Commerce is generally aware of the transaction for which the export business is seeking funding, and that the transaction, as presented to the Agency, generally meets eligibility requirements for a guarantee if a satisfactory lender is obtained. These letters of interest do not commit the Texas Department of Commerce to the guarantee of the loan. Existing §§162.4(e) and (f) are being relettered as §§162.4(f) and (g) to have consecutive lettering as a result of the new §162.4(e).

Section 162.5(a), Contents of Application, is being amended at subsections (a)(1) and (8) to refer to the "export business" rather than to

the "exporter." This change is being made to be consistent in terminology within the rules. Subsection (a)(6) is being clarified by adding additional information which the Texas Department of Commerce requires to consider an application under the rules. Similarly, subsection (a)(7) is being clarified by deleting the words "foreign risk" and replacing them with "account receivable insurance." New subsections (a)(10) and (11) are being added to reflect additional requirements that the Texas Department of Commerce will require in the application of the export business. Subsection (a)(10) requires that the export business provide evidence that the project for which the loan or guarantee is being sought contains the requisite Texas content under §481.042(3) of the Act. Subsection (a)(11) requires the export business to identify the ten percent equity infusion it is providing for the project, as required by §481.059(d) of the Act.

Section 162.6(c), General Terms and Conditions of Department's Financial Commitment, is being amended to increase the loan amount which the Texas Department of Commerce can guarantee from 85% to 90%. This change is being made to be consistent with §481.059(d) of the Act, which authorizes the guarantee of up to 90% of a loan. Section 162.6(d) is being changed to delete the reference to "FCIA" since that entity no longer has a relationship with the Eximbank. Section 162.6(h) is being changed to allow the Texas Department of Commerce to charge up to 1.5% of the principal balance guaranteed, and to increase the non-refundable application fee from \$100 to \$250. These changes are being made in order to recover more of the administrative costs incurred by the Agency from the direct beneficiaries of the loan guarantees as required by §481.048(e) of the Act. Section 162.6(i)(2) is being changed to refer to the "export business," rather than to the "exporter." This change is being made throughout the rules.

Section 162.8(b) is being amended to refer to the "export business," rather than to the "exporter." This change is being made throughout the rules to be consistent in terminology.

Section 162.9, Loan Review Committee, is being changed to allow the Agency's Executive Director, rather than its Policy Board, to appoint the loan review committee.

Section 162.10, Eligible Lenders, is being changed to delete references to "private lenders," and to refer, instead, to "lenders." This change is being made throughout the rules to be consistent with the definition of lender at §481.042(2) of the Act. Sections 162.10(a) and (b)(2) are being amended to refer to the "export business" rather than to the "exporter." This change is being made throughout the rules for consistency. Section 162.10(c) is being amended to delete the word "private" before the word "lender" in order to be consistent with the definition of "lender" found at §481.042(2) of the Act and to add that a lender seeking to make a loan for an export transaction must include with the application the interest rate that the lender will charge the export business. This information is necessary to enable the Texas Department of Commerce to determine whether to guarantee the loan.

Ed Sosa, export finance manager, has determined that during the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. For the first five years that the rules are in effect, the effect on state government will be the administrative costs which the Texas Department of Commerce incurs in administering the Exporter Loan Fund Program. These costs cannot be precisely quantified; however, it is anticipated that the costs will be somewhat less than the Agency is now incurring in administering the Fund since higher fees are proposed to be charged

Mr. Sosa does not believe that there will be any costs to local government as a result of the proposed rules. Local governments should indirectly benefit from the Exporter Loan Fund Program, if loan guarantees are given to export businesses within a local community since the capital should allow the export business to grow, thereby increasing its revenues, upon which taxes are paid, and increasing its need for employees

There may be small increased costs to a lender which makes a loan to an export business, because the Texas Department of Commerce is proposing to change the guaranty fee paid by the lender from 1.0% to up to 1.5% of the principal balance being guaranteed by the Agency. It is also proposing to increase the application fee by \$150, to \$250. This latter amount, however, is applied to the guaranty fee if the loan guarantee is approved. These small cost increases to a lender will be partially, if not totally, offset if the Texas Department of Commerce increases its loan guarantee from 85% to 90% of the loan

Other costs to the public of complying with the rules are not quantifiable since they depend, in large part, on the amount of time spent on the application and the wages of the individual or individuals working on the application. Such costs, however, should be no greater under the amended rules than they are under the existing rules for the Exporter Loan Fund Program. These costs, which will be incurred only by applicants that seek to receive loan guarantees from the Exporter Loan Fund Program, should be more than offset by the economic benefits realized by successful applicants

The cost to small business of complying with the rules is no different than the cost to other applicants. A local employment impact statement has not been requested from the Texas Employment Commission concerning the impact of these rules

Two copies of written comments on the proposed rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701 within 30 days of the publication of the proposed rules

The rules are proposed under the authority of the Texas Exporter Loan Fund, Subchapter D, the Texas Government Code, §481.021(a)(1), and the Texas Government Code, Chapter 2001

The amendments implement the Texas Government Code, §§481.041-481.060

§1621. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Department of Commerce Act, Texas Government Code, Chapter 481, and the Administrative Procedure Act, Government Code, Chapter 2001, [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a], the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Texas Exporters Loan Fund program

(b) Purpose. The purpose of these sections is to provide standards of eligibility and application procedures for participation in the program

(c) Objectives. The major objectives of the Texas Exporters Loan Fund Program are to expand employment and income opportunities for Texans through increased exports of Texas products or services by providing actual and potential exporters, particularly small and medium-sized exporters, and agricultural enterprises, with information and technical assistance on export opportunities, exporting techniques, and financial assistance in support of export transactions

(d) Definition of Terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise

(1) Act-The Texas Department of Commerce Act, Texas Government Code, Chapter 481

(2) Application-A completed application, including all documents and information required by the department and submitted by the export business [exporter] or [private] lender for a project

(3) Allied Lenders-Financial institutions receiving approval from the department to participate in the department's export finance programs

(4) Board-The policy board [of directors] of the department

(5) Business day-A day on which the department is open for business. The term shall not include any Saturday, Sunday or traditional holiday officially observed by the state. The department's normal business hours are 8 a.m. to 5 p.m. each business day

(6) Department-Texas Department of Commerce

(7) Equity-The export business's [exporter's] contribution to a project in the form of cash, land or depreciable property

(8) Executive director-The executive director of the department.

(9) Eximbank-The Export Import Bank of the United States, which is the independent United States Government agency that helps to finance and facilitate the export of United States goods and services.

(10) Export business-A person engaged in the export of a Texas product or service.

[(11) FCIA-Foreign Credit Insurance Association, which is Eximbank's agent responsible for insuring export accounts receivable.]

(11)[(12)] Fund-Texas Export Loan Guaranty Fund.

(12)[(13)] Guaranty amount--With respect to loans made by financial institutions, is a sum measured in terms of United States dollars, that in the case of default by the borrower, guarantees repayment of the loan, not to exceed 90% [85%] of the loan. The guaranty amount may not exceed \$350,000, except in those instances where the department determines that substantial job creation is a major component of the project

(13)[(14)] Intellectual property-Architectural, engineering, surveys and other professional type services.

(14)[(15)] Lender-A lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, governmental agency that customarily provides financing, or an affiliate of any of those entities. The term also applies to allied lenders or other providers of working capital loans approved by the Department

(15)[(16)] Loan Review Committee-A committee appointed by the [board] Executive Director to provide advisory services on the issuance of guaranties on export loans.

(16)[(17)] Program-Texas Exporters Loan Guaranty Fund Program.

(17)[(18)] Project-The activities of an export business engaged in entering or expanding into export markets, found by the department to meet all eligibility requirements of the Act and this chapter.

(18)[(19)] SBA-United States Small Business Administration.

(19)[(20)] Staff-The staff of the department.

(20)[(21)] State-State of Texas.

(21)[(22)] Texas product-A manufactured good or service at least 25% of the total value of which is represented by

Texas source components, labor, or intellectual property or the export or pre-export preparation of a Texas agricultural product or livestock.

(e) Conflicts of interest.

(1) A member of the board, the Executive Director, the loan review committee, agent, or employee of the department, in his or her own name or in the name of a nominee, may not hold an ownership interest of more than 7-1/2% or in excess of \$50,000 of the fair market value of an association, trust, corporation, partnership, or other entity that is, in its own name or in the name of a nominee, a party to a contract or agreement under this chapter on which the member of the board, the Executive Director, the loan review committee, agent, or employee may be called on to act or vote

(2) With respect to a direct or indirect interest, other than an interest prohibited by paragraph (1) of this subsection, in a contract or agreement under this chapter on which the member of the board, the Executive Director, the member of the loan review committee, agent or employee may be called on to act or vote, the member of the board, the Executive Director, the member of the loan review committee, agent, or employee shall disclose the interest to the department before the taking of final action by the department concerning the contract or agreement, and shall disclose the nature and extent of the interest and his or her acquisition of it. This disclosure shall be publicly acknowledged by the department and kept a part of the loan file. A member of the board, the Executive Director, a member of the loan review committee, agent, or employee who holds such interest may not be officially involved in regard to the contract or agreement, may not vote on a matter relating to the contract or agreement, and may not communicate with the Executive Director or other members, agents, or employees concerning the contract or agreement. Notwithstanding any other provision of law, a contract or agreement entered into in conformity with this subsection is not void or invalid because of an interest described by this subsection, nor is a person who complies with this subsection guilty of an offense, and the person may not be removed from office or be subjected to other penalty because of this interest

(3) A contract or agreement made in violation of this section is null and void and does not create an action against the department.

(f) Statements and opinions. Statements and opinions expressed orally or in writing by the staff in response to inquiry or otherwise, and not specifically identified and promulgated as rules, shall not be con-

sidered regulatory standards of the department.

(g) Examination of records. Any party may request [requesting] the examination of records pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, in writing to the Department's General Counsel. [Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.]

(h) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Export Finance Office, [Finance Division] Texas Department of Commerce, Post Office Box 12728, Austin, Texas 78711-2728.

§162.3. Eligibility Requirements

(a) Applicants. An export business, located in Texas, is eligible to submit an application to the department if the [proposed] export business meets the following criteria

(1) must be entering or expanding into export markets;

(2) has a reasonable equity interest in the business, which shall be determined on a case-by-case basis by the department and/or [and] the lender; however, the applicant must provide at least 10% of the total cost of the project,

(3) the project must involve an export transaction, and

(4) meet approval standards as set forth in §162.7 of this title (relating to Criteria for Approval of Loan Guarantee).

(b) Projects. In order for a project to be eligible for financing under the program, the project must meet the following requirements:

(1) be a Texas product, as defined in §162.1(d), of this title (relating to General Provisions), and

(2) consist of eligible project costs

(c) Project costs. The proceeds of a loan guaranteed by the fund may be used to finance the following costs which are directly related to exporting:

(1) the purchase of inventory,

(2) the purchase and installation of machinery and equipment,

(3) the purchase of raw materials,

(4) operations costs relating to the manufacture of a Texas product, and

(5) operations cost relating to the marketing of a Texas product.

(d) Ineligible project costs. Costs which are not eligible include the refinancing of existing debt.

§162.4. Filing Requirements and Consideration of Applications.

(a) Application forms. An export business [applicant] or lender seeking a loan guaranty from the department must use the application forms provided by the department. One copy of the completed application with all supporting documentation and required exhibits and attachments must be submitted to the department [during a business day]

(b) Initial review by staff. The staff reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, the staff determines if the project meets the approval standards set forth in §162.7 of this title (relating to Criteria for Approval of Loan Guaranty)

(c) Consideration of application. Following staff review, the loan review committee considers the application. The executive director finally considers the application taking into account the purpose of the fund and the criteria and terms of the program

(d) Approval of application. If the executive director approves the application, the applicant is notified in writing setting forth the terms and conditions of the financial assistance approved. The department, together with the lender and any other private or governmental participants, prepares the written agreements and documents necessary to close the loan or finalize the credit, in accordance with the terms and conditions set forth in the notice of approval. The executive director may[,] waive any requirement of any section in situations where such requirement is not necessary for the protection of the public interest.

(e) Letter of Interest. If an applicant has not been able to secure a lender, a letter of interest may be issued by the Department summarizing the proposed transaction as presented to the Department by the applicant, and providing terms and additional information, if any are required. The applicant may then use the letter of interest to locate a lender. The Department may assist the applicant in locating a funder. The letter of interest does not commit the Department to the guaranty of the loan. Rather, it serves to indicate, generally, that the application meets eligibility requirements.

(f)[(e)] Denial of application. If the application is disapproved, the department

notifies the applicant in writing of the reasons for denial

(g)[(f)] Misrepresentation by applicant Each applicant has an affirmative and continuing duty to update and correct all information provided to the department and the lender. The department may reject any application, may revoke any notice of approval, or may refuse to close any loan in the event that any information provided by the applicant contains a material misrepresentation or omission or false information. In addition the department may,

(1) hold the applicant ineligible to apply for an export loan guarantee for a period of two years or until any issue of restitution is resolved, whichever is longer; and

(2) terminate the applicant's guarantee if the correct information would have changed the department's guarantee decision

§162.5 Contents of Application

(a) The application must set forth the information necessary for the determination of eligibility and must include, among other things

(1) a description and history of the export business [exporter],

(2) the experience of management,

(3) financial statements,

(4) income and expense projections for the export sale,

(5) a description of collateral and other security,

(6) purchase orders, contract and/or letter of credit, whichever is [if] applicable, and proposed terms of the export sale,

(7) account receivable insurance [foreign risk] coverage when necessary,

(8) a statement by the export business [exporter] or lender identifying other sources of financing which have been secured for the project, and

(9) a schedule of all debt of the export business detailing outstanding balance, payment amount, remaining term life, interest rate, and original term

(10) Evidence of Texas Content, as required by the Act, §481.042(3).

(11) A statement by the export business identifying how and in what form the 10% equity for the Project is to be provided

(b) The applicant must submit any other information as requested by the de-

partment in order to make a sound loan decision

§162.6. General Terms and Conditions of Department's Financial Commitment

(a) Permissible use of financial commitment. The department's financial commitment may be used to finance the costs and expenses related to the acquisition or production, financing, and shipment of a Texas product.

(b) Minimum loan or credit guaranteed. The department shall not provide financial assistance to the exporter where the amount of the guaranty needed is less than \$10,000.

(c) Maximum amount of loan guaranty. The department's net exposure for financial assistance to an exporter, including all its affiliates, may not, at any one time, exceed 90% [85%] of the loan amount. The guaranty amount may not exceed \$350,000, except in those instances where the department determines that substantial job creation is a major component of the project

(d) Extent of participation. The department may participate in a loan guaranty to the extent necessary and appropriate to facilitate the required financing. The applicant may seek co-participation in financial assistance from other private and governmental sources, including the SBA, Eximbank, [FCIA,] and private insurers. In any event, the department's maximum participation will be as stated in subsection (c) of this section, and the lender must remain at risk for at least 10% of the outstanding principal balance amount

(e) Maturity. The maturity of a loan guaranteed by the department may not exceed 12 months

(f) Security. Loans must be secured by collateral of a type, amount, and value which, considered with other criteria affords reasonable assurance of repayment

(g) Interest rates and fees. The lender may charge fees and a legal rate of interest on guaranteed loans

(h) Fees. A guaranty fee of up to 1.5% [1.0%] of the principal balance guaranteed is payable by the lender to the department. A non-refundable application fee will also be required in the amount of \$250 [\$100]. The application fee is applied towards the guaranty fee if the project is approved

(i) Reporting requirements

(1) Reports by lender. The lender shall report in writing to the department as provided in the guaranty agreement

(2) Reports by export business [exporter]. The export business [exporter] shall report to the lender immediately upon

making shipment of the goods and shall provide copies of documents evidencing shipment according to the terms of trade. If requested by the department, the export business [exporter] shall submit other reports or documentation reasonably related to an assessment of the export business's [exporter's] compliance with the Act and this chapter, or the terms of the sale transaction, loan agreements or the department's guaranty.

§162.8. Loan Administration.

(a) Servicing. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the department to do so

(b) Notification of nonpayment. If the export business [exporter] fails to make any payment of principal or interest within 15 days after the due date, the lender shall immediately notify the export business [exporter] and the department specifying the outstanding balance, due date, and remedial action planned or taken. If the export business [exporter] fails to cure the default, the lender will report the same information to the department at 30 and 45 days after the due date

(c) Notification of modification of terms. If terms of the loan agreement are modified written notification will be sent to the department by the lender immediately

§162.9 Loan Review Committee.

(a) The Loan Review Committee consists of the following members, appointed by the Executive Director [board]:

(1) three members from financial institutions that are knowledgeable about, and experienced in, the exporting and export finance unique to Texas, and

(2) two members from export firms located in Texas, experienced in exporting, knowledgeable about the needs and problems of small and entrepreneurial exporters, and actively employed or retired from an exporting firm, export trading company, or export management company

(b) Appointments to the loan review committee shall be for two-year terms. Members of the loan review committee shall serve at the pleasure of the Executive Director [board] and vacancies shall be filled by the Executive Director [board]. A quorum shall consist of three members with a majority vote necessary for decision-making

§162.10 Eligible [Private] Lenders

(a) Types of organizations. A participating [private] lender may be any financial organization whose primary business is lending money, is prepared to support a

Texas export business [exporter] through the extension of credit, and receives participating status approval by the department.

(b) Lender qualification procedures.

(1) Each financial institution will be required to qualify itself for participation in the program by submission of a letter of request, accompanied by its latest audited financial statements, and the designation of the individual(s) within the financial institution who will be responsible for working with the department.

(2) As a condition to participation, a lender must agree to make investigation, as specified in the application package, to determine the export business [exporter's] viability, the economic benefits to be derived, the prospects for repayment, and other facts that it considers necessary to determine whether participation by the export business [exporter] is consistent with the purposes of the Act.

(c) Application process. A [private] lender interested in making a loan for an export transaction must submit a commitment letter to the department outlining the terms and conditions of the proposed loan. An application, proposed closing date, collateral for the loan, interest rate and guaranty amount that the lender is seeking from the department must be included. The department may request other information from the lender

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439698

Deborah C. Kastrin
Acting Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: May 30, 1994

For further information, please call: (512) 320-9401

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 74. Elevators, Escalators and Related Equipment

• 16 TAC §§74.10, 74.80, 74.100

The Texas Department of Licensing and Regulation proposes amendments to §§74.10, 74.80, and 74.100, concerning elevators, escalators, and related equipment. The amendments add a definition of annual inspection,

lower the fee for a seal crimping tool, and require test tags to be dated annually

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the safety, health, and welfare of the public. The cost for compliance for small businesses will be a savings of \$35 for each crimping tool purchased. The anticipated economic cost to persons who are required to comply with the sections as proposed is a savings of \$35 for each crimping tool purchased

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711

The amendments are proposed under the Health and Safety Code, Chapter 754, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act

The amendments affect Health and Safety Code, Chapter 754

§74.10 Definitions

Annual inspection-Periodic inspection/test as defined in the ASME Safety Code for Elevators and Escalators, A17.1

§74.80 Fees

- (a)-(b) (No change)
- (c) Test tags, wire rope, and lead seals:
 - (1) (No change)
 - (2) \$90 [\$125] for seal crimping tool.
- (d)-(e) (No change)

§74.100 Technical Requirements

- (a)-(b) (No change)
- (c) Test tags must be attached to equipment in accordance with the latest edition of the ASME A17.1 and A17.3, Safety Code for Elevator and Escalators:
 - (1) (No change)
 - (2) Test tags shall be dated and attached to equipment annually with wire rope using a crimping tool purchased from the department bearing the department's seal

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

Issued in Austin, Texas, on April 20, 1994

TRD-9439578

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

Earliest possible date of adoption: May 30, 1994

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter B. Prescribing of Psychotropic Medication-Mental Retardation Facilities

• 25 TAC §§405.25-405.38

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.25-405.38, concerning prescribing of psychotropic medication-mental retardation facilities. The repeal of existing §§405.821-405.835, concerning prescribing of psychoactive drugs, is contemporaneously proposed in this edition of the *Texas Register*.

In addition to establishing general principles to be utilized in the prescribing of psychotropic medication for persons with mental retardation, the proposed new subchapter outlines procedures for the ongoing evaluation of individuals for whom psychotropic medication have been prescribed. In addition, the new subchapter introduces a drug protocol to be used for purposes of assessing quality improvement

Lelani Rose, director, Office of Financial Services, has determined that for the first five-year period the rules are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the rules as proposed. Local economic impact is anticipated to be insignificant

Dr. William Reid, M.D., M.P.H., medical director, has determined that for the first five-year period the rules as proposed are in effect, the public benefit anticipated as a result of the rules will be rules which address the special concerns of prescribing psychotropic medication for persons with mental retardation. There will be no effect on small businesses. There is no anticipated cost to persons required to comply with the proposed new sections

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668,

Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under Texas Health and Safety Code, §532 015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers

The proposed rules affect the Texas Health and Safety Code, §592 038.

§405.25. Purpose. The purpose of this subchapter is to establish guidelines for the prescribing of psychotropic medication to individuals who are served in campus-based components of mental retardation facilities of the Texas Department of Mental Health and Mental Retardation.

§405.26. Application. The provisions of this subchapter shall apply to all campus-based components of mental retardation facilities of the Texas Department of Mental Health and Mental Retardation.

§405.27. 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 (TXMHMR).

Consultation—A deliberation with or report by a health care professional providing an expert opinion as requested by a physician or other authorized person.

Department—The Texas Department of Mental Health and Mental Retardation (TXMHMR).

Emergency—A situation in which, in the opinion of the treating physician or other appropriate professional, the immediate use of medication is necessary for acute treatment or essential to interrupt imminent danger to the individual or others.

Fully-qualified psychiatrist—A physician, licensed to practice medicine in Texas, who has completed approved residency training in psychiatry.

Individual—A person who is receiving residential services at a state school or state center

Individual's record—The facility's official written record of an individual's care (medical record, chart)

Informed consent—Voluntary consent given by a person or the person's legally authorized representative. Guidelines for obtaining and documenting informed consent are outlined in Chapter 405, Subchapter I, of this title (relating to Consent to Treatment with Psychotropic Medication—Mental Retardation)

Interdisciplinary team (IDT)—A group of MR professionals and paraprofessionals plus other concerned persons, including the individual, who assess the individual's treatment, training, and rehabil-

itation needs and make recommendations for services.

Medical director—The medical director or clinical director of a facility Except as noted elsewhere in this subchapter, or in situations in which he/she declines to provide the consultation, the medical director is, by definition, qualified to render the consultations or second opinions required in this subchapter.

Mental retardation facility—All state schools and state centers providing 24-hour residential services to persons with mental retardation. The term applies to the campus-based programs of state schools and state centers, but does not apply to multiple disability units of state hospitals.

Pharmacist—A person with a current license issued by the Texas State Pharmacy Board to practice pharmacy.

Physician—A doctor of medicine or osteopathy who holds a current license issued by the Texas State Board of Medical Examiners to practice medicine, or who possesses an institutional practice permit issued by the Texas State Board of Medical Examiners. A licensed dentist or podiatric physician, when acting within the scope of his/her professional training and licensure, is authorized to prescribe, dispense, and administer medications appropriate to the specialty, and is included in this definition.

Polypharmacy—Simultaneous use of more than one psychotropic medication from the same medication class to treat an individual. For the purpose of this rule, the period of overlapping use of more than one psychotropic medication when a physician changes an individual from one drug to another.

Prescription—A lawful written or telephone/verbal order by a licensed prescriber or the authorized agent of a licensed prescriber to dispense or administer medication

PRN—As needed

Psychotropic medication—Any medication which is prescribed for the primary purpose of, and with the primary intent of, improving cognition, affective state, and/or behavior

Registered nurse—A person with a current license issued by the Texas State Board of Nurse Examiners to practice professional nursing

Respite care—The care of a person with mental retardation voluntarily within a mental retardation facility for a brief period of time, the purpose of placement being to provide temporary relief or special assistance for the individual or the individual's family.

TXMHMR Executive Formulary Committee—A committee, appointed by the commissioner, which is responsible for creation and revision of the TXMHMR Formulary and other duties

TXMHMR Formulary—A continually revised printed listing by nonpropri-

etary name of all drugs approved for use within TXMHMR facilities by the Executive Formulary Committee.

§405.28. General Principles.

(a) Prior to the administration of psychotropic medication, informed consent for the medication class and the individualized dosage range will be obtained as described in Chapter 405, Subchapter I of this title (relating to Consent to Treatment with Psychotropic Medication—Mental Retardation Facilities).

(b) Psychotropic medication shall not be used excessively, for punishment, for convenience of staff, as a substitute for activities or treatment, or in frequency or quantities that interfere with the individual's rehabilitation program.

(c) Psychotropic medication shall be prescribed only after:

(1) a psychiatric evaluation (including documentation of current symptoms and/or behaviors) of the individual for whom the medication is being prescribed has been conducted; and

(2) behavioral and clinical goals and objectives have been established; and

(3) appropriate laboratory screening procedures have been performed.

(d) Psychotropic medication shall only be prescribed with prior input and participation by the individual's IDT, and as a part of the individual's treatment program. When a psychotropic medication is prescribed primarily for control of inappropriate behavior, it must be used only as an integral part of the individual's treatment program plan that is directed specifically toward the reduction of and eventual elimination of the behavior for which the medication is employed. There must be consensus between the physician and the IDT before prescribing psychotropic medication primarily for control of inappropriate behavior

(e) Documentation of the significant factors considered in arriving at the decision to use psychotropic medication, the consent process, the treatment procedures, and the individual's response to treatment are to be entered into the individual's record

(f) If the prescribing physician is not a fully-qualified psychiatrist, a consultation must be obtained before any change in medication class or other significant changes are made to a psychotropic medication regimen. Except for emergencies, changes will be made with input and participation by appropriate members of the individual's IDT

(g) Nothing in this rule shall be understood to preclude use of psychotropic medication in an emergency, as outlined in §405.32 of this title (relating to Emergency Use of Psychotropic Medication). In the event of an emergency, requirements of subsections (c) and (d) of this section shall be met in keeping with provisions outlined in §405.32.

§405.29 Diagnosis and Documentation of Diagnosis when Initiating Psychotropic Medication.

(a) For each individual, the physician, with input from the individual's team, shall develop a diagnostic impression in accordance with the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) prior to initiating psychotropic medication.

(b) The physician shall document the diagnostic impression in the individual's record, including, but not limited to, the history, symptoms, and any behavioral manifestations that support the impression.

(c) A physician shall assess the general health of the individual. This assessment may include a reference to a physical evaluation conducted within the last year, physical examination by the physician, or the referral of the individual for more thorough examination.

§405.30 Prescribing Parameters

(a) Dose and dosage levels. The TXMHMR Formulary or other professionally accepted and authoritative references will be used as guidelines for dosage. Higher doses may be used only with treatment by or documentation of consultation with a fully-qualified psychiatrist.

(b) Pharmacist's responsibility.

(1) Prior to dispensing or distributing medication the pharmacist shall review the prescription for.

(A) dosage ranges,

(B) drug interactions,

(C) polypharmacy; and

(D) drug allergies or sensitivities.

(2) If the pharmacist discovers an irregularity, he or she shall contact the prescribing physician for resolution of the issue. The prescribing physician shall consult with a fully-qualified psychiatrist as needed for additional professional opinion and clinical recommendation. If no agreement is reached, the pharmacist or prescribing

physician shall contact the facility medical director for assistance.

(c) Polypharmacy. The simultaneous use of more than one psychotropic medication of the same class (polypharmacy) in treating an individual shall be permitted only after the prescribing physician (if not a fully-qualified psychiatrist) has reviewed the matter with a fully-qualified psychiatrist and the prescribing rationale has been documented.

(d) PRNs.

(1) PRN orders for antipsychotic and anxiolytic drugs are valid for a maximum of 96 hours.

(2) All PRN orders for medications other than antipsychotic and anxiolytic drugs are valid for a maximum of 31 days.

(3) All PRN orders must include:

(A) the target symptoms or signs which trigger use of the medication,

(B) the dose to be used;

(C) the minimum interval allowed between doses; and

(D) the maximum dose in a single 24-hour period.

§405.31. Emergency Use of Psychotropic Medication.

(a) Psychotropic medication may be ordered by a licensed physician in an emergency. The clinical condition and treatment rationale will be documented in the individual's record.

(b) Emergency use of psychotropic medication shall be reviewed by the treating physician within five working days with input and participation by the IDT. If continued use of the medication is required or recommended, and the use has not previously been incorporated into the individual's treatment plan, the physician shall ensure that psychiatric consultation is obtained within five days.

(c) If the continued use of the medication is recommended all provisions of this subchapter apply to its use.

§405.32. Initiation and Ongoing Evaluation of Medication Response and Clinical Condition.

(a) Initiation of psychotropic medication. When a new psychotropic medication is initiated or a dose is significantly changed.

(1) The response and clinical condition of the individual shall be directly evaluated and documented in the individual's record by a physician as often as medi-

cally necessary for the period of time needed to stabilize the clinical response, but at least weekly for one month.

(2) Side-effects shall be monitored and evaluated by the registered nurse or physician's designee at least weekly for at least one month. The evaluations shall be reviewed weekly by a physician.

(b) Monthly evaluation of prescription. At least monthly the individual's prescribing physician and/or a fully qualified psychiatrist, along with appropriate members of the individual's IDT, will review the case of each individual who is taking psychotropic medication.

(c) Quarterly psychiatric evaluation. At least quarterly, a fully-qualified psychiatrist will personally review data compiled since the last review, assess each individual taking psychotropic medication, and discuss the case with appropriate members of the individual's IDT.

(d) Quarterly tardive dyskinesia screening. All individuals receiving medication known to be associated with tardive dyskinesia shall be screened by an appropriately trained physician, physician's assistant, registered nurse, or pharmacist for involuntary movements prior to initiation of therapy (except in an emergency), with all positive findings verified by a qualified physician, and the verification documented in the individual's record. Subsequent testing shall be performed quarterly for the duration of the treatment, unless otherwise specified, by appropriately trained professional staff utilizing a recognized examination procedure for abnormal involuntary movement. Results shall be documented in the individual's record. Abnormal findings shall be reviewed and verified by a physician. Psychiatric or neurologic consultations will be obtained as clinically indicated, and at the first examination which suggests a diagnosis of tardive dyskinesia. A diagnosis of tardive dyskinesia will only be made by a psychiatrist or neurologist.

(e) Quarterly pharmacist's review.

(1) At least quarterly, a pharmacist with input from appropriate members of the individual's IDT shall review the drug regimen of each individual consistent with the "Medication Audit Criteria and Guidelines" attached to this subchapter as Exhibit A.

(2) The pharmacist must report any irregularities in the drug regimen to the prescribing physician and IDT. The pharmacist must prepare and maintain a record of each individual's drug regimen review.

(f) Annual withdrawal. Withdrawal from psychotropic medication shall be attempted in a clinically appropriate manner at least annually, unless clinical evidence is provided and documented in the individu-

al's record that attempted withdrawal is contraindicated. The IDT shall be notified and will participate in clinical and behavioral monitoring as needed.

(g) Laboratory and other evaluations. After medication is initiated, laboratory and other evaluations shall be carried out as clinically appropriate. Relevant hematologic and other body systems shall be examined at least every 12 months.

(h) Medication concentration in fluids and tissues. Concentrations of medication in body fluids or tissues shall be determined when possible and clinically indicated, provided appropriately valid and reliable laboratory measures are available

§405.33. Individuals with Medication-Related Dyskinesias, including Tardive Dyskinesia. For individuals with a verified diagnosis of medication-related dyskinesia (which, for purposes of this subchapter, will include other, similar drug-induced movement disorders), the following provisions shall apply. Variations may be warranted according to specific needs of the individual.

(1) The diagnosis, duration (if known), and severity of symptoms will be recorded in the individual's record.

(2) Once the diagnosis is confirmed, it will be conveyed to the individual and the individual's legally authorized representative, if any. The relevant aspects of the syndrome will be explained, including the possibility that it may be related to medication.

(3) The physician will share the information with appropriate members of the IDT.

(4) If the individual is taking antipsychotic or other medication which may be associated with dyskinesias, the risks and benefits of reducing the dosage, discontinuing the medication, or changing to a medication less likely to cause tardive dyskinesia will be considered and documented in the individual's record.

(5) For cases in which continuing an apparently causative medication or class of medications is justified, the physician shall:

(A) document the rationale for continuing to prescribe the antipsychotic medication to the dyskinetic individual,

(B) attempt a discussion of potential benefits and risks with the individual and the individual's authorized representative, if any, and document the attempt and/or discussion in the individual's record; and

(C) if the physician is not a fully-qualified psychiatrist, secure and document a second opinion via consultation with a fully-qualified psychiatrist or neurologist

§405.34 Prescribing of Psychotropic Medication for Special Populations

(a) Respite services When an individual admitted for extended respite services is taking psychotropic medication, the facility will attempt to obtain current medical and psychiatric record summaries from the individual's outside attending physician or psychiatrist, if possible

(1) If the facility physician determines the psychotropic medication regimen is not appropriate, the facility physician may choose to change the regimen consistent with clinical need and the provisions of this subchapter. The facility physician will confer with the individual and/or family/guardian of the individual, as appropriate, and the outside prescribing physician, if available, to discuss the proposed changes. The facility physician, if not a fully-qualified psychiatrist, shall obtain a psychiatric consultation prior to any significant change and shall notify the outside prescribing physician of the change

(2) If, in the opinion of the facility treating physician, the preadmission psychotropic medication regimen is appropriate, the medication will be continued

(b) Children/Adolescents In cases in which large doses of psychotropic medication not usually recommended for pediatric use are warranted, justification and consultation with a fully-qualified psychiatrist, preferably a child psychiatrist, must be documented in the individual's record

(c) Pregnant or nursing individuals When, based upon consideration of potential benefits and risks, psychotropic medication is required during pregnancy or nursing, the following will occur

(1) Except in an emergency, consultation will be obtained from an obstetrics consultant or the physician currently managing the pregnancy (in the case of pregnant individuals) OR from a pediatrician or the physician currently managing the infant (in the case of nursing individuals), prior to prescribing

(2) A summary of current treatment, including diagnosis and medications, will be communicated to the physician or clinic (if any) providing prenatal or postnatal care

(3) The actions taken in paragraphs (1) and (2) of this subsection will be documented in the individual's record

(c) Other special clinical populations. The facility physician will be aware

of special medication issues, and consider consultation with an appropriate specialist, before prescribing psychotropic medication for persons with particular clinical or risk-factors associated with their treatment. In addition to children and adolescents and pregnant or nursing individuals, such persons include the elderly, persons with alcohol and or drug abuse/dependency, and persons with a general medical condition which may significantly affect psychiatric diagnosis or treatment

§405.35 Prescribing of Psychotropic Medication for New Admissions When an individual admitted to a mental retardation facility is already taking a psychotropic medication, psychiatric history will be requested from the prescribing physician. Consideration of psychiatric consultation will be documented by the facility physician within 14 days of admission and, if needed, obtained within 30 days of admission. The medication regimen shall be maintained until or unless a physician orders otherwise

§405.36 Use of Medication Commonly Considered Psychotropic for Nonpsychiatric and Non-Behavioral Conditions Medications commonly considered psychotropic but prescribed for a nonpsychiatric or non-behavioral symptom, sign, or condition (e.g., sleep or spasticity), are not considered "psychotropic" for purposes of this rule. Ordinary prescribing rules and standards will apply

§405.37 Quality Improvement

(a) Each state school and state center shall maintain a pharmacy and therapeutics committee (PTC). The PTC will be composed of at least two physicians, one pharmacist, and one registered nurse

(b) On a quarterly basis, the chief pharmacist will submit to the PTC a summary of findings regarding use of psychotropic medication as determined by the quarterly drug regimen review

(c) The PTC shall consider potential problems with utilization of psychotropic medication, findings, conclusions, recommendations, action taken, and results of actions taken. The minutes of the meeting will reflect active physician participation in the psychotropic medication use evaluation process. The minutes or portion of the minutes applicable to medication audit will be maintained in a file in the office of the medical director or the director of quality assurance or management and program evaluation of each facility, subject to outside inspection or review only upon authorization of the director, Legal Services

(d) The PTC shall forward a summary of its recommendations to the facility

medical director, who shall share the summary with executive staff. The summary will include known trends or potential problem areas requiring improvement.

(e) The TXMHMR Executive Formulary Committee or other duly-appointed departmental bodies will, upon request of the commissioner or the TXMHMR medical director, be authorized to review representative minutes to determine facilities' compliance with this section.

(f) The actions of the PTC shall be considered part of the quality-assurance process of each facility, each of which is a healthcare organization as defined in Texas statute. As such, the actions, minutes, reports and data used by the committee shall be confidential and privileged to the fullest extent allowed by law.

§405.38. Distribution.

(a) This subchapter shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; the medical director; deputy commissioners, associate deputy commissioners, assistant deputy commissioners, and Central Office directors; superintendents and directors of all TXMHMR mental retardation facilities; clinical directors and medical directors of TXMHMR mental retardation facilities; members of the TXMHMR Medical Advisory Committee; and the chair of the TXMHMR Formulary Committee.

(b) In addition, the superintendent or director of each TXMHMR mental retardation facility shall:

(1) provide an individual copy of this subchapter to every physician who works at or for the facility, whether as an employee, consultant, volunteer, or in another capacity;

(2) provide copies to every pharmacist who works at or for the facility;

(3) provide copies to the director of nurses and other staff members, as appropriate;

(4) maintain copies on each unit and at each service site at which medication is prescribed; and

(5) maintain a copy with the policies and procedures manuals of the facility.

(c) Each facility will maintain documentation that every salaried or contracted physician who treats individuals in that facility has received a copy of this subchapter and has agreed to abide by it as a condition of his or her employment or contract.

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

Issued in Austin, Texas, on 20, 1994.

TRD-9439505

Ann K. Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: May 30, 1994

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

Subchapter I. Consent to Treatment with Psychotropic Medication-Mental Retardation Facilities

• 25 TAC §§405.201-405.209

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.201-405.209, concerning consent to treatment with psychotropic medication-mental retardation facilities.

In addition to establishing procedures for obtaining informed consent for treatment with psychotropic medications for persons admitted to mental retardation facilities, the proposed new rules establish guidelines for determining the appropriateness of treatment with psychotropic medications for persons who are judicially committed. The proposed rules include a requirement that consent be reviewed and renewed on at least an annual basis, and requires that individuals be informed of their right to withdraw consent to treatment at any time.

Leilani Rose, director, Office of Financial Services, has determined that for the first five-year period the rules are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the rules as proposed. Local economic impact is anticipated to be insignificant.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that the first five-year period the rules as proposed are in effect, the anticipated public benefit as a result of the rules will be rules establishing procedures to ensuring the extension of the right to refuse medication to persons who are admitted to mental retardation facilities, as well as the establishment of a means of providing due process for judicially committed persons for whom psychotropic medications are prescribed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

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

These sections are proposed under Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking power.

The proposed new sections affect the Texas Health and Safety Code, §592.038.

§405.201. Purpose. The purpose of this subchapter is to:

(1) establish requirements for informed consent for treatment with psychotropic medications for those persons who have been voluntarily admitted to a mental retardation facility;

(2) provide guidelines for obtaining and documenting this consent; and

(3) ensure due process for those persons who have been committed involuntarily to a mental retardation facility under the provisions of the Persons with Mental Retardation Act (PMRA), Texas Health and Safety Code, Subtitle D.

§405.202. Application. This subchapter applies to all campus-based components of mental retardation facilities of the Texas Department of Mental Health and Mental Retardation.

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

Chief physician-The medical director or clinical director of a state mental retardation facility.

Committed person-A person committed to a mental retardation facility involuntarily under the provisions of the PMRA, Texas Health and Safety Code, Subtitle D, or transferred to a mental retardation facility under the provisions of the Mental Health Code, Texas Health and Safety Code, Part I, Subtitle C.

Emergency-A situation which, in the opinion of the treating physician or other appropriate professional, the immediate use of medication is essential to interrupt imminent danger to the person served or others.

Fully-qualified psychiatrist-A physician, licensed to practice medicine in Texas, who has completed approved residency training in psychiatry.

Informed consent-Voluntary consent given by a person or the legally authorized representative of the person admitted to a mental retardation facility under the voluntary or Order of Protective Custody (OPC) provisions of the PMRA. The basic elements of information necessary to informed consent, and ongoing counselling with the patient regarding his or her care, must be provided by the treating physician or his/her designee in simple, non-technical terms in the person's primary language or mode of communication. The information necessary to provide for informed consent includes:

(A) a fair explanation of the procedures to be followed and their purposes;

(B) a description of any attendant discomforts and risks reasonably to be expected;

(C) a description of any benefits reasonable to be expected;

(D) a disclosure of any appropriate alternative procedures that might be advantageous to the person served as well as the potential risks and benefits associated with that alternative;

(E) an explanation of the risks or benefits and potential consequences associated with refusal of treatment;

(F) an offer to answer any questions concerning the procedures; and

(G) an instruction that the consent may be withdrawn at any time without prejudice to the client.

Legally authorized representative—The parent, managing conservator, or guardian of a minor; or the guardian of the person of an adult; or the limited guardian of an adult, who has been granted specific authority to consent to such decisions.

Medically appropriate treatment—Treatment with psychotropic medication based on a physician's judgment that such medication is clinically indicated and that the medication's potential benefits outweigh its potential risks.

Mental retardation facility—All state facilities providing 24-hour residential services to persons with mental retardation. The term applies to the campus-based programs of state schools and state centers, but does not apply to multiple-disability units of state hospitals.

Minor—A person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes.

Outside consultant—A fully-qualified psychiatrist providing services to the facility on a contract-only basis for the purpose of providing a second opinion in the event a committed person or his legally authorized representative objects to the administration of psychotropic medication. The outside consultant shall be a psychiatrist other than the psychiatrist involved in the initiation and/or ongoing evaluation of the individual for whom psychoactive medications have been prescribed.

Psychotropic medication—Any medication which is prescribed for the primary purpose of, and with the primary intent of,

improving cognition, affective state, and/or behavior.

§405.204. General Information.

(a) Documentation. Each step of the procedure outlined in this subchapter shall be clearly documented in the person's clinical record.

(b) Prescribing of psychotropic medications. This subchapter establishes guidelines for obtaining informed consent for administration of psychotropic medications. Such medications will be prescribed in accordance with the guidelines established in Chapter 405, Subchapter B of this title (relating to Prescribing of Psychotropic Medications—Mental Retardation Facilities)

(c) Emergencies. Nothing in this subchapter is intended to preclude the administration of psychotropic medication to any person in an emergency as defined in §405.203 of this subchapter (relating to Definitions) and as outlined in Chapter 405, Subchapter B of this title (relating to Prescribing of Psychotropic Medications—Mental Retardation Facilities).

§405.205. Informed Consent: Persons Admitted Under the Voluntary or Order of Protective Custody (OPC) Provisions of the Persons with Mental Retardation (PMRA).

(a) Psychotropic medication will not be administered to persons admitted to a mental retardation facility under the voluntary or Order of Protective Custody (OPC) provisions of the PMRA without first obtaining informed consent or when existing consent has been withdrawn, except as provided in §405.204 of this subchapter (relating to General Information)

(b) Informed consent to administer psychotropic medication may be given by the legally authorized representative of a person admitted under the OPC provisions of the PMRA, or by the person if he or she meets the criteria for legal capacity described in §405.203 of this title (relating to Definitions).

(c) Persons who are admitted under the voluntary provisions of the PMRA are presumed to have the legal capacity to give informed consent

§405.206 Informed Consent Persons Involuntarily Committed Under the Provisions of the PMRA (Judicial Commitment).

(a) Persons admitted under judicial commitment do not require informed consent for medically appropriate treatment, although such persons or their legally authorized representatives objecting to the treatment will be afforded due process, as outlined in subsection (d) of this section

(b) Persons admitted under judicial commitment receiving psychotropic medication at the time of admission may be continued on that medication until the development of the individual rehabilitation plan (IHP) by the interdisciplinary team (IDT), within 30 days of admission

(c) On recommendation of the interdisciplinary team, the superintendent/director or his/her designee may authorize continued use or initiation of the use of psychotropic medication for a judicially committed person. In such a case, the person and his or her legally authorized representative will be provided information necessary to informed consent, including the risks and benefits of the prescribed psychotropic medication, and will be informed of his or her right to object to the treatment.

(d) If a committed person or his legally authorized representative objects to the administration of psychotropic medication, the following review procedure will be initiated:

(1) The chief physician of the mental retardation facility will ensure that an outside consultant psychiatrist will, within 14 calendar days of the person's objection or that of his or her legally authorized representative:

(A) personally examine the person,

(B) interview the person and his or her legally authorized representative, if the representative is available,

(C) review the clinical record,

(D) discuss the case with the treating physician, and

(E) make a determination concerning the appropriateness of treatment with psychotropic medication

(2) Psychotropic medication may be administered if the outside consultant determines that the administration of such medication is medically appropriate treatment. In making this determination, the outside consultant will consider

(A) the accuracy of the diagnosis,

(B) indications for the medication,

(C) probable benefits and risks of the medication,

(D) the existence and value of alternative, less restrictive forms of treatment, if any; and

(E) whether the medication promotes greater functional independence.

(3) If, at any time, the outside consultant determines that the administration of a psychotropic medication is not medically appropriate treatment, the administration of such medication will be discontinued within a reasonable period of time based on the condition of the person and the type and dosage of medication being administered pursuant to the professional judgment of the treating physician.

(4) Evaluation of individuals administered psychotropic medications pursuant to a determination under subsection (b) of this section will be in keeping with provisions outlined in §405.59 of this title (relating to Prescribing of Psychotropic Medications)

§405.207. Documentation of Informed Consent.

(a) Informed consent for the administration of psychotropic medication will be evidenced by a form which includes on it the information necessary to provide for informed consent, executed by a person admitted under the voluntary or OPC provisions of the PMRA or by that person's legally authorized representative. Persons who have been involuntarily committed and who do not object to treatment with psychotropic medications should also execute the form to indicate that they received information about the treatment and do not object. Facilities may use the standard "Departmental Form for Consent to Treatment with Psychotropic Medication," which is referred to in §405.208 of this title (relating to Exhibits) as Exhibit A, or they may develop a mechanism of their own.

(1) The executed form will be retained in the person's clinical record

(2) A new consent will be obtained on at least an annual basis or any time the medication regimen is altered in a way which would result in a change of medication class or would, in the clinical judgment of the interdisciplinary team, result in a significant change in the risks or benefits to the person.

(b) If the person or his legally authorized representative consents to the administration of psychotropic medication but is physically incapable or is unavailable to execute the form, the treating physician or his/her designee will document the verbal consent in the person's clinical record

(c) The treating physician or his/her designee will discuss the administration of

psychotropic medication with all persons for whom such medication has been prescribed, will provide to them the information required for informed consent as described in §405.203 of this title (relating to Definitions), and will attempt to create a therapeutic alliance with each person for whom medication has been prescribed.

§405.208 Exhibits. Copies of Exhibit A—Departmental Form for Consent to Treatment with Psychotropic Medication are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668

§405.209. Distribution

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, the medical director; deputy commissioners, associate deputy commissioners, and assistant deputy commissioners and Central Office directors, superintendents and directors of all TXMHMR mental retardation facilities; clinical directors and medical directors of TXMHMR mental retardation facilities; members of the TXMHMR Medical Advisory Committee, and the chair of the TXMHMR Formulary Committee

(b) In addition, the superintendent or director of each TXMHMR mental retardation facility shall

(1) provide an individual copy of this subchapter to every physician who works at or for the facility, whether as an employee, consultant, volunteer, or in another capacity;

(2) provide copies to every pharmacist who works at or for the facility,

(3) disseminate the information contained in this subchapter to appropriate staff members

(c) Each facility will maintain documentation that every salaried or contracted physician who treats individuals in that facility has received a copy of this subchapter and has agreed to abide by it as a condition of his or her employment or contract

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

Issued in Austin, Texas, on 20, 1994

TRD-9439506

Anne K Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption May 30, 1994

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

TITLE 28. INSURANCE Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.36

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

The Texas Department of Insurance proposes the repeal of §7.36 concerning the preparation and filing of a report of the audit of an insurer's workers' compensation reserves by all insurers which transact workers' compensation business in Texas. The repeal of this section will eliminate Form WCR-1. The repeal of this section is necessary to streamline reporting requirements for insurers which transact workers' compensation business in Texas and to enable the Texas Department of Insurance simultaneously to adopt a new §7.36, which replaces the repealed section with other provisions concerning preparation and filing of a report of the audit of an insurer's workers' compensation reserves. Notification of the proposed new section which replaces this repealed section appears elsewhere in this issue of the *Texas Register*

Sandra Autry, associate commissioner for the financial program, has determined that, for the first five-year period the repeal of the section is in effect, there will be no fiscal implications for state or local government as a result of the repeal of the section.

Ms Autry also has determined that, for each year of the first five years the repeal of the rule is in effect, the public benefit anticipated as a repeal of the section will be more efficient and accurate reporting of data on workers' compensation reserves of insurers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner for the Financial Program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

The repeal of the existing rule is authorized under the Insurance Code, Articles 5.61 and 1.03A. Article 5.61 requires each workers' compensation insurer transacting business in Texas to maintain reserves in an amount estimated to provide for the payment of all

losses and to file a report with the Department showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in Texas and that the report must be audited by an independent certified public accountant. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application.

The Insurance Code, Article 5.61, is affected by this rule.

§7.36. Audited Report of Workers' Compensation Reserves.

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

Issued in Austin, Texas, on January 1, 1988.

TRD-9439710 D J Powers
 Legal Counsel to the
 Commissioner
 Texas Department of
 Insurance

Earliest possible date of adoption May 30, 1994

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

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The Texas Department of Insurance proposes new §7.36, concerning the preparation and filing of a report of the audit of an insurer's workers' compensation reserves by all insurers which transact workers' compensation business in Texas. The proposal of new §7.36 is simultaneous with the proposed repeal of present §7.36. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section will eliminate Form WCR-1 and streamline reporting requirements of workers' compensation data submitted to the Texas Department of Insurance by consolidating some of the data in call reports and the data that was required under existing §7.36. The proposed rule implements the requirement of Insurance Code, Article 5.61, which requires an audit of data relating to an insurer's Texas workers' compensation reserves. The proposed rule will require insurers which have issued new or have renewal workers' compensation insurance policies in this state in the most recent calendar year to have the data, specified in the proposed rule, audited. This is a reduction in the scope of the existing regulation, which required any insurer which had written workers' compensation insurance in the past five years to have this information audited.

Sandra Autry, associate commissioner for the financial program, has determined that for the first five-year period the proposed new section will be in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the proposed section and there will be no effect on local employment or local economy.

Ms. Autry also has determined that for each year of the first five years this section as

proposed is in effect, the public benefit anticipated as a result of enforcing this section will be more efficient and accurate reporting of data on workers' compensation reserves of insurers. The information formerly required to be filed with the department in Form WCR-1 will be contained in a new report that insurance companies writing workers' compensation insurance will file with the Texas Department of Insurance. The anticipated economic cost to small businesses and to other persons who are required to comply with this section as proposed will not be significantly different than compliance with the rule that is being repealed simultaneously with the adoption of this proposed rule. The cost of complying with the existing regulation was estimated to range from three or four thousand dollars to 15 or 20,000 thousand dollars. Cost of compliance with the proposed new section is estimated to be the same, however, only those insurers which issued new or renewal workers' compensation insurance policies in the most recent calendar year will be required to have the data audited. On the basis of cost per hour of labor, there will be no difference in cost of compliance between small businesses and larger businesses.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner for the Financial Program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

The proposed new rule is authorized under the Insurance Code, Articles 5.61, 5.62 and 1.03A. Article 5.61 requires each workers' compensation insurer transacting business in Texas to maintain reserves in an amount estimated to provide for the payment of all losses and to file a report with the Department showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in Texas and that the report must be audited by an independent certified public accountant in accordance with generally accepted auditing standards and the rules of the department. Article 5.62 authorizes the commissioner to make and enforce rules necessary to carry out the provisions of the Insurance Code, Chapter 5, Subchapter D, concerning the regulation of workers' compensation insurance. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application.

The proposed rule affects Insurance Code, Article 5.61.

§7.36. Report on Audit of Workers' Compensation Reserves

(a) **Applicability.** This section applies to all insurers which are authorized to write and which have issued new or renewal workers' compensation insurance policies in this state in the most recent calendar year.

(b) **Scope of Audit.** The workers' compensation data which is to be audited is contained in Texas Workers' Compensation Financial Call Plan, Calls 5, 5(supplement), 5A, and 5A(supplement), required by the department. The data to be audited in these forms shall be audited by the same accountant that performs the annual audit of the insurer under Insurance Code, Article 1.15A, if such an audit is performed, and such data is described in paragraphs (1)-(4) of this subsection as follows:

(1) From page 2, column 11, Accident Year Outstanding Losses Excluding IBNR-Indemnity-Case and Bulk-last 5 accident years only;

(2) From page 2, column 12, Accident Year Outstanding Losses Excluding IBNR-Medical-Case and Bulk-last 5 accident years only;

(3) From page 4, column 19, Accident Year Unearned Premium-last accident year only, and

(4) From page 4, column 21, Accident Year Allocated Loss Adjustment Expense Outstanding-last 5 accident years only.

(c) **Audit Coverage.** The report of the audit of the workers' compensation reserves described in subsection (b) of this section shall address the items described in paragraphs (1)-(4) of this subsection:

(1) the opinion of the accountant, which should address the validity of data reported and not the adequacy of reserves;

(2) a statement of the amount of Texas workers' compensation reserves as prescribed by subsection (b)(1)-(4) of this section,

(3) any notes to the statement required in paragraph (2) of this subsection; and

(4) a statement that the accountant has reviewed the Reconciliation Report for Compensation Experience (identified as page 4 of 6 in the call reports) and that the amounts therein agree with the amounts of the same data items reported elsewhere in the Call reports and reported on page 14 of the Annual Statement. For purposes of this section, this paragraph is not intended to require the accountant to audit data beyond that described in subsection (b)(1)-(4) of this section.

(d) **Filing Requirements for Audit Reports of Workers' Compensation Data.** The audit report required by this section shall be filed with the Financial Program, 333 Guadalupe, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099 on or before June 30 of the year following the year audited. If the insurer is required to file

an annual audit report under Insurance Code, Article 1.15A, then the audit report required under this section shall be filed as a supplement to the annual audit report.

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

Issued in Austin, Texas, on April 23, 1994

TRD-9439709

J D Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption May 30, 1994

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

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• 28 TAC §§7.1601-7.1615

The Texas Department of Insurance proposes new §§7.1601-7.1615, concerning licensing, examination, and taxation of third party administrators. Additionally, the proposed new sections concern exemption from licensing requirements for third party administrators solely administering "employee benefit plans" as defined in the Employee Retirement Income Security Act, (ERISA), codified at 29 United States Code §1001, et seq. ERISA provides exclusive federal jurisdiction over regulation of employee benefit plans described in 29 United States Code §1003(a), and preempts any state regulation that "relates" to such plans. See 29 United States Code §1144(a) in *NGS American Inc v Barnes*, 988 F.2d 296 (5th Cir. 1993), the Fifth Circuit held that Article 21.07-6 of the Texas Insurance Code, which regulates third party administrators relates to employee benefit plans, to the extent it is applied to third party administrators in their capacity as administrators of employee benefit plans governed exclusively by ERISA.

However, ERISA includes a "savings clause" which preserves certain categories of state laws from preemption, namely, insurance, banking and securities. See 29 United States Code §1144(b)(2)(A). The states may also apply their insurance laws to multiple employer welfare arrangements described in 29 United States Code §1144(b)(6)(A)(ii). Because ERISA permits states to regulate insurance, including multiple employer welfare arrangements, the purpose of these new sections is to create an exemption from regulation for those third party administrators solely administering employee benefit plans governed exclusively by ERISA. The new sections also adopt forms by reference to be used by the Department for the application, registration, filing and documentation of third party administrators by the Department. The Department has filed a copy of the forms with the Secretary of State's office, Texas Register section. Persons desiring copies of the forms can obtain such from the Texas Department of Insurance, Third Party Administrator Unit, Mail Code 105-6A, P.O. Box 149104, Austin, Texas 78714-9104.

The proposal of new §§7.1601-7.1615 is simultaneous with the proposed repeal of existing §§7.1601-7.1613. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*.

Beverly McVey, director of the licensing group, has determined that for each year of the first five-years the new sections will be in effect, there will be no fiscal implications to state and local government as a result of enforcing or administering the sections, and there will be no effect on local employment or the local economy. Enforcement and administration will be performed by existing staff of the department.

Ms. McVey also has determined that, for each year of the first five years the new sections are in effect, the public benefit resulting from the implementation of these new sections will be that regulation by the Texas Department of Insurance will accord with ERISA. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to D. J. Powers, Legal Counsel to the Commissioner, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Beverly McVey, Director, Licensing Group, Texas Department of Insurance, Mail Code 107-1B, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's office.

The new sections are proposed pursuant to the Insurance Code, Articles 21.07-6, 1.02, 1.03A, and 1.04C, and the Government Code, §2001.004, et seq. Article 21.07-6, which regulates third party administrators, authorizes the State Board of Insurance to promulgate reasonable rules and regulations that are appropriate to accomplish the purposes of the article. This rulemaking authority is interpreted to be delegated to the Commissioner of Insurance under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, which provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. Article 1.04C of the Insurance Code, as enacted in House Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Government

Code, §2001.004, et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following articles of the Insurance Code are affected by this rule: §§7.1601-7.1615, The Insurance Code, Article 21.07-8.

§7.1601. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative or service fees—The total gross amount of all consideration, fees, assessments, payments, reimbursements, dues, and any other compensation, monetary or otherwise, received by a third party administrator during the taxable year. Administrative or service fees shall not include sales commissions received by an administrator that has a valid agent's license or lawfully distributed by the administrator to licensed agents or other sales representatives. Administrative or service fees shall not include those amounts received for the administration of employee benefit plans governed exclusively by ERISA.

Administrator, third party administrator, or TPA—A person who collects premiums or contributions from, or who adjusts or settles claims in connection with life, health and accident benefits or annuities for residents of this state, but the term does not include those persons to the extent their operations are specifically excluded in the Insurance Code, Article 21.07-6, §(1)(A)-(R) or are exempted from regulation pursuant to §7.1606(a) of this subchapter.

ERISA—The Employee Retirement Income Security Act of 1974, codified at 29 United States Code §1001, et seq, which includes the series of federal statutes regulating employee benefit plans and pension plans.

Functions of a group policyholder—All services, functions, duties, or activities which may lawfully be delegated to a policyholder pursuant to a contract between an insurer and a group policyholder.

Plan—A plan, fund, or program established, adopted, or maintained by a plan sponsor, insurer, or person to the extent that the plan, fund, or program is established, adopted, or maintained to provide:

(A) indemnification or expense reimbursement for a life, health, or accident benefit; or

(B) an individual or group annuity business.

Trade name—An assumed name or DBA (doing business as) which is used by an administrator in its operations or activities with residents of this state.

§7.1602. Forms Relating to Regulation and Exemption of Administrators Under the Insurance Code, Article 21.07-6. The Texas Department of Insurance adopts and incorporates herein by reference standard administrator forms for use in the regulation and exemption from regulation of administrators. Applicants and licensed administrators are required to utilize these forms in preparing applications, requests for exemptions, statements, notices of required information, and other submissions required under the Insurance Code, Article 21.07-6, and this subchapter. These forms are published by the Texas Department of Insurance and may be obtained from the Third Party Administrator Unit, Mail Code 105-6A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. These forms are more specifically identified in paragraphs (1)-(10) of this subsection:

- (1) TPA Form Number 1, Name Application;
- (2) TPA Form Number 1A, Assumed Name Certificate;
- (3) TPA Form Number 2, Application for Certificate of Authority;
- (4) TPA Form Number 2A, Supplemental Information/Annual Report;
- (5) TPA Form Number 3, Officers and Directors Page;
- (6) TPA Form Number 4, Biographical Affidavit;
- (7) TPA Form Number 5, Service of Process;
- (8) TPA Form Number 6, Identification and Reporting of Certain Insurers and Health Maintenance Organizations.
- (9) TPA Form Number 7, ERISA Exemption/Registration Form,
- (10) TPA Form Number 7A, Summary Plan Description

§7.1603. Application for Certificate of Authority.

(a) Any person who collects premiums or contributions from, or who adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state, excluding those persons identified in the Insurance Code, Article 21.07-6, §(1)(A)-(R), or in §7.1606 of this title (relating to Exemption from Licensing for Certain Administrators) of this subchapter, must apply for a license to operate as a third party administrator

(b) Applications for a certificate of authority shall be made in the name of the corporation, partnership, or sole proprietor on TPA Form 2. The certificate of authority, when issued, shall extend to the officers

and managers of the corporation, so long as they remain in that capacity and are qualified to act as an officer or manager of that corporate TPA; to each of the partners of the partnership so long as they remain in that capacity and are qualified to act as a partner of that partnership TPA, and to the sole proprietor of such sole proprietor TPA. The certificate of authority when issued shall not extend to any employees, agents, or subcontractors of the applicant

(c) A certificate of authority issued to an administrator under the Insurance Code, Article 21.07-5 (repealed 71st Legislature, 1989) has the same effect as a certificate of authority issued under the Insurance Code, Article 21.07-6. The administrator is still subject to the provisions of the Insurance Code, Article 21.07-6. An administrator that has submitted all or part of the documents required for the application of a certificate of authority under the Insurance Code, Article 21.07-5, can be required to submit only those documents needed to make the application administratively complete

(d) If items required under this subchapter for application for a certificate of authority are absent, or deemed insufficient by the commissioner, the commissioner shall notify the applicant and the applicant shall be given a reasonable time to correct said deficiencies. If, after the reasonable time has expired the deficiencies have not been corrected, the commissioner will notify the applicant by letter that, if the applicant does not request an opportunity for a hearing, the commissioner will withdraw the application without prejudice

(e) Applicants may request in writing to the commissioner that their application be withdrawn from the consideration process. This request must be made prior to the issuance or denial of a certificate of authority. However, when requesting withdrawal of an application, an applicant must not have operated or be operating as an administrator under the Insurance Code, Article 21.07-6, in this state. In the event an application is withdrawn or denied, any fees submitted with the application will not be refunded. After a withdrawal and prior to commencing any administrator activities in this state, applicants must submit a new application with appropriate fees

§7.1604 Application Denial, Suspension, Cancellation, or Revocation. If the commissioner denies the application, the affected party may not resubmit a new application for a period of time not less than one year from the date of denial. If the commissioner suspends a certificate of authority, the affected party may not operate as an administrator for a period of time certain as specified in the suspension order which may not exceed one year from the

date of suspension. If the commissioner cancels or revokes a certificate of authority, the affected party may not resubmit a new application for a period of time not less than one year from the date of the cancellation or revocation

§7.1605 Application Procedures

(a) Each applicant for a TPA certificate of authority will complete TPA Form 2 in compliance with the requirements in the Insurance Code, Article 21.07-6 and this subchapter. TPA Form 2 will be completed as prescribed and accompanied by such documents, statements, notices, and attachments necessary to support the application. Applicants with a relationship or affiliation such as a commonality of management, ownership, and/or consolidated financial information may, upon written request and approval of the commissioner, be permitted to submit only one copy of the required information to avoid duplicative filings by such related or affiliated applicants. Applicants will be provided a listing of documents required to complete their application

(b) Each applicant must reserve its name by completing TPA Form 1. The name of the entity on TPA Form 1 must agree in complete detail with the actual legal name of the applicant. A TPA shall transact business in its own name, which shall not closely resemble the name of any other insurer or TPA doing business in this state. If the name does resemble the name of any other insurer or TPA, the applicant TPA may do business under a trade name. If a trade name is to be used in this state, the applicant must complete TPA Form 1A to reserve the use of the trade name

(c) One complete, originally signed copy of each statement, notice, form, or application, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner of insurance and addressed to Third Party Administrator Unit, Mail Code 105-6A, Texas Department of Insurance, 333 Guadalupe, P O Box 149104, Austin, Texas 78714-9104

(d) Statements, notices, forms, and applications should be prepared on paper 8 1/2 inches by 11 inches in size. All copies of any statement, notice, application, exhibit, or financial statement shall be clear, easily readable, and suitable for microfilming and photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on microfilm and photocopies. Statements, notices, and applications shall be stated in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with a state-

ment, notice, or application is in a foreign language, it shall be accompanied by an accurate English language translation, and any monetary value other than in United States currency shall be converted into United States currency and the rate of exchange used shall be as of the date of the financial statement filed by the applicant.

§7.1606. Exemption from Licensing for Certain Administrators.

(a) An administrator who is acting solely as the administrator of employee benefit plans described in 29 United States Code §1003(a) is exempt from regulation under the Insurance Code, Article 21.07-6. This exemption shall not apply to administrators of multiple employer welfare arrangements described in 29 United States Code, §1144(b)(6)(A)(ii). Administrators who solely administer employee benefit plans as described in 29 United States Code, §1003(a) must request and receive exempt status from the Texas Department of Insurance. To receive exempt status, an administrator must:

(1) complete and submit a request for ERISA exemption and registration form on TPA Form 7; and

(2) obtain from the employer or employee organization establishing the plan a complete description of the plan, on TPA Form 7A for all plans serviced by the administrator.

(b) Administrators will be notified, in writing, of the approval or denial of the request for exemption. There shall be no filing fee for the filing of a request for exemption. The exemption, if granted, shall last for 12 months from the date the exemption was granted. Upon expiration of the exemption, an administrator must file for new exemption status. Any subsequent exemption filings must contain the required documents submitted with the initial exemption request.

§7.1607 Identification and Reporting Requirements for Certain Insurers and Health Maintenance Organizations

(a) An insurer who otherwise collects premiums or contributions from or adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state may not act as or hold itself out as an administrator unless it has notified the commissioner of its intent to do business under the Insurance Code, Article 21.07-6, except to the extent its operations or activities are exempt as described in subsection (b) of this section.

(b) Exempt operations or activities are those operations described in paragraphs (1) and (2) of this subsection which exclusively consist of either:

(1) an insurance company which is collecting premiums for or adjusting or settling claims under its own insurance policies or annuities;

(2) a health maintenance organization authorized to operate in this state under the Texas Health Maintenance Organization Act for the following purposes:

(A) collecting revenues on its own behalf for evidences of coverage that it has issued and delivered under state law;

(B) adjusting or settling claims under evidences of coverage issued and delivered by it under state law, including the contracting with and payment to providers for performing services, verification of eligibility, and subrogation;

(C) collecting premiums, adjusting, or settling claims for insurance which was issued incidental or supplemental to its lawfully issued and delivered evidences of coverage; and

(D) performing any other activity that is specifically regulated by the Texas Health Maintenance Organization Act, or exempt under this Act or through operation of federal law.

(c) Insurers specifically described in subsection (a) of this section are subject to all the provisions of this subchapter except §7.1603 of this title (relating to Application for Certificate of Authority), §7.1605 of this title (relating to Application Procedures), §7.1612 of this title (relating to Supplemental Information/Annual Report), and §7.1613 of this title (relating to Fidelity Bond) and are subject to any other appropriate statutes and regulations. The following provisions in paragraphs (1)-(3) of this subsection apply to such insurers.

(1) Each insurer must transact business under the name in which it holds a certificate of authority.

(2) Every insurer that is operating as an administrator must notify the commissioner, on TPA Form 6, of its activities as an administrator prior to commencing operations.

(3) Every insurer shall, on or before March 1 of each calendar year, prepare and submit to the commissioner an annual report, on TPA Form 6, concerning the insurer's organization, operation, and status as an administrator with respect to Texas risks for the preceding calendar year.

§7.1608 Fees

(a) The commissioner shall collect, and the person affected shall pay to the

commissioner, the fees set forth in paragraphs (1)-(3):

(1) \$500—Filing fee for processing an original application for a certificate of authority,

(2) \$250—On-site visit examination fee as specified in the Insurance Code, Article 21.07-6, §8; and

(3) \$100—Filing fee for annual report

(b) No fee shall be due and owing from administrators applying or registering for exempt status pursuant to §7.1606.

§7.1609. Prohibited Transactions. A TPA may not engage in any of the activities listed in paragraphs (1)-(5) of this section:

(1) misrepresenting the terms, advantages, or nature of its service contract;

(2) making false or incomplete comparisons with the service contracts of other TPAs or persons in order to induce a plan, insurer, or person to enter into, continue, or discontinue any service contract with the TPA;

(3) accepting or rejecting risk other than in compliance with and in accordance with the terms of the written agreement structured under the requirements of the Insurance Code, Article 21.07-6, §11;

(4) publishing or circulating any advertising or informational material, benefit descriptions, certificates, booklets, or brochures pertaining to business underwritten by a plan, insurer, or plan sponsor without the advance written approval of such plan, insurer, or plan sponsor; or;

(5) designing, constructing, or implementing barriers under the written agreement that would unreasonably restrict the right of a plan participant to avail himself of individual life, health, or accident policies or annuities through an agent selected by the plan participant.

§7.1610 On Site Visits

(a) The commissioner or his designated representative is authorized to make a complete on-site visit examination of the affairs of each administrator as often as is deemed necessary.

(b) Administrators will be notified of the scheduled on-site visit by letter, which will specify, as a minimum, the identity of the commissioner's designated representative and the expected arrival date and time.

(c) The administrator must make available during such on-site visits all books and records relating to its operation, including but not limited to, the information spec-

ified in paragraphs (1) and (2) of this subsection:

- (1) complete copies of any written agreements as defined in the Insurance Code, Article 21.07-6, §11; and
- (2) financial statements.

§7.1611. Cease and Desist Orders. The commissioner is authorized pursuant to the Insurance Code, Article 1.10A, to issue emergency cease and desist orders prior to notice and hearing if it appears to the commissioner that the alleged misconduct is fraudulent or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

§7.1612. Supplemental Information/Annual Report.

(a) Every TPA must ensure that the commissioner is informed, on TPA Form 2A, within 20 days, of any change in ownership, officers, directors, partners, sole proprietors, or any other significant change that might have an impact on the TPA's operations or certificate of authority. The Texas Department of Insurance will designate the manner in which the TPA will inform the commissioner of any of the changes specified in this subsection that will have an impact on the TPA's operations or certificate of authority.

(b) Every TPA shall, on or before March 1 of each calendar year, prepare and submit to the commissioner a sworn report on a completed TPA Form 2A, concerning the TPA's organization, operations, and status for the preceding calendar year.

(c) An administrator shall notify and deliver a copy of any order or judgment to the commissioner within 30 days of the occurrence in another state of any one or more of the actions set forth in paragraphs (1)-(4) of this subsection.

(1) suspension or revocation of the administrator's right to do business;

(2) receipt of an order to show cause why its license should not be suspended or revoked;

(3) imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state; or

(4) any of the actions in paragraphs (1)-(3) of this subsection with respect to any of an administrator's partners, directors, officers, or persons who own more than 10% of the voting interest of an administrator.

§7.1613. Fidelity Bond. The fidelity bond, as required by the provisions of the Insurance Code, Article 21.07-6, §6, will be

equal to at least 10% of the amount of total funds handled during the preceding year or, if no funds were handled during the preceding year, 10% of the amount of funds reasonably estimated to be handled during the current calendar year. In no event will the fidelity bond be less than \$10,000 nor will a fidelity bond be required in excess of \$500,000. Funds handled will be as defined in the Insurance Code, Article 21.07-6, §6(d).

§7.1614 Maintenance Tax. Each administrator shall annually pay a maintenance tax on its correctly determined administrative or service fees with respect to risks located in this state. The maintenance tax rate will be determined annually, but may not exceed 1.0%. Each administrator shall complete and submit the maintenance tax on a tax form prescribed by the Office of the Texas Comptroller of Public Accounts.

§7.1615. Severability. If any section or portion of a section this Subchapter P is held to be invalid for any reason, all valid parts are severable from the invalid parts and remain in effect. If any section or portion of a section is held to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. To this end, all provisions of §§7.1601-7.1614 of this title (relating to Licensing and Examination of Third party Administrators) are declared to be severable.

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

Issued in Austin, Texas, on April 20, 1994

TRD-9439500

D J Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption May 30, 1994

For further information, please call (512) 463 6327

◆ ◆ ◆
Subchapter P. Third Party Administrators; Examinations; Licenses

• **28 TAC §§7.1601-7.1613**

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

The Texas Department of Insurance proposes the repeal of §§7.1601-7.1613, concerning the regulation, examination, and

licensing of third party administrators. The repeal of this subchapter is necessary to enable the commissioner simultaneously to adopt a new subchapter which replaces the repealed sections with other provisions concerning the regulation of third party administrators. This repeal and adoption of a new subchapter is necessary to bring the regulation by the Texas Department of Insurance into accord with ERISA. ERISA provides exclusive federal jurisdiction over regulation of employee benefit plans described in 29 United States Code, §1003(a), and preempts any state regulation that "relates" to such plans. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new sections which would replace those sections proposed for repeal.

Beverly McVey, director of the licensing group, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal implications for state or local government or small business as a result of enforcing or administering the repeal, and there will be no effect on the local employment or local economy

Ms. McVey also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that regulation by the Texas Department of Insurance will accord with ERISA. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal must be submitted within 30 days after the publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment is to be submitted to Beverly McVey, Director, Licensing Group, Texas Department of Insurance, Mail Code 107-1B, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 21.07-6, 1.02, 1.03A, and 1.04C, and the Government Code, §2001.004, et seq Article 21.07-6 authorizes the State Board of Insurance to promulgate reasonable rules and regulations that are appropriate to accomplish the purposes of the Article regulating Third Party Administrators. This authority is interpreted to be delegated to the Commissioner of Insurance under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, which provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02 Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. Article 1.04C of the Insurance Code, as enacted in House

Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Government Code, §2001.004 et seq (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following articles are affected by this repeal: §§7.1601-7.1613, Insurance Code, Article 2107-6.

§7.1601 Definitions

§7.1602. *Forms Relating to Regulation of Administrators Under the Insurance Code, Article 2107-6.*

§7.1603 *Application for Certificate of Authority*

§7.1604 *Application Denial, Suspension, Cancellation or Revocation.*

§7.1605 *Application Procedures.*

§7.1606 *Identification and Reporting Requirements for Certain Insurers and Health Maintenance Organizations as Described in the Insurance Code, Article 2107-6, §24*

§7.1607 *Fees*

§7.1608 *Prohibited Transactions*

§7.1609 *On site Visits*

§7.1610 *Cease and Desist Orders*

§7.1611 *Supplemental Information Report*

§7.1612 *Fidelity Bond*

§7.1613 *Maintenance Tax*

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

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

Issued in Austin, Texas, on April 21, 1994

TRD-9439591

D. J. Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption May 30, 1994

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

Motor Vehicles

• 30 TAC §§114.3, 114.5, 114.6

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §114.3, concerning Inspection Requirements, §114.5, concerning Exclusions and Exceptions; and new §114.6, concerning Hardship Waiver Eligibility Criteria. A revised control strategy which specifies the technical, administrative, and enforcement provisions of the Inspection/Maintenance (I/M) program is being proposed concurrently. The amended sections, new section, and control strategy are proposed as a revision to the State Implementation Plan (SIP) for the control of ozone in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso nonattainment areas. These revisions are necessary under the 1990 Federal Clean Air Act Amendments and the subsequent November 5, 1992, I/M program rulemaking by the U.S. Environmental Protection Agency (EPA) which require the establishment of I/M programs in moderate, serious, and severe ozone nonattainment areas and carbon monoxide nonattainment areas.

The amendments are needed to provide a more cost effective I/M program, to allow EPA to make a finding that the I/M SIP meets the requirements of the Federal Clean Air Act Amendments of 1990, and to clarify the intent of and/or eliminate conflict between the SIP, Chapter 114, and the contract for operating inspection facilities. The purpose of this program is to reduce in-use automobile evaporative and exhaust emissions.

The proposal amends §114.3 to provide a definition for uncommon part, remove the 25% emissions reduction requirement for minimum expenditure waivers, exempt vehicles with antique license plates from the I/M program requirements, provide conditions for voluntarily testing at fleet facilities and dealerships for a fee two times the standard test fee in the program area, establish the requirements for voluntary certification of repair technicians and repair facilities, establish a \$25 annual test fee for certified repair technicians of Texas (CERTTs), require a motorist whose vehicle has failed an emissions test to submit a completed vehicle emissions repair report (VERR) before receiving a retest, establish that covered fleet vehicles not registered by the Texas Department of Transportation must be in compliance by December 31 of the year the vehicle was scheduled for testing, estab-

lish a grace period until January 1, 1995, for repairs for waivers to be performed by CERTTs; and establish reciprocal compliance and alternative scheduling.

Proposed amendments to §114.5 change the word "waiver" to the word "exclusion." These revisions are needed to reflect the title to the section which allows exclusions to §114.1 and to eliminate conflict with the waiver provisions in §114.3.

The proposed new §114.6 establishes hardship waiver eligibility criteria and requirements.

In addition to the proposed changes corresponding to the rules, the proposed SIP revisions also clarify that minimum expenditure waiver is limited to one test cycle while one-time hardship waivers are limited to once in the life of the vehicle; clarify that the referee facilities will be open 48 hours a week; establish that 60 days is the length of time that a motorist whose vehicle fails an out-of-cycle or remote sensing test has to repair the vehicle; change the method that TNRCC will use to comply with EPA's Final Rule 51.369 to training assessment instead of curriculum development; and provide a definition for tactical vehicle. The proposed SIP revisions also delete the requirement for Plumblesmo Test in the current I/M emissions test in Dallas and Tarrant counties beginning July 1, 1994 and in El Paso County beginning October 1, 1994.

Stephen Minick, Budget and Planning Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government will be an anticipated increase in cost of approximately \$379,000 in 1995 and \$340,000 in each of the years 1996-1999 related to oversight of the certification of facilities and repair technicians. Revenues to the state will increase by an anticipated \$37,500 in 1995, increasing progressively to \$87,500 in 1999, based on the projected number of persons to register as certified emissions repair technicians at a cost of \$25 per individual per year. There are no significant fiscal implications anticipated for local government.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be reduced aggregate emissions from vehicles, improved emission-related repairs, improved consumer protection, and improved customer convenience in the Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and El Paso areas. The sections will have an effect on small businesses. The rules set forth the current statutory authority that allows fleet facilities and dealerships the option of vehicle emissions testing at their facilities at a fee equal to two times the standard test fee that is applicable to the program area.

This effect will vary with the rate applicable to the program area and with the number of vehicles to be tested. These sections do not change the anticipated costs for businesses and persons for the biennial inspection of vehicles registered in each of the I/M program areas. These sections as proposed will result

in a cost savings in the inspection fees and associated repairs for owners of vehicles with antique license plates, since the proposed rules exempt these vehicles. There is no anticipated economic cost to persons who are required to comply with the sections as proposed, other than those costs previously identified.

Public hearings on this proposal are scheduled for the following times and places: May 23, 1994, 7:00 p.m., Houston-Galveston Area Council, Second Floor, Conference Room A, 3555 Timmons Lane, Houston; May 24, 1994, 7:00 p.m., John Gray Institute, 855 Florida Avenue, Beaumont; May 25, 1994, 6:00 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; and May 26, 1994, 7:00 p.m., Irving Central Library, Auditorium, 801 West Irving, Irving.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC central office in Austin no later than June 3, 1994. Material received by the Mobile Source Division by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Mobile Source Division of the TNRCC located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC regional offices. For further information, contact Sherry L. Bryan at (512) 239-1994.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-1457. Requests should be made as far in advance as possible.

The amendments and new section are proposed under the Texas Clean Air Act (TCAA), the Texas Health and Safety Code, §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments and new section affect Health and Safety Code, §382.017.

§14.3 Inspection Requirements

(a) Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC), the terms used by the TNRCC have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(11) (No change)

(12) Uncommon part—An uncommon part is defined as one that takes more than 30 days for expected delivery and installation, and a motorist can

prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle registration.

(b) No person may operate any motor vehicle which does not comply with:

(1) (No change.)

(2) the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP; and

(A) has obtained a valid vehicle emissions certificate (VEC) from an inspection facility that is marked "Registration Authorized"; or

(B) has completed the requirements for reciprocal compliance; or

(C) has completed the requirements for an alternative schedule and has obtained a valid VEC through the Managing Contractor at a referee facility.

(c) No person may issue or allow the issuance of

(1) (No change)

(2) a Vehicle Emissions Certificate (VEC), as authorized by the TNRCC, unless.

(A) (No change)

(B) reciprocal compliance is established in accordance with all vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP. A motorist shall submit an original vehicle emissions inspection document to a referee inspection facility. If the inspector determines that the document fulfills the requirements of the program area in which the motorist intends to register a motor vehicle, the motorist shall receive a VEC upon remittance of any applicable fees, or

(C) an alternative schedule is established in accordance with the procedures contained in the revised Texas I/M SIP. To obtain the alternative schedule, the motorist or registered vehicle owner shall:

(i) submit documentation to the Managing Contractor's area headquarter office establishing that the vehicle is continuously operated entirely outside of an I/M program area and that it is not feasible to return the vehicle for emissions testing prior to the expiration of registration;

(ii) provide a date within the next 12 months that would

establish a feasible time to return the vehicle for testing; and

(iii) agree to obtain a valid VEC marked "Registration Authorized" by the feasibility date that was established in the application. If the inspector determines that the documentation fulfills the requirements for alternative scheduling, upon remittance of any applicable fees, the motorist shall receive a VEC and an alternative scheduled date by which time the motorists must submit the vehicle for emissions testing.

(d) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen VECs, vehicle emission repair reports (VERRs), vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

(e) No person may own, operate, or allow the operation of a fleet vehicle primarily operated in a program area, unless the fleet vehicle has complied with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP. An owner or operator of a fleet vehicle exempted from the payment of a registration fee and issued a specially designated license plate or otherwise not required to be registered in a program area by the TxDOT shall comply with the following requirements specific to such fleets:

(1) (No change)

(2) register with the TNRCC by March 1, 1994, and shall provide by that date information on each vehicle including, but not limited to, all data required for the registration of the fleet vehicle by the TxDOT and other information specified on forms provided by the TNRCC, {and}

(3) (No change)

(4) update the vehicle registration database reflecting any additions, deletions, or other changes to the covered vehicles by December 31 of each year; and

(5) submit vehicles for testing and repair, if necessary, to obtain a valid VEC stating "Registration Authorized" by December 31 of the year the vehicle was scheduled for testing.

(f)-(j) (No change)

(k) A motorist whose vehicle has failed an emissions test must have emission-related repairs performed and must submit a properly completed VERR in order to receive a retest, a minimum expenditure waiver, or a time extension waiver.

(l)(4) A motorist may apply to the Managing Contractor at a referee inspection facility for waivers which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection. For the minimum expenditure and time extension waiver, the motorist may apply only once for each type of waiver for each testing cycle and shall pay any applicable processing fee. For the one-time hardship extension waiver, the motorist may apply once for the lifetime of the vehicle and shall pay any applicable processing fee.

(1) A Minimum Expenditure Waiver may be granted in accordance with the following conditions.

(A) The motor vehicle must have a valid VEC, a valid VERR, and have failed a retest after repairs, provided the following conditions have been met:

(i) in enhanced program areas, repairs shall require a minimum expenditure of at least \$450, adjusted annually; or

(ii) in basic program areas, repairs shall require a minimum expenditure of at least \$75 for pre-1981 model year vehicles and at least \$200 for 1981 and later model year vehicles; and

(iii) after January 1, 1995, repairs shall be performed by a TNRCC voluntarily certified repair technician of Texas (CERTT) at a voluntarily certified repair facility of Texas (CERFT); and

(iv) repairs shall be directly applicable to the cause for the test failure.

(v) repairs shall have directly reduced emissions by 25% of the difference between emissions during the initial test and the emissions standards contained in the revised Texas I/M SIP]

(B) A Minimum Expenditure Waiver shall be valid for the remaining portion of the testing cycle.

(2) A one-time hardship extension waiver may be granted once in the life of the vehicle in accordance with the following conditions

(A) A motorist must have a valid VEC indicating that the subject vehicle failed the initial emission inspection test.

(B) A motorist shall provide proof in writing to the Managing Contractor at a referee inspection facility that the registered vehicle owner(s) meets the hardship eligibility criteria established by the TNRCC in §114.6 of this title (relating to Hardship Eligibility Criteria). [or

at least one of the following criteria to establish financial hardship:]

(i) the motorist's family income is below the poverty level as defined by the Office of Management and Budget Poverty Index;

(ii) the motorist's family receives financial assistance pursuant to the Texas Human Resources Code, Chapter 31, Financial Assistance Programs Code;

(iii) the motorist's family receives food stamp assistance as determined by the Texas Department of Human Services in accordance with the Food Stamp Act Amendments of 1977; or

(iv) the motorist's family earns not more than 40% of the area median income as defined in the Comprehensive Housing Affordability Strategy of the Texas Department of Housing and Community Development.]

(3) A Time Extension Waiver may be granted in accordance with the following conditions.

(A) The motorist can document that emissions-related repairs cannot be completed before the expiration of current registration or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part. [An uncommon part is defined as one that takes more than 30 days for expected delivery and installation and a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers, will exceed the remaining time prior to expiration of the vehicle registration.]

(B) The motorist shall provide to the Managing Contractor at a referee inspection facility an original VEC indicating that the vehicle failed the emissions test and an original itemized documentation, by a CERTT at a CERFT (after January 1, 1995), indicating parts ordered, source of parts, including address and phone number, [prepayment, if applicable, and] expected delivery, and installation dates of uncommon parts before a Time Extension Waiver can be issued

(C) The motorist shall return the motor vehicle to the referee inspection facility for a retest and verification of repairs upon completion of the repairs.

(D) The motorist shall provide to the Managing Contractor at the referee facility [TNRCC], prior to expiration of a Time Extension Waiver, adequate documentation that one of the following conditions exists:

(i) the motor vehicle passed a retest;

(ii) the motorist qualifies for a Minimum Expenditure Waiver or Hardship Waiver; or

(iii) the motor vehicle shall no longer be operated in the program area.

(E) The length of a Time Extension Waiver shall depend upon expected delivery and installation dates of uncommon parts as determined by the Managing Contractor, but shall not exceed 90 days [three months].

(4) If a motorist or other entity leases or offers for lease, sells or offers for sale, trades or offers for trade, or otherwise transfers the title of a motor vehicle during the time any waiver is in effect, the motorist or entity shall notify the prospective owner or operator in writing of the waiver[,] and that the VEC is marked "Registration Denied. "

(5) A motorist shall use any available warranty coverage to obtain needed repairs before expenditures shall be used in calculating the minimum repair expenditures to qualify for a Minimum Expenditure [or a Hardship Waiver] , unless the warranty remedy has been denied in writing from the manufacturer or authorized dealer.

(6) A motorist may not use or attempt to use expenditures for tampering-related repairs in calculating the minimum repair expenditures to qualify for a Minimum Expenditure [or a Hardship] Waiver. Tampering includes, but is not limited to, engine modifications, emission system modifications, or fuel-type modifications not approved by the TNRCC or EPA.

(7) A motorist shall provide to the Managing Contractor at the referee inspection facility an original retest VEC, a properly completed VERR provided by a CERTT at a CERFT, and an original itemized receipt indicating the emissions-related repairs performed for the issuance of a Minimum Expenditure [or a Hardship] Waiver A motorist shall provide to the Managing Contractor at the referee inspection facility an original retest VEC and an original itemized receipt indicating the purchase or payment, and expected delivery and installation dates of uncommon parts for the issuance of a Time Extension Waiver.

(m)(1) If the vehicle has failed an I/M test and the VEC is marked "Registration Denied," a [A] motorist may petition the Executive Director of the TNRCC for the exemption of a motor vehicle from the requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP, upon demonstration

that the motorist has taken reasonable measures to comply with such requirements and that such exemption shall have minimal impact on air quality. If the Executive Director approves the petition, the motorist may receive an exemption upon remittance of any applicable fees.

(n) If a motorist has obtained vehicle registration using a VEC issued through alternative scheduling, one of the following conditions must be met:

(1) the vehicle must be returned to the program area, submitted for emissions testing, and receive a VEC marked "Registration Authorized" prior to the alternative scheduled date; or

(2) if the vehicle is returned to the program area prior to the alternative scheduled date, the vehicle must be submitted for testing within 30 days of returning to the program area.

(o)[(m)] The requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP shall be applied to all 1968 and newer model year gasoline-powered motor vehicles, excluding motorcycles [.] and antique vehicles (as defined by the Texas Department of Transportation registration, specifically as defined in Texas Civil Statutes, Article 6675a, concerning registration of antique passenger cars and trucks; license plates; renewal; penalty.) Alternatively fueled or dual-fueled vehicles will be tested in the gasoline mode, if the vehicle can be operated on gasoline.

(p) [(n)] The requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP shall be applied in the program areas in accordance with the following schedule

(1) the basic program in Collin, Dallas, Denton, Jefferson, Orange, and Tarrant counties beginning on July 1, 1994,

(2) the enhanced program in Brazoria, El Paso, Fort Bend, Galveston, Harris, and Montgomery counties beginning on January 1, 1995, and

(3) the enhanced program in Chambers, Liberty, and Waller counties beginning on January 1, 1997.

(q) No person may act as or offer to perform services as a CERTT, as defined in this chapter, without first obtaining an annual certification from the TNRCC.

(1) The following requirements must be met for CERTT certification to be issued and renewed:

(A) demonstration to the National Institute of Automotive Service Excellence (ASE) of a minimum of three

years of full-time automotive repair service experience;

(B) certification in the following four tests offered by the ASE: Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and Advanced Engine Performance Specialist (APES) Test (or the APES Test successor);

(C) receipt by TNRCC of a completed CERTT application; and

(D) receipt by TNRCC of payment of the \$25 annual registration fee.

(2) A CERTT shall perform the following in his duties:

(A) oversee all emissions related repairs that are performed at the facility;

(B) certify the emissions related repairs on the VERR form to be submitted to the TNRCC;

(C) complete and certify the VERR form for customers;

(D) comply with the following notification provisions:

(i) notify TNRCC within 14 days of changes in employment from a CERFT; and

(ii) notify the TNRCC of changes in the ASE testing status; and

(E) when issued a TNRCC CERTT emblem patch, wear this patch on a visible part of clothing.

(r) No owner or operator of a repair facility may represent a facility to be, or use a facility as a CERFT, as defined in this chapter, without first obtaining or renewing an annual certification from the TNRCC.

(1) All the following conditions must be met for CERFT certification to be issued:

(A) employment of a minimum of one full-time CERTT;

(B) possession of all the following functional equipment:

(i) ammeter;

(ii) alternator/regulator/starting circuit tester (all functions);

(iii) battery load tester;

(iv) compression tester;

(v) cooling system tester;

(vi) dwellmeter;

(vii) engine analyzer;

(viii) exhaust gas analyzer (with at least hydrocarbon (HC), carbon monoxide (CO), and carbon dioxide (CO₂) measurement capability),

(ix) fuel pressure/pressure drop tester (both functions);

(x) fuel quality tester;

(xi) ohmmeter;

(xii) propane gas bottle (for carburetor lean drop check);

(xiii) repair reference information;

(xiv) scanner;

(xv) tachometer;

(xvi) timing light;

(xvii) vacuum/pressure gauge (both functions);

(xviii) vacuum pump;

and (xiv) voltmeter; and

(C) receipt by TNRCC of a completed CERFT application.

(2) The owner or operator of a CERFT shall comply with the following requirements:

(A) maintain the equipment referenced in paragraph (1)(B) of this subsection in proper operable condition;

(B) employ a minimum of one CERTT, performing duties in compliance with these regulations, at all times that the facility is performing emissions-related repairs;

(C) prominently display the TNRCC CERFT sign. The owner or operator of a CERFT must remove this sign any time that the requirements of this subparagraph are not being met; and

(D) comply with the following notification provisions:

(i) notify the TNRCC of changes in employment of a CERTT;

(ii) notify the TNRCC anytime the CERFT does not meet the requirements of this paragraph; and

(iii) notify the TNRCC of a change of business address.

(s) A CERTT or CERFT issued under this chapter may be suspended or revoked for good cause at any time by order of the Commission after notice and opportunity for public hearing is provided pursuant to the Texas Government Code, §2001.054. Good cause includes, but is not limited to, failure to comply with the certification and operating conditions and requirements contained in subsections (q) or (r) of this section.

(t) The TNRCC may refuse to issue a certification under subsections (q) and (r) of this section if the applicant has a history of noncompliance with the provisions of subsections (q) or (r) of this section or for other good cause shown.

(u) For a per-vehicle fee remitted by a fleet operator to the Managing Contractor that equals twice the test fee established for the I/M program area, the Managing Contractor may agree to perform testing at a fleet facility or dealership under one of the following conditions:

(1) using mobile test equipment;

(2) using test equipment owned by the fleet or dealership but calibrated and operated by the Managing Contractor's personnel; or

(3) using test equipment owned and operated by the managing contractor and installed at the fleet or dealership facility.

(v) The Commission will determine an appropriate portion of the fee collected from fleet operators, dealers, or motorists for testing performed under subsection (u) of this section that may be remitted by the Managing Contractor to each fleet facility or dealership.

§114.5 Exclusions and Exceptions

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

(c) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the Executive Director for an exclusion [a waiver] from the provisions of §114.1(a) and (b) of this title. Such an exclusion [a waiver] may be granted if the following conditions are met

(1) (No change.)

(2) The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the exclusion [waiver] shall be specified in the application

(3) A demonstration shall be made in the application that provides ade-

quate justification for special consideration of the specified vehicle under the provisions of this chapter. This demonstration shall include, but shall not be limited to, the following information necessary to determine that the use of certain pollution control devices or systems on the vehicle to be covered by the exclusion [waiver] would result in a clear danger to persons or property or would be detrimental to the purpose for which the vehicle is intended to be used.

(A)-(F) (No change.)

(4) The applicant shall agree and ensure that a copy of the waiver shall be kept with the vehicle at all times and shall be available for inspection by representatives of the TNRCC, the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion [waiver] shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS [Texas Department of Public Safety].

(5) The applicant shall agree and ensure that the exclusion [waiver] shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion [waiver] when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion [waiver] application. The Executive Director shall be informed in writing prior to the change of ownership or usage

(6) The applicant shall comply with all special provisions and conditions specified by the Executive Director in the exclusion [waiver]

(d) (No change.)

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met

(1) The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) (No change.)

(f) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.1(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle

is offered for sale or displayed for public examination.

§114.6. Hardship Eligibility Criteria. No person shall be eligible for a hardship waiver extension from §114.3 of this title (relating to Inspection Requirements) for the vehicle emission Inspection/Maintenance (I/M) requirements and receive a vehicle emissions certificate marked "Registration Authorized" unless the following conditions are met:

(1) the hardship waiver applicant is the owner of the vehicle that has failed an I/M test;

(2) the waiver applicant signs a form that authorizes the Department of Human Services (DHS) to disclose the applicant's DHS case number;

(3) DHS staff verifies to the referee facility that the applicant is a recipient of Food Stamps assistance or Aid to Families with Dependent Children (AFDC); and

(4) the Managing Contractor at the referee facility verifies and compares the applicant's photo identification, the vehicle's vehicle identification number, and the DHS case number.

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

Issued in Austin, Texas, on April 15, 1994.

TRD-9439700

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: July 27, 1994

For further information, please call: (512) 239-0615

TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 181. Bond Review Board

Subchapter B. Public School Facilities Funding Program Rules

- 34 TAC §§181.21, 181.23, 181.25, 181.27, 181.29-181.31, 181.33, 181.35

The Texas Bond Review Board proposes amendments to §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, 181.35, and new §181.30. The amendments and the new section clarify procedures and incorporate statutory amendments to the program result-

ing from Acts of the 73rd Legislature, House Bill 1608, enacted in June of 1993.

Albert L. Bacarisse, executive director, Bond Review Board, has determined that for each year of the first five years that the amended and new sections are in effect, there will be negligible fiscal implications to units of state government as a result of enforcing or administering the amended and new sections.

Mr. Bacarisse also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections will be from simplifying and clarifying procedures for participating in the Program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to Sonja Suessenbach, Director, Public School Facilities Funding Program, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amendments and new section are proposed under Acts of the 71st Legislature, Regular Session, 1989, Chapter 815, §5(d), which gives the Texas Bond Review Board the authority to adopt rules governing administration of the Public School Facilities Funding Act.

The amendments and new section affect Texas Civil Statutes, Title 22, Article 717t.

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

Agreement—The document signed by the board and the district which specifies the terms and conditions of program financing.

Authorized representative—An officer or employee of the district [One or more individuals] designated by the governing body of a school district in its application. An authorized representative may act on behalf of the district to the extent authorized by the governing body and to the extent provided by law.

Board—The Bond Review Board created by Chapter 1078, Acts of the 70th Legislature, 1987 (Article 717k-7, Texas Civil Statutes).

Capital assets—

(A) Permanent fixtures, including mechanical or electrical equipment, of an instructional facility; and

(B) other property that constitutes furnishings or equipment of an instructional facility.

District—Any duly-constituted public school district in the state of Texas.

Fund—The school facilities aid fund created by Section 6 of the Public School Facilities Funding Act, including any accounts created within it.

Instructional facility—Real property, a building or other improvement to real property, or a fixture that is used predominantly for teaching or is required by state law.

Loan Committee—A six-member body, one member to be appointed by each of the five board members and one member designated by the Central Education Agency.

Local Account—A fund within a depository account designated by a district exclusively for receipt of requisitioned funds.

Participating District—A district which has received financing under the program.

Program—The financing program authorized by the Public School Facilities Funding Act.

State Bonds—Any debt instruments issued by the treasurer to fund the program

§181.23. Application Procedures.

(a) The board will notify districts when applications are being accepted for financing of new projects or refinancing of existing projects. After such notification by the board, districts may apply to the board at any time. Each application shall be immediately referred to the loan committee. The loan committee will make a written recommendation to the board within twenty working days of receipt of a completed application. Such recommendation will include approval or disapproval of specific projects and the estimated costs thereof. The board will act on an application no later than the next regularly scheduled board meeting for which such item may be properly posted. Applications from districts which have not held an election may only receive contingent approval by the board, subject to voter approval of the bonds or loan. Applications approved on a contingent basis will be funded following voter approval and a determination by the board that no material changes have occurred since contingent approval in the district's ability to repay the approved financing. Contingent approvals shall lapse after six months from the date of board approval, if no election has been held. The board will notify districts regarding state revenue bond issue schedules, including closing dates for applications due, loan committee and board application approval dates, and the dates for distribution of funds. The board may cancel a financing schedule due to market or other economic conditions.

(b) The board may approve all or a part of the application as recommended by the loan committee. Board approval may specify parameters relating to the financing as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

(c) The board will notify the district of the approval or disapproval of its application by telephone and will mail written notification by certified mail within three working days of board action. Written notification of the approval will be accompanied by the agreement to be signed by an authorized representative of the district and returned to the board by certified mail. A district may reject all or part of the financing approved, but not yet issued, and will be deemed to have rejected all funding if it fails to timely return the signed agreement. A district may not reject a part or parts of the financing approved by the board if such rejection would cause the financing to fail to meet board rules regarding eligible costs.

(d) The application must be signed by the president of the district's school board and the superintendent of the schools, or duly authorized representatives thereof. Applications submitted prior to voter approval must be accompanied by a resolution of the district's board authorizing submission of the application. Applications must include the following

(1) name and address of the district;

(2) name and telephone number of an authorized representative and of school district's attorney;

(3) name of paying agent/local bank, telephone number, contact person, and wire number;

(4) names of the district's school board members;

(5) current credit ratings, if any,

(6) itemization of the proposed use or uses of loan or bond proceeds,

(7) detailed description of the project or projects to be financed or refinanced, information on each project to include

(A) whether it is, or will be, used for teaching, required by state law (to include citation), or for some other purpose (to include detailed description),

(B) the projected cost,

(C) the estimated useful life of the project and selected components (furnishings, equipment, etc.) as detailed in the application form, and

(D) what percentage of time during a 12-month school year the project is, or will be, used for extracurricular activities,

(8) letter certifying that the project or projects were duly authorized and approved by the school board;

(9) if the election has been held, a copy of the ballot proposition and any other order entered or action taken by the district's board which specifies the purposes for which approved bond proceeds may be used;

(10) date project or projects approved by voters or expected election date;

(11) an identification of all bonded indebtedness presently outstanding, by series name and principal amount (both the original principal amount and the currently outstanding amount) and the debt service schedule associated with each series;

(12) the district's annual audited financial reports for the most recent three years;

(13) requested loan payback period, and if application is for the refinancing of an existing project;

(14) name, [and] series and maturities of bonds to be refunded;

(15) paying agent for the bonds to be refunded; and

(16) additional information as requested by the board or loan committee.

(e) All communications regarding a district's application or qualification for aid shall be directed to the executive director of the board.

§181.25. District Qualifications.

(a) In approving an application, the board must find that a district has the ability to repay the loan granted or bonds purchased.

(b) A district qualifies for participation in the program if it meets the following criteria:

(1) The district has a property-wealth per student ratio below the statewide average; or

(2) The district has a property-wealth per student ratio below 1.25 times the statewide average, and in addition meets one of the following:

(A) The district has an [a local] effective debt service tax rate greater than the statewide average for the latest year for which data is available;

(B) the district has in the last year requested and obtained a waiver of a legally required teacher-to-student ratio;

(c) If the application is for the refinancing of an existing project, the proposed financing must result in present value savings in percentage terms of at least 3 [5]

% based on the total refunded par amount, and cash and present value] savings in dollar terms of at least \$35,000 per total refunded par amount \$25,000 per issue refunded] in order for the district to qualify for participation in the program. The calculation of savings for purposes of this requirement will be the responsibility of the board.

(d) If it is determined that funds are not available to fund all requests from districts meeting the qualifications listed in subsection (b) of this section, the board will prioritize applications based on the degree to which the qualifications are met.

(e) Prior to submitting a formal application a school district may request from the board an advisory statement as to whether the board will consider purchasing the district's bonds. The request should include a description of the project to be financed or bonds to be refinanced

§181.27. Eligible Projects and Costs. Costs which are eligible for financing under this program include all or any portion of the cost of acquisition, construction, renovation, major repair, remodeling, retrofitting or improvement of qualifying [installation, reconstruction and improvement of] capital assets and instructional facilities; the refinancing of any outstanding obligations, mortgages or advances made, issued or given for financing costs of capital assets and instructional facilities; or bond issuance costs associated with eligible project financings or refinancings. A district which has had funds previously approved for financing or refinancing specific projects may apply to the board to redirect funds to a different project made necessary by unanticipated events. Capital assets and instructional facilities qualify if the average useful life of such capital assets and instructional facilities meets or exceeds the final maturity of bonds purchased by the Board, and they meet standards for reasonable costs set by the Board Construction or renovation projects contracted for after September 1, 1992, shall meet requirements specified by 34 TAC Chapter 61, Subchapter H, relating to School Facilities Standards, as amended, or successor rules. Construction or renovation projects contracted for before September 1, 1992, may demonstrate reasonable cost standards by confirming that contracts for the construction or renovation of any building were awarded pursuant to competitive bid pursuant to the Education Code, §21.901. [Until such time as the Texas Education Agency adopts facilities standards for public school facilities, compliance with reasonable cost standards for voter-approved projects may be demonstrated by confirming that contracts for the construction or renovation of any building

were awarded pursuant to competitive bid pursuant to §21.901 of the Education Code.] Decisions regarding the design, engineering and materials used in voter-approved projects shall rest with the school district.

§181.29. State Bond Issuance.

(a) The board will authorize the treasurer to issue bonds necessary to fund agreements between the board and districts

(b) The treasurer will consider market and other economic conditions in timing the issuance of obligations and the board will coordinate the issuance with the district.

(c) The board reserves the right to limit the use of proceeds of the initial issuance of bonds and any subsequent issuance of bonds to the refunding of outstanding district bonds and may limit the size of each refunding issue. The board further reserves the right to limit the initial state bond issue to a pilot issuance with minimum and maximum size limitations.

§181.30. Purchase of School District Bonds by the State.

(a) A qualifying district is authorized to borrow from the Fund by selling its bonds to the board.

(1) Qualifying district bonds must be authorized by the district in accordance with applicable law, including approval by the voters of the district if voter approval is required by law.

(2) Qualifying district bonds are not required to comply with Education Code, §20.01, that bonds be sold to the highest bidder.

(3) The school board may designate an officer or employee of the district to act on behalf of the district to set the price, interest rate, and date for the sale of the bonds. Such designation must be pursuant to official action of the school board and made part of the agreement.

(4) Until the bonds have been repaid in full, each qualifying district selling bonds to the board will be required to submit to the board a copy of its annual audited financial statements as soon as they are available.

(b) The board will purchase bonds of qualifying districts as set forth in the agreement

(1) The board will purchase bonds at private sale

(2) The costs of issuing the state revenue bonds will be passed on to the school districts participating in each finance program on a pro-rata basis.

(3) The board, on behalf of the qualifying district, will submit the district's bonds to the Texas Attorney General's Office for approval.

(4) The board will set out in the agreement the documents required for the bond purchase agreement and for closing of the bond sale as well as any other terms and provisions required to purchase the bonds

(5) Should the board find it economically advantageous to refinance the state revenue bonds issued to fund the qualifying bonds purchased, any net savings associated with such refunding will be passed along to the district on a pro-rata basis.

§181.31 Finance Administration

(a) All fund transfers shall be sent directly to the state treasury as specified in the bond documents. Specialized correspondence may be specified in the bond documents. All other correspondence regarding the purchase or repayment of qualifying district bonds shall be sent to the executive director of the board. [All correspondence regarding the issuance of state bonds shall be sent to the director of public finance programs of the state treasury and not to the board or its members.]

(b) The treasurer will maintain a separate fund for each participating district and may, upon the request of such district, invest each district's proceeds until requisitioned for expenditure. Interest earnings on funds invested in each separate fund will be credited to the appropriate district's account.

(c) A district which is not refinancing may receive all bond proceeds at closing or may, at its option, requisition funds from the treasury as needed. The treasurer will accept requisition requests by telephone, with such requests subsequently confirmed in writing. All requests made before 10 a.m. (Central Time) will be transferred to the district's local account the same day.

(d) A district's program principal and interest payments must be received by the treasury in immediately available funds no later than the close of business on the due date thereof or, if such date is not a business day, by the close of business on the first preceding business day.

(e) For districts that are refinancing outstanding obligations, the treasurer will direct funds used to purchase refunding bonds to the escrow account in accordance with and established by the bond documents.

(f) Interest earned on debt-service payments made by districts prior

to the treasurer making debt-service payments on the state's bonds may be credited to the next payment due by the district in accordance with normal investment allocation procedures.

(g) Should a district fail to make payment on the bonds as required by this section, action will be taken in accordance with §181.33 of this title (relating to Remedies for School District Default).

§181.33. Remedies for School District [Late Payment or] Default. If the state treasurer receives notification from a school district that it will not make a timely payment on a loan made under this program, or if a school district fails to make a timely payment of principal or interest due on a loan made under this program, the state treasurer shall notify the board and the commissioner of education and shall notify the local district in writing by certified mail. The Central Education Agency shall deduct the total amount due to the board or fund, including interest and any applicable late payment charges as of the date of notification, from the foundation school fund payment next due to that school district, including any allocations to that district under Education Code, Chapter 16, and shall continue making the deductions from subsequent foundation school fund payments until the total amount then due has been deducted. [Should a district be more than 15 days delinquent in any payment due under the program, the treasurer shall certify that fact to the board and to the commissioner of education and shall notify the district by certified mail. Upon certification of payment delinquency, the Central Education Agency shall deduct the total payment past due the program from the Foundation School Fund payment or payments next due the defaulting district, including any allocations to that district under the Education Code, Chapter 16.]

§181.35. Permanent School Fund Guarantee. Application forms for the program will address whether the Permanent School Fund (PSF) will be utilized to guarantee the state revenue bonds or the individual bonds of school districts. Use of the PSF guarantee program will require a school district to meet the rules of the PSF guarantee program then in effect.

(a) The board may apply to the commissioner of education for Permanent School Fund Guarantee for all or part of the state bonds.

(b) If principal and interest payments by the districts and the deductions under §181.31 of this title (relating to Finance Administration) are insufficient to

meet the principal and interest payments on state bonds, and such state bonds are guaranteed by the Permanent School Fund, any remaining deficiency shall be paid by the Permanent School Fund. Amounts paid by the Permanent School Fund shall be general obligations of the state until reimbursed by the treasury.

[(c) The treasurer shall immediately thereafter reimburse the Permanent School Fund out of the general revenue fund in an amount equal to the amount paid from it pursuant to this section.

[(d) Late payments the treasury receives from a district will be credited to the fund from which reimbursement of the Permanent School Fund was drawn.]

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

Issued in Austin, Texas, on April 21, 1994.

TRD-9439593

Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Earliest possible date of adoption May 30, 1994

For further information, please call: (512) 463-1741

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter D. Reimbursement Methodology

• 40 TAC §27.413

The Texas Department of Human Services (DHS) proposes an amendment to §27.413, concerning rate setting methodology, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The purpose for the amendment is to modify the reimbursement methodology for ICF-MR Level V children's facilities to ensure adequate payment to care for children in this class.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the amendment. The effect on state government for the first five-year period the section is in effect is an estimated additional cost of \$64,328 for fiscal year 1994; \$14,419 for fiscal year 1995; \$0 for fiscal year 1996; \$0 for fiscal year 1997; and \$0 for fiscal year 1998. There will be no fiscal impli-

cations for local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow the only Level V ICF-MR special children's facility to continue to operate. This facility is dedicated to serving disabled children with mental retardation or a related condition. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Pamela Roberts at (512) 450-4051 in DHS's Rate Analysis Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-126, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. Local DHS field offices have copies of the proposed rules for public review.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposal implements the Human Resources Code, §§32.001-32.042.

§27.413. Rate Setting Methodology

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

(c) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of Texas Department of Human Services (DHS) staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures:

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

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992:

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

(E) Temporary method for determination of ICF-MR Level V alter-

native children's facility rates for the period beginning May 1, 1994. An eligible children's facility is reimbursed in the following manner:

(i) Rates are based on projected per diem costs, not to exceed the current ICF-MR/RC-VIII base rate, including the estimated per diem cost of augmentative communication devices, plus the single highest supplemental rate amount, as specified under §27.415(c) of this title (relating to ICF-MR/RC VIII Experimental Class). The cost-based rates will not include a mark-up or incentive factor.

(ii) Reimbursement for fixed capital assets is in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and building equipment lease expense. The annual use fee is calculated as 14% of the appraised value of buildings, improvements and land, as determined by local taxing authorities. If an appraisal by local taxing authorities is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to ICF-MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The per diem use fee is calculated by dividing the annual use fee by anticipated facility days of service.

(iii) In calculating the projected costs, historical costs are adjusted to reflect anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by DHS to deliver quality services.

(iv) The portion of the Medicaid rate to a provider that represents administrative costs, as collected on the administrative cost area of the Medicaid cost report, is limited to the 90th percentile in the array of administrative costs for all large Level V ICFs-MR.

(v) Any Medicaid payments not expended on Medicaid allowable costs may be recouped by the state.

(vi) This temporary method remains in effect until September 30, 1994, or until formally replaced or modified, whichever comes first.

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

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

Issued in Austin, Texas, on April 22, 1994.

TRD-9439623

Nancy Murphy
Section, Manager, Policy
and Document Support
Texas Department of
Insurance

Proposed date of adoption: July 1, 1994

For further information, please call: (512) 450-3765

Part VI. Texas Commission for the Deaf and Hearing Impaired

Chapter 183. Board Certification Procedures

Subchapter B. Petition for Re- grading

• 40 TAC §183.131

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

The Texas Commission for the Deaf and Hearing Impaired is proposing the repeal of §183.131, concerning petition for regradings. This repeal is necessary to make more efficient use of the resources of the certification program and adopt program policies standard to other state licensing agencies.

David W. Myers, executive director, has determined that there will be no fiscal implications for state or local government as a result of the repeal. Mr. Myers has also determined that the public benefit anticipated as a result of repealing this section will be updated procedures and clarification in the operation of the Board of Evaluation of Interpreters. Standardization of licensing policies will enable the program to service more individuals more effectively. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on this repeal may be submitted to Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hearing Impaired, P.O. Box 12904, Austin, Texas 78711-2904.

The repeal is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hearing Impaired the authority to adopt rules for administration and programs.

§183.131. Petition for Regrading.

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

Issued in Austin, Texas, on April 18, 1994.

TRD-9439712

David W. Myers
Executive Director
Texas Commission for the
Deaf and Hearing
Impaired

Earliest possible date of adoption: May 30,
1994

For further information, please call: (512)
451-8494

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WITHDRAWN RULES

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

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter A. Applications for License

• 7 TAC §25.2

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §51.24(b), the proposed amendment to §25.2, submitted by the Banking Department of Texas has been automatically withdrawn, effective April 23, 1994. The withdrawal as proposed appeared in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9881).

TRD-9439681

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter V. Wildlife Man- agement Association Area Hunting Lease License

• 31 TAC §65.803

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption a proposed amendment to §65.803, which appeared in the February 18, 1994, issue of the *Texas Register* (19 TexReg 1204). The effective date of this withdrawal is April 21, 1994.

Issued in Austin, Texas, on April 21, 1994.

TRD-9439552

Paul M. Shinkawa
Director of Legal Services
Texas Parks and Wildlife
Department

Effective date April 21, 1994

For further information, please call: (512)
389-4419

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Service Requirements

• 40 TAC §§47.2902, 47.2904, 47.2909, 47.2912, and 47.2913, concerning requesting prior approval, critical omissions/errors, physician supervision, service plan changes, and prior approval renewal, in its Primary Home Care Chapter. The text of the proposed amendments appeared in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2704). The effective date of the withdrawal is April 25, 1994.

Texas Department of Human Services (DHS) has withdrawn from consideration the proposed amendments to §§47.2902, 47.2904, 47.2909, 47.2912, and 47.2913, concerning requesting prior approval, critical omissions/errors, physician supervision, service plan changes, and prior approval renewal, in its Primary Home Care Chapter. The text of the proposed amendments appeared in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2704). The effective date of the withdrawal is April 25, 1994.

Issued in Austin, Texas, on April 14, 1994.

TRD-9439725

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

Effective date April 25, 1994

Claims Payment

• 40 TAC §47.3901, §47.3906

The Texas Department of Human Services (DHS) has withdrawn from consideration the proposed amendments to §47.3901 and §47.3906, concerning claims requirements and claims payment reviews and audits, in its Primary Home Care Chapter. The text of the proposed amendments appeared in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2705). The effective date of the withdrawal is April 25, 1994.

Issued in Austin, Texas, on April 14, 1994

TRD-9439726

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

Effective date: April 25, 1994

Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2918

The Texas Department of Human Services (DHS) has withdrawn from consideration the proposed amendment to §48.2918, concerning eligibility for primary home care, in its Community Care for Aged and Disabled Chapter. The text of the proposed amendment appeared in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2706). The effective date of the withdrawal is April 25, 1994.

Issued in Austin, Texas, on April 14, 1994

TRD-9439724

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

Effective date April 25, 1994



ADOPTED RULES

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

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

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §28.8

The Board of Directors of the Texas Agricultural Finance Authority of the Texas Department of Agriculture (the department) adopts an amendment to §28.8, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFE) Loan Guaranty Program, with changes to the proposed text as published in the January 14, 1994, issue of the *Texas Register* (19 TexReg 247). Section 28.8(f) is adopted with changes to clarify that, although the appeals process is being deleted, loan guaranty applicants may still re-apply to the program.

The amendment is adopted to make the loan guaranty applications process more efficient and consistent with other state loan programs, and to reflect the defeat of the constitutional amendment regarding the loan program on November 2, 1993.

The amendment will function by deleting references to the appeals process and by removing specific percentages from the minority provisions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Agriculture Code, §58.023, which provides the TAFE Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFE Loan Guaranty Program, §58.022, which provides the Board with the authority to adopt rules and procedures as necessary for the administration of its programs.

§28.8 Filing Requirements and Consideration of Applications

(a)-(e) (No change)

(f) Denial of qualified application. If the qualified application is denied by the board, the Authority will notify the applicant and the lender in writing, identifying the reasons for denial. Applicants who have

been denied may re-apply to the loan guaranty program.

(g)-(h) (No change)

(i) The Authority shall make a good faith effort to provide loan guaranties to businesses owned by minorities and women.

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 April 20, 1994

TRD-9439522

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: May 11, 1994

Proposal publication date: January 14, 1994

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

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas Chapter 4. Currency Exchange

• 7 TAC §4.6

The Finance Commission of Texas (the Commission) adopts new §4.6 concerning exemptions, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1618).

The 73rd Legislature amended the Act, §3, specifically subsection (c), to narrow the circumstances under which a discretionary exemption from licensing can be granted by the Banking Commissioner of Texas (the Commission). Pursuant to §3(c)(4), however, the exemption is not available to a person engaged in "the business of cashing checks, drafts, or other monetary instruments," a phrase not defined in the Act. Section 4.6 as adopted defines this phrase and will provide the Commissioner, the Banking Department of Texas (the Department), and the public with the guidance necessary to understand the application of the Act, §3(c) and the availability of exemptions thereunder.

Subsection (c) of the Act, §3, makes clear the legislature's intent that the purchase of goods or services with currency of a country or government other than the United States constitutes "currency exchange" for the purposes of the Act. The Commission is of the opinion that the legislature did not intend that a purchase of goods or services by check, draft, or other monetary instrument denominated in a foreign currency, which is collected or cleared through normal banking channels, should constitute "currency exchange" for the purposes of the Act, because the funds associated with the transaction are already in the banking system and their origin may be readily traced. New §4.6 clarifies this ambiguity.

New §4.6(b) provides that a retailer, wholesaler, or service provider is deemed to be engaged in "the business of cashing checks, drafts, or other monetary instruments" if, in the 12-month period immediately preceding the filing of an application for exemption, more than 1.0% of such person's gross receipts was derived, directly or indirectly, from fees or other consideration charged, earned, or imputed from cashing checks, drafts, or other monetary instruments. Such a person is not eligible for exemption.

New §4.6(c) provides an exception to the Act for foreign denominated checks, provided any change given is in the same currency as the check. Repetitive inquiries regarding these types of transactions should diminish.

No comments were received regarding adoption of the new section.

The new section is proposed under Texas Civil Statutes, Article 350, §7, which require that the Commission adopt rules necessary to implement Article 350.

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 April 22, 1994

TRD-9439685

Everette D. Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 475-1300

Part II. Banking Department of Texas

Chapter 10. Trust Companies

• 7 TAC §10.2

The Finance Commission of Texas (the Commission) adopts new §10.2, establishing requirements applicable to trust companies, regarding the physical location of books and records, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1620)

The Banking Commission is charged with conducting a comprehensive examination of each trust company pursuant to Texas Civil Statutes, Article 342-1103, §3. In recent years, issues have arisen regarding whether trust company books and records must be maintained within the State of Texas. This issue has been largely generated by the increasing number of domestic trust companies owned by out-of-state interests, particularly banks and securities firms, that perform or wish to perform centralized data processing functions at locations outside of Texas. The issue is also fueled by the increasing sophistication of electronic networks and the shift to a more integrated national and world economy.

New §10.2 provides flexibility to businesses regarding data processing and administration in recognition of the cost effectiveness of centralized practices, but serves the fundamental policy of the State of Texas underlying the requirement of domestic incorporation of trust companies conducting business in this state. As adopted, §10.2 establishes requirements regarding the types of records that must be maintained within the State of Texas, generally those dealing with corporate activities, and those that must be maintained at the site of account administration, whether inside or outside of Texas, generally those dealing with fiduciary activities, for the reasons stated in the proposed language for §10.2 (19 TexReg 1620)

Corporate records of a domestic trust company, as itemized in §10.2, must be maintained, controlled and available for review by examining personnel at its principal place of business in this state. Fiduciary records of a domestic trust company, as itemized in §10.2, must be maintained, controlled and available for review by examining personnel at the location(s) where the actual administration of the accounts takes place.

If corporate records and fiduciary records are separated as permitted by §10.2 and maintained at two or more locations, examinations may be conducted at each location at the expense of the examined entity.

One comment expressing support for §10.2 was received from a trust company that would be subject to the rule. However, the trust company that urged a clarification to the effect that corporate records should be permitted to be generated at locations outside of Texas, and certain supporting documentation and other records should be permitted to be maintained electronically or at centralized warehouses so long as they may be retrieved and produced on-site in Texas either physically or via computer terminals.

Commenting in favor of the rule was Merrill Lynch Trust Company of Texas.

The Department has considered the request for clarification and has elected to not change the proposed text. The rule itself expressly permits maintenance of duplicate records, and storage of noncurrent, supporting documentation is beyond the scope of the rule. The Department also believes that electronic access may meet the requirement of the rule assuming the functional locus of corporate activities remains in Texas. The Department may in the future propose amendments to §10.2 based on examination experience under the rule.

The new section is adopted under Texas Civil Statutes, Article 342-1106(b), which provide the Commission with the authority to promulgate and adopt general rules and regulations as may be necessary to accomplish the purposes of Chapter XI of the Banking Code, and Texas Civil Statutes, Article 342-113(a)(3), made applicable to trust companies by virtue of Article 342-1102, which authorizes the Commission to promulgate rules and regulations to provide for the preservation of the books and records of trust companies.

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 April 22, 1994

TRD-9439674 Everette D. Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date: March 8, 1994

For further information, please call (512) 475-1300

Chapter 25 Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

• 7 TAC §25.17

The Banking Department of Texas (the Department) adopts an amendment to §25.17, concerning the creation and administration of the Prepaid Funeral Guaranty Fund and the composition of the Prepaid Funeral Guaranty Fund Advisory Council. Section 25.17 is adopted with changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1621). The changed correct typographical errors.

The amendment to §25.17 is necessary to accurately and cogently reflect the law regarding prepaid funeral regulation and provide additional safeguards for prepaid funeral benefits consumers.

The amendment to §25.17 will bring the rule into conformity with legislative amendments to Texas Civil Statutes, Article 548b, §8A, effective September 1, 1993, eliminate unnecessary references, and promote consistency in organization and terminology.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 548b, §2 and §8A. Section 2 permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act. Section 8A authorizes the Department to prescribe rules to maintain a fund guaranteeing the performance by sellers of prepaid funeral contracts of their obligations to purchasers of such contracts.

§25.17 Guaranty Fund

(a) Pursuant to Texas Civil Statutes, Article 548b, §8A, a guaranty fund is hereby created to guarantee performance by sellers of prepaid funeral services. The fund will be named the prepaid funeral guaranty fund, and will be supervised by an advisory council composed of the following: the Banking Commissioner or the Commissioner's official designee, who will sit as the chairperson of the council, the Attorney General or the Attorney General's official designee; and industry representative appointed by the Finance Commission, and a consumer representative appointed by the Finance Commission. The consumer representative will serve a two-year term beginning on January 1 of an even-numbered year and ending December 31 of the following odd-numbered year. The industry representative will serve a two-year term beginning on January 1 of an odd-numbered year and ending December 31 of the following even-numbered year. Appointments made after January 1 will be deemed to run from January 1 of the even year for the consumer representative, and of the odd year for the industry representative. Neither the industry nor the consumer representative may serve more than two terms.

(b) The prepaid funeral guaranty fund will be capitalized as follows:

(1) The Texas Department of Banking shall assess and collect from all sellers of trust-funded prepaid funeral benefits \$1.00 for each unmatured contract sold during each calendar year beginning with 1993 and will provide a schedule reflecting this rate to all such sellers for use in reporting the number of contracts each has sold. Each seller shall remit its completed schedule together with the amount of its calculated assessment directly to the Department. The rate assessed under this paragraph shall remain at \$1.00 for each unmatured contract sold until the fund balance reaches \$1 million.

(2) Pursuant to Texas Civil Statutes, Article 548b, §8A(d), the advisory council may make and administer additional assessments on behalf of the fund as needed from time to time in order to pay claims against the fund when the balance of the fund is not sufficient to pay those claims.

(c) The Commissioner may use any earnings from the fund for the expenses of operating, maintaining, and supervising the

fund, including the reimbursement of travel expenses incurred by the industry and the consumer representatives pursuant to the travel guidelines applicable to state employees, and for the expenses of providing any other legislatively mandated action with respect to the fund, including but not limited to audits

(d) The advisory council shall meet on a periodic basis as determined by the Commissioner in order to fulfill the requirements of supervising the operation and maintenance of the fund. However, in no event shall the advisory council fail to meet at least once annually

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 April 22, 1994.

TRD-9439691 Everette D Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 475-1300

Subchapter B. Regulation of Licenses

• 7 TAC §25.18

The Banking Department of Texas (the Department) adopts an amendment to §25.18, concerning definitions applicable to §25.19 and §25.20. Section 25.18 is adopted with changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1622). The changes correct typographical errors.

The amendment to §25.18 is necessary to accurately and cogently reflect the law regarding prepaid funeral regulation.

The amendment brings §25.18 into conformity with a legislative amendment to Texas Civil Statutes, Article 548b, §8A, effective September 1, 1993, providing for an additional member of the Guaranty Fund Advisory Council, deleting the definition of "maturity," and making editorial changes for clarity, accuracy and uniformity.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 548b, §2 and §8A. Section 2 permits the Department to write rules regarding any matter incidental to the enforcement and orderly administration of the Act. Section 8A authorizes the Department to prescribe rules to maintain a fund guaranteeing the performance by sellers of prepaid funeral contracts of their obligations to purchasers of such contracts.

§25.18 Definitions Applicable to §25.19 and §25.19 The following words and terms, when used in §25.19 and §25.20,

shall have the following meanings, unless the context clearly indicates otherwise.

Commissioner—The Banking Commissioner of Texas or the Commissioner's designee.

Council or Guaranty Fund Advisory Council—The Prepaid Funeral Contract Guaranty Fund Advisory Council created by Texas Civil Statutes, Article 548b, §8A(c), to supervise operation and maintenance of the Prepaid Funeral Contract Guaranty Fund.

Department—The Texas Department of Banking.

Guaranty Fund—The Prepaid Funeral Contract Guaranty Fund created, operated, and maintained pursuant to Texas Civil Statutes, Article 548b, §8A, for the purpose of guaranteeing performance of prepaid funeral contracts.

Funeral provider—An individual, firm, partnership, corporation, or association licensed by the Texas Funeral Service Commission to provide funeral services and merchandise in the State of Texas.

Non-permit holder—An individual, firm, partnership, corporation, or association that does not hold a permit to sell prepaid funeral benefits in the State of Texas.

Permit—A permit to sell prepaid funeral benefits issued by the Commissioner pursuant to Texas Civil Statutes, Article 548b, §3.

Permit holder—An individual, firm, partnership, corporation, or association that holds a valid permit to sell prepaid funeral benefits in the State of Texas.

Prepaid funeral contract—A written contract and written amendments thereto sold by a permit holder to provide prepaid funeral benefits in the State of Texas.

Prepaid funeral funds—Those funds paid or collected on prepaid funeral contracts, less retainage but including earnings.

Purchaser—An individual who has purchased prepaid funeral benefits in the State of Texas from a permit holder on a written contract.

Seized funds—Funds arising from seizures of prepaid funeral funds under the Texas Civil Statutes, Article 548b, §4. Seized funds are separate from, and do not become part of, the Guaranty Fund.

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 April 22, 1994.

TRD-9439690 Everette D Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 475-1300

• 7 TAC §25.19

The Banking Department of Texas (the Department) adopts amendments to §25.19, concerning notices regarding the cancellation of a prepaid funeral benefits permit and the selection process for a successor permit holder, with changes to the proposed text as published in the March 8, 1994 issue of the *Texas Register* (19 TexReg 1623). The changes correct typographical errors.

The Department adopts amendments to §25.19 to provide greater assurance that successor permittees will provide the same or better funeral benefits to purchasers as they are entitled to under contracts with cancelled permittees and that such services will be provided with minimal expense to the guaranty fund.

The amendments to §25.19 will permit the Commissioner, in her discretion, to reject all bids received to fulfill obligations of a cancelled permit holder and to combine or group contracts seized for the purposes of bidding or sale. The amendments also permit the Commissioner to solicit bids on seized contracts that were not placed with successor permittees and establish management authority for prepaid funeral contracts and contract funds of a cancelled permit holder. Finally, the amendments make other editorial changes for clarity, accuracy, and uniformity.

No comments were received regarding adoption of the amendment.

The section is amended pursuant to the Department's rulemaking authority under Texas Civil Statutes, Article 548b, §2 and §8A. In addition to specific grants of rulemaking authority, §2 permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act. Section 8A authorizes the Department to prescribe rules concerning the maintenance of a fund to guarantee performance by sellers of prepaid funeral contracts of their obligations to purchasers thereof.

§25.19. Notice of Seizure; the Bid Process.

(a) Notice to purchasers. Within 30 days of cancellation of a permit to sell prepaid funeral benefits and the seizure of prepaid funeral funds, the Department shall notify those who have purchased prepaid funeral contracts from the cancelled permit holder. The notice shall inform the purchasers of the cancellation and seizure; provide instructions set out in Texas Civil Statutes, Article 548b, §4(g); provide an address to which any future payments due under the contracts must be sent, explain how monies can be released from the seized funds prior to selection of a successor permit holder; and explain how the contract may be cancelled should the purchaser wish to cancel it.

(b) Bid list. The Department shall maintain a bid list of permit holders who wish to bid for the right to assume the cancelled permit holder's obligations under prepaid funeral contracts and the right to

receive the balance of prepaid funeral funds paid or to be paid under those contracts. Upon the request of any permit holder, the Department shall add to or delete from the bid list the permit holder's name. The Department shall purge the list by deleting the names of those whose permits are cancelled or surrendered prior to the consideration of any bid award.

(c) Solicitation of bids. Within 60 days after cancelling a permit to sell prepaid funeral benefits, the Department shall notify those on the bid list of the cancellation. The notice shall include the name and address of the cancelled permit holder, the number and aggregate dollar amount of unperformed prepaid funeral contracts, the balance of unearned prepaid funeral funds, and the date by which sealed bid proposals must be submitted to the Department to be considered for the bid award. The notice shall also include instructions as to how eligible potential bidders may inspect the cancelled permit holder's prepaid funeral contract records. The seized contracts will be bid on as a bloc rather than on an individual contract basis, and the Commissioner shall have the discretion to combine or group contracts seized for bidding and sale purposes.

(d) Notice to non-permit holder funeral providers. If no permit holder or only one permit holder submits a sealed bid to assume the prepaid funeral obligations, or if no permit holder bidding on the prepaid funeral obligations submits a bid acceptable to the Commissioner, the Department may invite bids from non-permit holder funeral providers located in the same vicinity as the cancelled permit holder. The notice shall include the same information contained in the notice to those on the eligible bid list and, in addition, shall inform the non-permit holder that it must apply for and obtain a permit from the Commissioner to sell prepaid funeral benefits in the State of Texas in the event that it receives the bid award. The Commissioner may solicit bids from non-permit holder funeral providers at the same time as bids are solicited from permit holders under subsection (c) of this section.

(e) Solicitation of Bids on Certain Contracts. The Commissioner may also from time to time solicit bids on seized prepaid funeral contracts which were not placed with successor permittees as a result of the original or any subsequent bid solicitations.

(f) Selection Criteria.

(1) Time of selection. After the deadline has expired for submitting sealed bids, the Commissioner may select a successor to the cancelled permit holder.

(2) Criteria for permit holders. If the bidder is a permit holder, the Commissioner shall consider:

(A) whether the bidder has demonstrated an ability to properly manage, maintain and account for its own prepaid funeral funds;

(B) whether the bidder has properly remedied violations of law cited by the Department in its examination reports;

(C) whether the bidder has a history of repeated or continuous violations;

(D) whether the bidder has the ability to fulfill the terms of the prepaid funeral contract;

(E) whether the bidder poses any other significant regulatory concern; and

(F) the amount of money in the cancelled permit holder's prepaid funeral funds, the value of receivables that are due under the contracts of the cancelled permit holder to a successor permit holder, the amount of money offered for the prepaid funeral business, the current or potential claim against the Guaranty Fund, and any other relevant information.

(3) Criteria for non-permit holder funeral providers. If the bidder is a non-permit holder funeral provider, the Commissioner shall consider, to the extent applicable, all of the factors listed in subsection (f)(2) of this section and the following:

(A) the bidder's general reputation in the community where it is located;

(B) whether the bidder's business ability, experience, character and general fitness warrant the confidence of the public;

(C) any state or federal regulatory or law enforcement, administrative, or other action taken against the bidder; and

(D) the bidder's willingness to obtain a permit from the Commissioner to sell prepaid funeral benefits in the State of Texas and to abide by the statutes and rules governing such permits.

(4) Rejection of bids. The Commissioner may reject all bid proposals received pursuant to this section. If all bids are rejected, a new bid proposal may be solicited or, alternatively, the balance of prepaid funeral funds paid or to be paid under the contracts of the cancelled permit

holder shall be received into the Guaranty Fund for management by the Guaranty Fund Advisory Council, and the Department shall manage the prepaid funeral contracts; provided, however, that the Commissioner may thereafter solicit additional bid proposals under subsection (e) of this section.

(g) Selection of successor. The Commissioner alone shall be responsible for the selection of a successor permit holder under this section. The Commissioner shall make no contract regarding the selection of a successor permit holder that obligates the Guaranty Fund in any way until a vote of the members of the Guaranty Fund Advisory Council approving such obligation has been given in a properly posted open meeting.

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 April 22, 1994.

TRD-9439689

Everette D Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 475-1300

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• 7 TAC §25.20

The Banking Department of Texas (the Department) adopts an amendment to §25.20, concerning eligibility guidelines and claims procedures regarding the prepaid funeral guaranty fund, with changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1624). The changes correct typographical errors.

The Department adopts an amendment to §25.20 to provide greater public assurance that guaranty fund monies will be dispersed in accordance with the actual intent of §25.20, being to guarantee performance by sellers of prepaid funeral contracts of their obligations to purchasers.

The adopted amendments clarify that claims may not be filed against the guaranty fund on contracts purchased prior to its establishment; delete, with one exception, provision for permit holder claims against the guaranty fund; and make other editorial changes for clarity, accuracy, and uniformity.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Department's rulemaking authority under Texas Civil Statutes, Article 548b, §2 and §8A. In addition to specific grants of rulemaking authority, §2 permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act. Section 8A authorizes the Department to prescribe rules con-

cerning the maintenance of a fund to guarantee performance by sellers of prepaid funeral contracts of their obligations to purchasers thereof.

§25.20 Guaranty Fund Claims Filing Procedures and Eligibility for Payment Standards.

(a) Who may make a claim Unless expressly precluded from making a claim against the Guaranty Fund in subsection (b) of this section, the following parties or their heirs, successors, and assignees may make a claim against the Guaranty Fund

(1) purchasers of prepaid funeral benefits from permit holders, and

(2) those selected to assume obligations and liabilities of a cancelled permit holder in the event they assumed those obligations and liabilities under a contract that expressly authorizes them to make a claim against the Guaranty Fund

(b) Who cannot make a claim All other claims, including claims submitted by the following parties and their heirs, successors, and assignees, will be denied

(1) those who hold a contract that was purchased prior to August 31, 1987, the date of origin of the Guaranty Fund,

(2) those who purchased prepaid funeral benefits from a vendor that did not hold a permit to sell prepaid funeral benefits at the time of sale; and

(3) those who purchased prepaid funeral benefits under a plan that does not pay assessments to the Guaranty Fund, such as the plan litigated in *Sexton v Mount Olivet Cemetery Association*, 720 S.W. 2d 129 (Tex. App. -- Austin 1986, no writ) (specifically including, but not limited to, any prepaid funeral benefits purchased from Mount Olivet Cemetery Association).

(c) Purchaser claims Claims by individual purchasers will be handled on a case by case basis

(d) Claims approval process and right to reconsideration

(1) Delegation of authority to commissioner The Guaranty Fund Advisory Council may delegate to the Commissioner the authority to settle and determine all claims against the Guaranty Fund up to such amount and with such restrictions as the Council may from time to time determine. These limits and restrictions shall be reflected in the minutes of the meetings of the Council

(2) Appeals to the Guaranty Fund Advisory Council Unless an appeal is expressly waived in a settlement agreement, any action by the Commissioner approving, modifying, or denying claims against the

Guaranty Fund may be appealed to the Guaranty Fund Advisory Council by submitting a request for review to the Council within 30 days of receipt of notice of the Commissioner's action; otherwise the action of the Commissioner shall be final and not subject to review. Such request shall be addressed to the Council in care of the Commissioner and filed with the Commissioner on or before the close of business on the last day of the 30-day period

(3) Hearings on claims. Either the Commissioner or the Guaranty Fund Advisory Council may direct that an administrative hearing be held on any claim in order to clarify the facts or law pertinent to its disposition. No claim shall be reduced or denied without affording the claimant an opportunity for a hearing; provided, however, that if a hearing has been held or offered by the Commissioner and waived by the claimant, the Council need not offer another opportunity for a hearing. All hearings shall be conducted in compliance with the Administrative Procedure Act, Texas Government Code, §2001.001, et seq.

(e) Claimant's filings A claimant shall file with the Department a completed claim form prescribed by the Department together with the following documents and information

(1) a copy of the prepaid funeral contract and any amendments thereto;

(2) evidence of the status of the account, including whether the account is paid in full, the amount owed thereon and whether payments are current or delinquent;

(3) a statement containing the name of the seller and the date of purchase,

(4) a certified copy of the death certificate of the person designated by the purchaser to receive the funeral benefits under the contract, if applicable;

(5) a notarized statement setting forth any special circumstances that may bear on the claim, and

(6) any other information that may be pertinent to the claim that is requested by the Department

(f) Claims of permit holders. With respect to a claim submitted by a permit holder

(1) the Department shall furnish the Guaranty Fund Advisory Council at its request with all information pertinent to the claim that is contained in the Department's files or that may be obtained from the claimant under subsection (e) of this section, and

(2) the Department shall provide the Council with the Department's recommendations and analysis of the claim.

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 April 22, 1994.

TRD-9439688

Everette D Jobe
General Counsel
Department of Banking

Effective date: May 14, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 475-1300

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**TITLE 22. EXAMINING
BOARDS**

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

**Chapter 421. General
Provisions**

• **22 TAC §421.1**

The Texas Board of Private Investigators and Private Security Agencies adopts an amendment to §421.1, with changes to the proposed text as published in the January 14, 1994, issue of the *Texas Register* (19 TexReg 257).

The Board has determined that the amendment is necessary to regulate individuals who are corresponding with the agency on behalf of a licensed company

The rule will require that persons corresponding with the agency be appointed by the licensed company and be registered.

No comments were received regarding adoption of the rule

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

§421.1 Notice of Change or Fact. Whenever the Act or board rules require a notice to the board of any change or fact, the notice shall be in writing and shall contain:

(1) licensee's name and license number;

(2) details of the change or fact;

(3) the effective date of the change or fact, and

(4) the signature of the licensee, manager, branch manager or a person who is currently registered as an employee of the licensee who has been authorized by the licensee, manager, or branch manager to sign notices of any change or fact.

(A) The licensee shall notify the Board in writing within 14 days of the time and date of appointment of any person authorized to sign notices of change or fact and furnish the board with a signature of the person authorized to sign notices of change or fact

(B) No licensee may have more than two persons who are authorized to sign notices of change or fact for each principal place of business or branch office

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 April 21, 1994

TRD 9439602

Clara D. Sanders
Executive Director
Texas Board of Private
Investigators and
Private Security
Agencies

Effective date May 13, 1994

Proposal publication date January 14, 1994

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

TITLE 28. INSURANCE Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

§ 7.87 TAC § 7.87

The Texas Department of Insurance adopts new § 7.87, concerning the filing of audit reports of risk pools created under the Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program. The new section is adopted with changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9822)

Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program, authorizes political subdivisions to create risk pools to provide health and accident coverage for the political subdivision's officials, employees, retirees and their dependents, requires the trustees of a risk pool to have the records of the risk pool audited annually and to file the audit report with the Texas Department of Insurance

The new rule will provide guidance to political subdivisions in filing the audit reports and provide notice to the public of the availability of the audit reports. The new rule requires the auditor's report of the risk pool to be filed with the Texas Department of Insurance within six months of the end of the fiscal year of the risk

pool. The Texas Department of Insurance will make the audit reports available for public inspection and copying. The rule was changed to reflect the new name of the division that is to receive the reports and make them available to the public

No comments were received regarding adoption of the section

The new section is adopted under the authority of Local Government Code, §172.010(d) and Insurance Code, Article 1.03A. Local Government Code, §172.010(d), authorizes the commissioner of insurance to adopt rules governing the time and manner for filing audit reports of risk pools created under the Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program. The Insurance Code, Article 1.03A, authorizes the commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department

§ 7.87 Risk Pool Audits

(a) The Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program, authorizes certain political subdivisions to create risk pools to provide health and accident coverage for political subdivision officials, employees, and retirees

(b) The Local Government Code, §172.010, requires that an independent auditor perform an annual audit of a risk pool, and that the trustees of the risk pool file a copy of the independent auditor's report with the Texas Department of Insurance

(c) The independent auditor's report of the risk pool required by the Local Government Code shall be filed within six months of the end of the fiscal year of the risk pool with the Financial Monitoring Division, Financial Program, Texas Department of Insurance, P.O. Box 149104, MC 303-1A, Austin, Texas 78714-9104

(d) The risk pool audit reports can be inspected during regular business hours at the Texas Department of Insurance, Financial Monitoring Division, 333 Guadalupe, Austin, Texas

(e) Persons desiring copies of such audit reports can obtain copies from the Texas Department of Insurance, Financial Monitoring Division, Financial Program, P.O. Box 149104, MC 303-1A, Austin, Texas 78714-9104

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 April 23, 1994

TRD 9439711

J. D. Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Effective date May 14, 1994

Proposal publication date December 21, 1993

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

• 30 TAC § 305.50

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §305.50, concerning application for permit. Section 305.50 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8152). The amendment is adopted in order to clarify certain hazardous waste permit application requirements regarding financial information and assurances stemming from provisions of the Texas Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code, Annotated (Vernon Pamphlet 1993), enacted by the legislature in Senate Bill Number 1099, 72nd Legislature, 1991, and in Senate Bill Number 124, 73rd Legislature, 1993

Comments on the proposed rules were received from Akin, Gump, Strauss, Hauer & Feld, L.L.P., from Crain, Caton & James, and from the Texas Chemical Council. One commenter expressed some concern over proposed §305.50(4)(B)(vii) with regard to the clarity of its meaning. The proposed language stated "(vii) for an applicant who cannot or chooses not to otherwise demonstrate sufficient financial resources under this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction, and for safe operation, proper closure, and adequate liability coverage, the following information"

This commenter suggested changes to the wording which would carry out the perceived intent of the proposal, which was that applicants who demonstrate compliance with the requirements of proposed §305.50(4)(B)(i)-(v), would not have to additionally demonstrate compliance with proposed §305.50(4)(B)(vii). We agree that such was the intent of the proposal and therefore have adopted the commenter's suggested clarifying wording changes. The adopted rule now states, under §305.50(4)(D)(vii), that "if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)-(v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new

debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information."

We agree with the commenter that this change more clearly expresses the TNRC's intent, and it makes the rule more easily understood.

Another commenter stated, with reference to proposed §305.50(4)(B)(i), that it appeared the Commission was attempting to make financial decisions that strictly are business decisions, with no impact on the health and welfare of the citizens of the State. With regard to this comment, it should be noted that the Commission is merely requiring applicants to document and submit information demonstrating how they meet the statutory requirements of §361.085(a) of the Texas Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code, Annotated (Vernon Pamphlet 1993).

This commenter expressed concern that the proposed rule language, if adopted, would restrict the flexibility of a permittee to alter his or her financial plans, and requested that the rules be revised to explicitly authorize applicants to specify alternative financing mechanisms to provide construction and start-up funds. The commenter maintained that an applicant should not be required to specify, to the exclusion of other financing arrangements, the method selected to obtain funding. We believe that no change is necessary to the proposed rule language, in this regard. The rules are structured to require an applicant to submit a reasonable and obtainable financial plan. Once demonstrated that financing is obtainable, the rules do not restrict the permittee from altering his or her financial arrangements, subject to any applicable permit and/or permit application amendment or modification requirements.

Two commenters requested changes to proposed §305.50(4)(B)(vii)(I), which would have required applicants choosing to demonstrate financial assurance through a new stock offering or new debt issuance to submit letters of opinion from financial experts certifying, among other things, that financing is obtainable within 180 days from permit issuance. The commenters suggested that the rule provide that this certification be required within 180 days from the time that the permit becomes final and not subject to further appeal. We agree with this suggested revision, and the adopted rule, under §305.50(4)(D)(vii)(I), includes the phrase "certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application."

These two commenters on proposed §305.50(4)(B)(vii)(I) raised an issue related to permit finality and the requirement for submittal of time schedules for securing financing. We agree that it is appropriate to condition the requirement for this submittal upon permit finality, and have included the following language under §305.50(4)(D)(vii)(I): "and include the time schedule contingent upon permit finality for securing the financing."

A comment was received concerning provisions for certain alternative financial capability demonstrations pursuant to Senate Bill Number 124, 73rd Legislature, 1993. Under this bill, an applicant is deemed to have demonstrated that sufficient resources are available to satisfy all applicable financial assurance requirements, if the applicant provides a resolution from the County Commissioners agreeing to approve the issuance of development bonds to satisfy the financial assurance requirements. We agree that it is appropriate to include these provisions during this rulemaking, thus, they have been codified under adopted §305.50(4)(C).

Other changes to §305.50(4), relate to the reformatting necessary in the designations of the subparagraphs. New subparagraphs (C) and (D) have been adopted, so that existing subparagraphs (C), (D), and (E) have been redesignated as subparagraphs (E), (F), and (G).

Finally, no comments were received on proposed §305.50(12)(E), with the concomitant redesignation of subparagraph (E) to (F) of §305.50(12). Thus, these subparagraphs are adopted as proposed.

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The amendment is also adopted under the Solid Waste Disposal Act, §3 and §4, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.50 Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1)-(3) (No change)

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable:

(A) (No change)

(B) An application for a permit to store, process or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information

submitted to satisfy this subparagraph shall meet the requirements of subparagraphs (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i)-(vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40 Code of Federal Regulations, Part 264, Subpart H as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles,

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service;"

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year,

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following

(I) descriptions of the business and its operations,

(II) identification of any affiliated relationships,

(III) credit agreements and terms,

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities, and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)-(v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application, and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under §305.50(4)(D) of this section would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facil-

ity shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F, of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 Code of Federal Regulations, §§270.14-270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5)-(11) (No change.)

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous waste management facility, the application shall also contain the following:

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

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraphs (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

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 April 20, 1994.

TRD-9439525

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: May 11, 1994

Proposal publication date: November 9, 1993

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

Chapter 330. Municipal Solid Waste

Subchapter A. General Information

• 30 TAC §330.4

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §330.65, amendment to §330.4(d), and new §330.65, concerning municipal solid waste management. Section 330.4(d) is adopted with changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8766). New §330.65 is adopted with changes to the proposed text as published in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8652). Published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8863), is the proposed preamble to the repeal of and new §330.65. These sections amend portions of the 30 Texas Administrative Code (TAC), Chapter 330 rules, which were adopted by the commission on May 26, 1993, and published in the June 18, 1993, issue of the *Texas Register* (18 TexReg 4058). The repeal to §330.65 is adopted without changes and will not be republished.

The new and amended sections are in response to Senate Bill (S.B.) 963, which amended the Texas Solid Waste Disposal Act, §361.111, Texas Health and Safety Code (Vernon Supplement 1994) to exempt certain solid waste management facilities involved in the transfer of municipal solid waste from TNRCC municipal solid waste permit requirements.

The amendment to §330.4(d) will exempt certain municipal solid waste transfer facilities from TNRCC municipal solid waste permit requirements. In order to qualify for one of the delineated exemptions, the facility must comply with design and operational requirements established by the TNRCC and the owner/operator must hold a public meeting regarding the siting of the facility. The public meeting must be held in the municipality or county where the facility is to be located.

In order to be more consistent with Senate Bill 963, §330.4(d)(3) will be revised. It shall read as follows: a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons per day or less.

The new §330.65 relates to the requirements for an application for registration of solid waste facilities (Type V) that are exempt from permit requirements under §330.4(d) and (g). This section delineates operational and design criteria which must be met by these registered facilities.

The TNRCC has revised §330.65(e)(4) to provide a cross reference regarding on-site wastewater treatment systems. This reference was added to alert applicants to other particular design and permitting requirements which may pertain to them. It shall read as follows: Water pollution control. Provisions for the treatment of wastewaters from the facility shall be provided. A connection into a public sewer system, a septic system, or a small wastewater treatment plant are acceptable. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-site Wastewater Treatment). The applicant shall obtain any permit or other approval required by state or local code for the system installed. The floor of the operating area shall be concrete, and the walls of the operating areas shall be smooth masonry, metal or concrete. A sump drain shall be provided to collect all wastewaters generated by the facility, and transport them to the treatment facility.

The TNRCC extended an opportunity for public comment on the proposed amendments to the rules. A public hearing was held on December 6, 1993, in Austin, Texas but no one attended to present comments. Written comments on the proposed rules were received for a period of 30 days, from December 3, 1993, until January 3, 1994. Written comments on the proposed rules were received from the following entities during the comment period. Laidlaw Waste Systems, Inc., North Richland Hills, Texas, Scanlan & Buckle, P.C., Attorneys at Law, Austin Texas, National Solid Waste Management Association, Texas Chapter, Austin Texas; and Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C., Attorneys at Law, Austin, Texas.

The TNRCC received one comment that stated the wrong authority had been cited and the proposed amendments should be resubmitted to fulfill the notice requirements of the Texas Government Code. It has been noted that the incorrect Bill was mentioned in the preamble of the proposed rule. Senate Bill 963 is the prevailing legislation and these rules are in response to that legislation. The TNRCC finds that the rules are consistent with the legislation and its intent. The correct legislation has been noted in this preamble.

The TNRCC received one comment that stated that the rules were in conflict with House Bill (HB) 2043. That bill used the conjunctive term "and" rather than the disjunctive term "or" used in the proposed rule. The argument was made that a transfer station, pursuant to HB 2043, must meet all four conditions to be exempt from TNRCC permit requirements. The wording in the rule would allow an exemption if any one of the three conditions listed in the proposed rule were met. As noted previously, SB 963 was determined to be the prevailing legislation rather than HB 2043. SB 963 uses the term "or". TNRCC finds that the rules are consistent with the legislation.

The TNRCC received two comments pointing out that the fourth provision in HB 2043 had been omitted from the list of acceptable sources of solid waste and recommended that the provision concerning material recovery facilities be included in the proposed rule. Three additional comments were received regarding certain exemptions for material recovery facilities. The TNRCC, as previously indicated in the December 3, 1993 issue of the *Texas Register* (18 TexReg 8863), will make material recovery facilities a subject of a separate rule making.

The TNRCC received two comments requesting that the pre-opening inspections and approval should be removed from §330.65(b). It was stated that this requirement delayed operations and was unnecessary. It is the position of the TNRCC that the public must be assured that the facility will safeguard its health, welfare, physical property and the environment. Field verification of these new facilities should in no way significantly delay the opening of a facility which meets the design criteria. No change will be made to the rule.

The TNRCC received two comments requesting that requirements for pre-approval (registration requirements of §330.65(d)) be reduced or removed. The information requested by the TNRCC must be addressed by each owner/operator of such facilities. It is not overly burdensome for the applicant to provide the information. The TNRCC believes that this information must be reviewed prior to opening a facility in order to ensure that the facility will comply with the design and operational criteria necessary to protect public health and the environment.

The TNRCC received one recommendation to revise §330.65(d)(1)(B), which requires submission of disposal reports, by adding the phrase "if available". This would recognize that new facilities do not have past disposal fee reports. TNRCC believes this change is unnecessary. Section 330.65(d)(1)(B) provides a list of documentation which can demonstrate that the transfer stations can and do meet regulatory conditions for the exemption from a permit. The cited paragraph ends by saying "or other data acceptable to the executive director." This is clear indication that other information can serve to demonstrate what the projected incoming waste rate will be.

With respect to §330.65(d)(3)(B), the TNRCC received one recommendation that this section be revised to say "... documentation if applicable", to recognize cases where local approval may not be required. The TNRCC believes this change is unnecessary. An applicant providing the information required by other subsections of §330.65 can easily demonstrate that this provision may not be applicable to a particular site.

The amendment is adopted under the authority of the Texas Water Code (Vernon 1992), §5 103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and §361.024 of the Texas Solid Waste Disposal Act, Texas Health and Safety Code (Vernon 1992), which provides the TNRCC with the authority

to adopt rules to regulate the operation, management and control of solid waste under its jurisdiction

§330.4 Permit Required

(a)-(c) (No change)

(d) A permit is not required for a municipal solid waste transfer station facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from

(1) a municipality with a population of less than 50,000,

(2) a county with a population of less than 85,000, or

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons per day or less

(e) -(o) (No change)

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 April 20, 1994

TRU 9439527

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date May 11, 1994

Proposal publication date November 26, 1993

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

Subchapter E. Permit Procedures

• 30 TAC §330.65

The repeal is adopted under the Texas Health and Safety Code, Chapter 361, which provides the commission with all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste

§330.65. Requirements of an Application for Registration of Solid Waste Facilities (Type V)

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 April 20, 1994

TRD-9439524

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date May 11, 1994

Proposal publication date: November 23, 1993

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

Subchapter E. Permit Procedures and Design Criteria

• 30 TAC §330.65

The new section is adopted under the Texas Health and Safety Code, Chapter 361, which provides the commission with all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.65. Registration for Solid Waste Management Facilities

(a) Applicability. This section shall apply to a municipal solid waste management facility which is exempt from permit requirements under §330.4(d) and (g) of this title (relating to Permit Required).

(b) Construction and operation. Owners/operators may proceed with construction of a solid waste management facility meeting all the requirements of this section without prior executive director approval, provided that a public meeting is held pursuant to subsection (d)(3)(C) of this section and the applicant has submitted an application complete with all information demonstrating compliance with these rules to the executive director. The operation of the facility shall not begin until after a pre-opening inspection has been conducted and authorization to accept waste has been given by the executive director. Owners/operators must comply with all applicable regulations, and shall remain responsible for making corrections and/or other changes that are necessary to meet the requirements, prior to beginning operation of the facility.

(c) Number of copies. Registrants shall submit three copies of the completed application for registration.

(d) Application. The complete registration application shall include Part I of a permit application as required by §330.52 of this title (relating to Technical Requirements of Part I of the Application), including, but not limited to, documentation of population or incoming waste rate, site plan, land use narrative, site operating plan, legal description, evidence of competency, evidence of financial assurance, and an applicant's statement, and shall be submitted as follows.

(1) Documentation of population or incoming waste rate.

(A) Documentation of the population to be served shall be submitted

with the application. The population information shall be consistent with the latest population data from the last decennial census.

(B) Documentation of the incoming waste rate shall be submitted with the application. The incoming municipal solid waste rate shall be supported by the reports submitted for calculation of the municipal solid waste disposal fee for the previous six reporting quarters, documentation of new or existing programs that recycle and would reduce the waste loading for the facility, existing data of the municipal solid waste generated by the area to be served, or other data acceptable to the executive director.

(2) Site plan. The site plan shall include all the general design criteria which could be incorporated in a set of construction plans and specifications. A site layout plan, signed and sealed by a registered professional engineer, and a location map shall be included in the plans.

(3) Land use narrative

(A) The land use narrative shall include a description of the surrounding land use within one-half mile of the site and it shall be shown on a topographic map

(B) The applicant shall attach documentation of local government approval/acceptance of the site location, e.g., conformity with local zoning restrictions, a building permit, license, nonconforming use authorization, etc. These regulations do not grant authorization for development/operation of the facility in noncompliance with local government ordinances and regulations.

(C) The applicant and the commission shall conduct a public meeting in the local area, prior to the beginning of construction of the facility, to describe the proposed action to the general public. The public meeting shall be held as prescribed in the Health and Safety Code, §361.0791 (relating to Public Meeting and Notice Requirement) and §305.107 of this title (relating to Public Meeting and Notice Requirements).

(4) Site operating plan.

(A) The site operating plan shall include, as a minimum, a description of the solid waste data, the facility operation, operational characteristics of the equipment, facility maintenance, safety provisions, emergency procedures, fire protection, sanitation, facility rules, operating hours, litter control procedures, and vector control procedures.

(B) The plan shall also address alternate processing or disposal procedures of the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours

(C) The solid waste data shall include an estimate of the amount of solid waste to be received daily, the maximum amount of solid waste to be stored, the maximum and average lengths of time that solid waste is to remain on the site, and the intended destination of the solid waste received at this site

(5) Legal description A legal description of the property, including the book and page number of the county deed

records of the current property owner shall be submitted. The legal description shall be a metes and bounds description of the site signed and sealed by a registered professional land surveyor. A drawing of the description, signed and sealed by the surveyor, shall also be submitted. If the property is platted, the book and page number of the final plat record and a copy of the final plat shall be submitted

(6) Evidence of competency

(A) The applicant shall submit a list of all Texas solid waste sites which the applicant has owned or operated within the past ten years. The site name, site type, permit or registration number, county, and dates of operation shall be also submitted

(B) The names of the principals and supervisors of the applicant's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities

(7) Evidence of financial assurance Evidence of financial assurance shall be provided in accordance with §§330.9 and 330.280-330.286 of this Chapter, (relating to Financial Assurance)

(8) Statement of applicant The following document shall be signed, notarized, and submitted with the application

(A)

I, _____, state that I have knowledge of the facts set forth herein and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project for which application is now being made will not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the applicant or am authorized to act for the city/county/applicant.

(Signature)

(Type Name and Title)

(Date)

Notary public's certificate:

Subscribed and sworn to before me, by the said _____, this _____ day of _____ 19__, to certify which witness my hand and seal of office.

Notary Public in and for _____ County, Texas.

My commission expires on _____

(C) The applicant shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications).

(e) Design Criteria.

(1) Site access. The site access road from a publicly owned roadway shall be at least a two lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for commercial collection vehicles and for residents shall be provided. The access road design shall include adequate turning radii according to the vehicles that will utilize the site and shall avoid disruption of normal traffic patterns. A positive means to control dust and mud shall be provided.

(2) Access control. Access to the site shall be controlled by a perimeter fence, four-foot barbed wire or six-foot chain-link, with lockable gates. An attendant shall be on-site during operating hours. A sign shall be provided that gives the site name, registrant name, registration number, operating hours, and site rules.

(3) Miscellaneous design details. The facility shall be designed in accordance with all local building code and land development code requirements. Building setback lines shall be followed, if applicable. Vehicle parking shall be provided for

equipment, employees, and visitors. Safety bumpers at hoppers shall be provided for vehicles. Necessary connections for facility cleaning shall be provided. Provisions shall be made to prevent the entry of precipitation into vehicles. The operating area and transport shall be enclosed by walls, chain-link fencing, and/or gates

(4) Water pollution control. Provisions for the treatment of wastewaters from the facility shall be provided. A connection into a public sewer system, a septic system, or a small wastewater treatment plant are acceptable. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-site Wastewater Treatment). The applicant shall obtain any permit or other approval required by state or local code for the system installed. The floor of the operating area shall be concrete, and the walls of the operating areas shall be smooth masonry, metal or concrete. A sump drain shall be provided to collect all wastewaters generated by the facility, and transport them to the treatment facility.

(5) Air pollution and ventilation. Ventilation of structures designed in accordance with applicable codes shall be provided. The applicant shall consult with the TNRCC for assistance and any permit requirements.

(6) Storage requirements. On-site storage of source-separated recyclable materials should be provided and this area

shall be separate from the transfer area. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(7) Fire protection. A fire protection plan shall be prepared. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(8) Noise pollution and screening. Screening or other measures to minimize the noise pollution and adverse visual impacts shall be provided

(9) Site drainage. Drainage provisions for controlling surface water on or near the site shall be provided. The locations of any proposed dikes, berms, storm sewers, levees, detention ponds, and the outfall point shall be identified. Drainage calculations shall be in accordance with §330.55 of this title (relating to Site Development Plan).

(10) Site facilities. The site shall provide facilities for potable water, sanitary purposes, office, maintenance, recyclable materials collection, and solid waste transfer. Concrete pads with raised curbs around the perimeter or asphalt paved areas with berms shall be utilized to control spills and contaminated water.

(11) Additional technical information for composting facilities. For registration of composting facilities, additional technical information related to the specifics of composting shall be submitted by the applicant in accordance with the criteria for composting facilities provided by the commission.

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 April 20, 1994

TRD-9439526 Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date: May 11, 1994

Proposal publication date: November 23, 1993

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter V. Wildlife Management Association Area Hunting Lease License

- 31 TAC §§65.801, 65.802, 65.804-65.807

The Texas Parks and Wildlife Department adopts new §§65.801, 65.802, 65.804, and 65.807 concerning Wildlife Management Association Area Hunting Lease License. Section 65.804 is adopted with changes to proposed text as published February 18, 1994, issue of the *Texas Register* (19 TexReg 1204). Sections 65.801, 65.802, 65.806, and 65.807 were adopted without changes and will not be republished. Proposed §65.803 (concerning License Fees) is withdrawn. The change to §65.804(3) (concerning License Issuance) requires a Wildlife Management Association Area Plan as opposed to a Wildlife Habitat and Harvest Annual Recommendation, prior to issuance of a Wildlife Management Association license

The new sections are necessary for the implementation of a legislative mandate, a result of legislation passed in the 73rd Texas Legislature which provides for Hunting Lease for landowners within Wildlife Management Associations in Parks and Wildlife Code, Chapter 43, Subchapter D, §43 0432 and §43.044, Hunting Lease Licenses; and Chapter 81, Subchapter D, §§81 301, 81 302, and 81 303 Wildlife Management Association Areas.

The new rules provide the framework for cooperative efforts of landowners in management and enhancement of wildlife species. The rules set requirements for boundaries and proximity of association lands, recordkeeping and reporting, and wildlife management within Wildlife Management Association Areas

The agency received no public comments regarding adoption of the rules

The new rules are proposed under the Texas Parks and Wildlife Code, Chapter 43, Subchapter D, Hunting Lease Licenses, and Chapter 81, Subchapter D, Wildlife Management Association Area, which provides the Parks and Wildlife Commission with authority to adopt rules necessary to implement this subchapter

§65.804 License Issuance The department may issue a license to an applicant if the following requirements have been satisfied:

(1) an application supplied by the department for a license has been completed and filed with the department,

(2) the department finds the observing wildlife and collecting information within the Wildlife Management Association Area will serve the purpose of wildlife management in this state,

(3) a department-approved Wildlife Management Association Plan has been completed and filed with the department; and

(4) all application, license, and review fees have been paid to the department

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 April 21, 1994

TRD-9439550 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: May 12, 1994

Proposal publication date: February 18, 1994

For further information, please call 1 (800) 792-1112, Ext 4433 or (512) 389-4433

Chapter 69. Resource Protection

Wildlife Rehabilitation Permits

- 31 TAC §69.45

The Texas Parks and Wildlife Commission adopts an amendment to §69.45, relating to Wildlife Rehabilitation Permits, without changes to the proposed text as published in the February 18, 1994, issue of the *Texas Register* (19 TexReg 1205)

The amendment was necessary to implement a legislative mandate

The amendment sets requirements and guidelines for permit issuance to those persons who wish to participate in wildlife rehabilitation efforts. The rules are intended to clearly delineate the responsibilities of wildlife rehabilitators and provide means to prevent abuse and exploitation of wildlife

The agency received no comments regarding adoption of the rule

This amendment is adopted under Parks and Wildlife Code, Chapter 43, Subchapter C, §43 027, which delegates authority to the Texas Parks and Wildlife Commission to make regulations governing the taking and possession of wildlife indigenous to the state for rehabilitation purposes

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 April 21, 1994

TRD-9439551 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: May 12, 1994

Proposal publication date: February 18, 1994

For further information, please call 1 (800) 792-1112, Ext 4433 or (512) 389-4700

Part X. Texas Water Development Board

Chapter 359. Water Banking

- 31 TAC §§359.1-359.14

The Texas Water Development Board (the board) adopts new §§359.1-359.14, concerning Water Banking Section 359.2 and §359.8 are adopted with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1892). Sections 359.1, 359.3-359.7, and 359.9-359.14 are adopted without changes and will not be republished

Chapter 359 is created to establish and administer the Texas Water Bank in accordance with the Texas Water Code, Chapter 15, Subchapter K. Chapter 359 will allow the board to administer the water bank to facilitate the transfer of water from all sources as necessary to provide adequate water supplies for use within the State of Texas

The following comments from individuals were received regarding adoption of the new rule

One commenter was concerned that the board had not defined the term "conserved water" in the context of the new sections. In response, §359.2 was expanded to include a definition for conserved water. Another commenter expressed concern that the language in §359.8(c) was unnecessarily restrictive in the protection of rights from cancellation after transfer from the bank. In

response, wording was changed to cover all types of transfers. No other specific comments requiring changes were made. Commenters unanimously supported the concept of water banking. Neutral comments were received from the Brazos River Authority and the City of McAllen.

The chapter is adopted pursuant to Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Code and the laws of the state, and Texas Water Code, §15.703(b), which authorizes the board to adopt rules necessary for implementing the water bank.

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

Administrator—The Executive Administrator of the Texas Water Development Board or designated representative(s)

Board—The Texas Water Development Board

Bank—The Texas Water Bank, including regional banks established pursuant to this Subchapter.

Commission—The Texas Natural Resource Conservation Commission

Conserved water—That water which has been made available for alternative or future uses through practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the availability of water through recycling or reuse.

Department—The Texas Parks and Wildlife Department.

Deposit—The authorized placement of a water right or the right to use water in the bank for transfer

Depositor—A person who deposits or has on deposit a water right in the bank.

Lease—To convey by contract the right to use water for a specified time period in accordance with the authorized right and other applicable law

Person—Includes, but is not limited to, any individual, corporation, organization, government, or governmental subdivision or agency, including the board, business trust, estate, trust, partnership, association, and any other legal entity.

Political subdivision—A state agency, a county, city, or other body politic or corporate of the state, including any district or authority created under the Texas Constitution, Article III, §52 or Article XVI, §59, and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Acts of the 43rd Legislature, Chapter 76, First Called Session, 1933 (Texas Civil Statutes, Article 1434a).

Transfer—The conveyance of a water right or the right to use water under a water right in any of the following manners:

(A) the conveyance of legal title to a water right, or

(B) a contract or option contract to allow use of a water right.

Water right—A right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law

§359.8. Deposits, Transfers, Cancellation Protection, and Withdrawals.

(a) Up to 50% of a water right may be deposited in the bank for an initial term of up to 10 years, during which time the portion of the water right deposited is exempt from cancellation by the commission under the terms of Texas Water Code, Chapter 11, Subchapter E, as provided by Texas Water Code, §15.704. That portion of the water right deposited is exempt from cancellation under this subsection only once, even if it has been transferred or redeposited. That portion of the water right which is on deposit remains on deposit until it is withdrawn

(b) The administrator may accept deposits of water rights, including conserved water, into the bank. The administrator, acting within the purposes of the Texas Water Code, Chapter 15, Subchapter K, may also take any appropriate action to facilitate water transfers both within and external to the operations of the water bank

(c) That portion of a water right that has been transferred while on deposit in the bank is exempt from cancellation by the commission under the terms of the Texas Water Code, Chapter 11, Subchapter E, for a period of 10 years following commission approval of any necessary actions relating to the transfer of that water right

(d) The depositor must notify the administrator within 30 calendar days of the date a contract to transfer a water right or portion thereof is signed

(1) For transfers requiring regulatory approval, transfers are not complete until all necessary regulatory approvals are obtained. The depositor must notify the administrator in writing within 30 calendar days of the date of receipt of final regulatory approvals. The date of final regulatory approvals is the effective date of transfer.

(2) For transfers not requiring regulatory approval, transfers are not complete until the terms and conditions of the contract have been fulfilled. In these cases, the depositor must notify the administrator in writing within 30 calendar days of the contract closure. The date the contract is closed is the effective date of transfer

(e) That portion of a water right that has been deposited in the bank may be withdrawn upon the depositor's completion of a withdrawal form and its submission to the administrator. A copy of this form must be submitted by the withdrawing depositor to the executive director of the commission at the same time it is submitted to the administrator. The withdrawal is effective upon the date of signature by the administrator on the withdrawal form or 30 days after the submission of the withdrawal form, whichever occurs earlier. A water right may be withdrawn by the administrator under §359.6 of this title (relating to Bank Review)

(f) A water right may be used as authorized by law while on deposit in the bank. The depositor must notify the administrator of any actions or conditions that would affect the transferability of the deposited right

(g) A water right transferred while on deposit in the bank may remain in the bank

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 April 22, 1994.

TRD-9439639

Craig D. Pedersen
Executive Administrator
Texas Water Development
Board

Effective date: May 13, 1994

Proposal publication date: March 18, 1994

For further information, please call (512) 463-7981

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 79. Legal Services

• 40 TAC §79.403, §79.404

The Texas Department of Human Services (DHS) adopts amendments to §79.403 and §79.404, without changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1943)

The justification for the amendments is to establish the Advisory Committee on Fire Safety Standards, add one member to the Aged and Disabled Services Advisory Committee, and change the abolishment date for the Advisory Committee on Mental Retardation Facilities and the Advisory Committee on Nursing Facility Affairs. After those committees are abolished, their functions will be performed by the Aged and Disabled Services Advisory Committee

The amendments will function by providing an improved structure to address conflicts in building codes and regulations related to renovation and remodeling of structures to be used as health care facilities; and consolidating the review committees involved in the aged and disabled programs.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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 April 21, 1994.

TRD-9439553

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

Effective date: May 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512)
450-3765

Chapter 90. Nursing Facilities and Related Institutions

The Texas Department of Human Services (DHS) adopts amendments to §§90.15, 90.16, and 90.235, concerning renewal procedures and qualifications, change of ownership, and administrative penalties, in its *Nursing Facilities and Related Institutions* rule chapter. The amendments are adopted with changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1789).

The justification for the amendments to §90.15 and §90.16 is to add definitions for "timely and sufficient application" in relation to applications for licensure or relicensure of a nursing facility or a facility serving persons with mental retardation and/or a related condition. In addition, §90.15(a) is amended to reflect an amendment to the Health and Safety Code, §242.033, which changed the duration of a license from one year to two years.

The justification for the amendment to §90.235(i) Schedule A(F) and Schedule B(H) is to add the amounts of the administrative penalties for failure to submit required renewals or changes of ownership established in §90.15 and §90.16.

The justification for the amendment to §90.235(i) Schedule A(S) and Schedule B(I) is to enforce compliance with the Health and Safety Code, §242.134, which requires nursing facilities to report deaths of residents to DHS. The amendment specifies penalties and amounts that DHS may assess against facilities that fail to meet this requirement.

The amendments will function by clarifying the application process and ensuring better enforcement of DHS's policy on reporting deaths in facilities licensed under Chapter 242 of the Health and Safety Code.

No comments were received regarding adoption of the proposal; however, DHS is adopting the amendments with a number of editorial clarifications as follows: In §90.15(a), DHS is deleting the word "annually" to clarify that licenses are renewed every two years, and, for consistency, in subsection (b), to substitute "license holder" for "facility." Section 90.15(b)(3) is adopted with deletion of an extraneous "and" following the first comma. In §90.16, DHS is deleting "and" following the first comma in paragraph (3). DHS is adopting §90.235(i), Schedule B(H), to read "Failure to submit a renewal or change.."

Subchapter B. Application Procedures

• 40 TAC §90.15, §90.16

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license long-term care nursing facilities and under Texas Civil Statutes, Article 4413(502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

§90.15. Renewal Procedures and Qualifications.

(a) Each license issued under this chapter must be renewed every two years. Each license expires two years from the date issued. A license issued under this chapter is not automatically renewed.

(b) Each license holder must, at least 45 days prior to the expiration of the current license, file an application for renewal with the Texas Department of Human Services (DHS). DHS considers that an individual has made timely and sufficient application for the renewal of a license if the license holder:

(1) submits a complete application to DHS, and DHS receives the complete application at least 45 days before the current license expires;

(2) submits an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 45 days before the current license expires; or

(3) submits an application to DHS, DHS receives the application during the 45-day period ending on the date the current license expires, and the individual pays a fine under the administrative penalties described in Schedules A(R) and B(H) of §90.235 of this title (relating to Administrative Penalties)

(c) The application for renewal must contain the same information required for an original application as well as payment of the annual licensing fees.

(d) The renewal of a license may be denied for the same reasons an original application for a license may be denied. See §90.17 of this title (relating to Criteria for Denying a License or Renewal of a License).

§90.16. Change of Ownership

(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder must notify the Texas Department of Human Services (DHS) that a change of ownership is about to take place.

(b) To avoid a gap in the license because of a change in ownership of the facility, the prospective purchaser must submit to DHS a complete application for a license under §90.11 of this title (relating to Criteria for Licensing) at least 30 days before the anticipated date of sale. The applicant must meet all requirements for a license. If the applicant has made timely and sufficient application for a license and otherwise meets all requirements for a license, DHS will issue the applicant a license effective on the date of transfer of ownership. DHS considers an individual has made timely and sufficient application for a license if the individual

(1) submits a complete application to DHS, and DHS receives the complete application at least 30 days before the anticipated date of sale;

(2) submits an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 30 days before the anticipated date of sale;

(3) submits an application to DHS, DHS receives the application during the 30-day period ending on the anticipated date of sale, and the individual pays a fine under the administrative penalties described in Schedules A(R) and B(H) of §90.235 of this title (relating to Administrative Penalties); or

(4) submits an application to DHS, DHS receives the application by the date of sale, and the individual proves to DHS's satisfaction that the health and safety of the facility residents required an emergency change of ownership

(c) Pending the review of the prospective purchaser's application, the license holder shall continue to meet all requirements for operation of the facility.

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 April 22, 1994.

TRD-9439624 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: July 1, 1994

Proposal publication date: March 15, 1994

For further information, please call (512) 450-3765

◆ ◆ ◆
• 40 TAC §90.17

The Texas Department of Human Services (DHS) adopts an amendment to §90.17, concerning criteria for denying a license or renewal of a license, in its Nursing Facilities and Related Institutions rule chapter. The amendment is adopted with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1943).

The justification for the amendment is to specify what constitutes "substantial failure to comply with the nursing facility requirements." As stated in the rule prior to this amendment, a license could be denied when a facility substantially fails to comply with the nursing facility requirements.

The amendment will function by providing for denial of licensure to nursing facilities whose noncompliance poses a serious threat to health and safety or that fail to maintain compliance with nursing facility requirements on a continuing basis.

No comments were received regarding adoption of the amendment; however, DHS is adopting §90.17(a) with an editorial clarification.

The amendment is adopted under the Health and Safety Code, Chapter 242 which provides the department with the authority to license long-term care nursing facilities and under Texas Civil Statutes, Article 4413(502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all func-

tions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

§90.17 *Criteria for Denying a License or Renewal of a License*

(a) The Texas Department of Human Services (DHS) may deny a license or a renewal of a license if an applicant, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §90.41 of this title (relating to Standards for Nursing Facilities), including, but not limited to:

(A) noncompliance that poses a serious threat to health and safety, or

(B) a failure to maintain compliance on a continuous basis,

(2)-(5) (No change.)

(b)-(e) (No change)

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 April 25, 1994

TRD-9439714 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date June 1, 1994

Proposal publication date March 18, 1994

For further information, please call (512) 450-3765

◆ ◆ ◆
Subchapter H. Enforcement

• 40 TAC §90.235

The amendment is adopted under the Health and Safety Code, Chapter 242 which provides the department with the authority to license long-term care nursing facilities and under Texas Civil Statutes, Article 4413

(502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

§90.235. *Administrative Penalties.*

(a) (No change.)

(b) When a violation cited by the department is determined to be within the scope and description of the penalty schedules as stated in subsection (i) of this section, known as Schedule A and Schedule B, the violation is cause for assessment of a penalty as described in this section and as listed in the schedules. In determining whether a violation limits the facility's ability to comply with the law, a violation must be

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

(4) of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or

(5) of a type established elsewhere in DHS's rules concerning licensing standards for long term care facilities.

(c)-(d) (No change.)

(e) An offense is defined as all deficiencies cited during a particular survey. The first offense carries the penalty shown in the "first offense" column on the schedule. The second offense carries the penalty shown in the "second offense" column on the schedule. The third offense carries the penalty shown in the "third offense" column of the schedule. For purposes of determining a "first offense," this provision does not apply to Schedule A(S) or Schedule B(I).

(f)-(h) (No change)

(i) Conditions and assessments for violations warranting administrative penalties for licensed facilities are described in Schedule A and Schedule B which are as follows

SCHEDULE A: PENALTIES FOR NURSING FACILITIES

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
A. - Q. (No change.)			
R. Failure to submit a renewal or change of ownership license application as required in accordance with §§90.15 or 90.16 of this title (relating to Renewal Procedures and Qualifications and Change of Ownership).			
1. The facility does not submit a license renewal application at least 45 days before the current license expiration date.	500	1,000	1,500
2. During a change of ownership process, the prospective purchaser does not submit a license application to the licensing program at least 30 days before the anticipated sale date.	500	1,000	1,500
S. Failure to submit a report of a resident death in accordance with the requirements of the Health and Safety Code, §242.134. Facilities failing to submit a resident death report more than once during a 12-month period are subject to an administrative penalty based on the number of previous offenses.	500	1,000	1,500

**SCHEDULE B: PENALTIES FOR FACILITIES SERVING PERSONS WITH
MENTAL RETARDATION AND/OR RELATED CONDITIONS**

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
A. - G. (No change.)			
H. Failure to submit a renewal or change of ownership license application as required in accordance with §§90.15 or 90.16 of this title (relating to Renewal Procedures and Qualifications and Change of Ownership).			
1. The facility does not submit a license renewal application at least 45 days before the current license expiration date.	500	1,000	1,500
2. During a change of ownership process, the prospective purchaser does not submit a license application to the licensing program at least 30 days before the anticipated sale date.	500	1,000	1,500
I. Failure to submit a report of a resident death in accordance with the requirements of the Health and Safety Code, §242.134. Facilities failing to submit a resident death report more than once during a 12-month period are subject to an administrative penalty based on the number of previous offenses.	500	1,000	1,500

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 April 22, 1994.

TRD-9439625 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: July 1, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512)
450-3765

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

**Chapter 172. Consumer
Advisory Committee**

◆ ◆ ◆
• 40 TAC §§172.1-172.7

The Texas Commission for the Blind adopts the repeal of §§172.1-172.7, without changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1980)

The repeals are necessary to comply with the provisions of Senate Bill 383 (73rd Legislature) which requires an agency advised by advisory committees to describe in a rule the committees purpose, tasks, reporting requirements, and duration. New sections are being adopted simultaneously which contain all of the required information

No comments were received regarding adoption of the repeals

The repeals are adopted under the Human Resources Code, Title 5, and the Rehabilitation Act of 1973, as amended, which provide the Texas Commission for the Blind with the authority to adopt rules and to take actions that are necessary or appropriate to carry out commission purposes

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 April 19, 1994

TRD-9439557 Pat D Westbrook
Executive Director
Texas Commission for the
Blind

Effective date May 12, 1994

Proposal publication date: March 18, 1994

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

◆ ◆ ◆
**Chapter 172. Advisory
Committees and Councils**

• 40 TAC §§172.1-172.3

The Texas Commission for the Blind adopts new §§172.1-172.3. Section 172.1 is adopted with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1980). Section 172.2 and §172.3 are adopted without changes and will not be republished. The only changes to §172.1 are to the chapter title and the section title. Chapter 172 has been changed to Advisory Committees and Councils to reflect the broader content of the chapter, the title of §172.1 has been changed to Establishment of Advisory Committees and Councils; and the word "section" has been changed to "chapter" in §172.1(a).

The rules are necessary to comply with the provisions of Senate Bill 383 (73rd Legislature) which requires an agency advised by advisory committees to describe in a rule the committees' purpose, tasks, reporting requirements, and duration.

The rule will function as a resource to the public on the committees that advise the agency, which will maintain the public's ability to participate in the commission's rulemaking process in an advisory capacity

No comments were received regarding adoption of the rules

The new sections are adopted under the Human Resources Code, Title 5, and the Rehabilitation Act of 1973, as amended, which provide the Texas Commission for the Blind with the authority to adopt rules and to take actions that are necessary or appropriate to carry out commission purposes.

§172.1. Establishment of Advisory Committees and Councils.

(a) The Texas Commission for the Blind is advised by advisory committees and councils established under its enabling legislation and by other state and federal laws, and by committees and councils created by the Board in order to effectively administer the agency's programs. The purpose of this chapter is to identify these advisory bodies, their purpose, tasks, reporting requirements, general membership, and duration.

(b) The size of advisory committees and councils varies according to statute or need. When the size of a committee or council is not specified in statute the executive director has the authority to review representation and increase or decrease the size as necessary to assure proper representation and/or to operate within economic constraints. At no time shall any committee exceed 24 members.

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 April 19, 1994

TRD-9439558 Pat D Westbrook
Executive Director
Texas Commission for the
Blind

Effective date. May 12, 1994

Proposal publication date: March 18, 1994

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



OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday-Wednesday, May 3-4, 1994, 1:00 p.m. and 8:00 a.m., respectively.

Harvey Hotel, 3100 I-40

Amarillo

According to the agenda summary, the Texas Wheat Producers Board will consider action, call to order and opening remarks, minutes of February meeting, reports, crop reports, Women's Leadership Program, TALL III, Foreign AG study trip, reports from other board members; discussion and action: report from TDA representative, financial report, year end collections, updates from other board members; reports and action: meetings and trade show exhibits, past quarter and future activities, new business. Summer Leadership Conference, Summer Board of Directors meeting, Wheat Producers Association Executive Committee meeting, A&M mini-summits, Agriculture 20/20 meetings; and adjourn

Contact: Bill Nelson, 2201 Civic Circle, Amarillo, Texas 79109-1853, (806) 352-2191

Filed: April 25, 1994, 4:04 p.m.

TRD-9439759

Tuesday, May 3, 1994, 1:30 p.m.

Texas Agricultural Research and Extension Center

Vernon

According to the agenda summary, the State Seed and Plant Board will meet for discussion and action on: minutes of last meeting; use of Variety Review Board decision to determine certification eligibility under Texas Certification Program; request from Harvest Master Seed Company on appeal of rejection of seed source; applications for certification eligibility under Texas Certification Program; request for recertification of varieties of peanuts, wheat, and sorghum; applications for license as Certified Seed Growers; and discussion of other business.

Contact: Charles Lemmons, P.O. Box 629, Giddings, Texas 78942, (409) 542-3691.

Filed: April 25, 1994, 10:33 a.m.

TRD-9439721

Thursday, May 5, 1994, 1:00 p.m.

Red Lion Hotel, North I-35 and Highway 290

Austin

According to the agenda summary, the Texas Boll Weevil Eradication Foundation, Inc. will call to order; opening remarks and introductions, discussion and action, approval of minutes, financial report, chairman's report, program director's report, TDA report, foundation by-law change, funding sources, referendums, next meeting date and place, other business, and adjourn.

Contact: Woody Anderson, Route 3, Box 393, Colorado City, Texas 79512, (915) 728-3485.

Filed: April 26, 1994, 9:09 a.m.

TRD-9439787

Texas Commission on Alcohol and Drug Abuse

Wednesday, April 27, 1994, 10:00 a.m.

TCADA, 710 Brazos, Suite 609

Austin

Emergency Meeting

According to the complete agenda, the Criminal Justice Issues Committee called to order; approved request for proposal process; funding three substance abuse felony punishment facilities programs and one in-prison therapeutic community program; new business; and adjourned.

Reason for emergency: Due to the accelerated construction schedule and subsequent completion of the Texas Department of Criminal Justice's units these programs had to begin implementation. These processes had to be approved as soon as possible in order to begin treatment in these units on schedule.

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8132.

Filed: April 25, 1994, 3:21 p.m.

TRD-9439737

Tuesday, May 17, 1994, 9:00 a.m.

710 Brazos

Austin

According to the complete agenda, the Offender Credentialing Committee will call to

order, review applications for the Licensed Chemical Dependency Counselor, and adjourn

Contact: Mike Fizzell, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8257

Filed: April 26, 1994, 9 26 a m

TRD-9439794

The State Bar of Texas

Wednesday, April 27, 1994, 9:30 a.m.

The Austin Club, 110 East Ninth Street
Austin

Emergency Revised Agenda

According to the agenda summary, the Commission for Lawyer Discipline added to the agenda discuss and take appropriate action, if any, with respect to item number 15 in closed executive session (personnel matters)

Reason for emergency This item required action prior to the next meeting of the Commission

Contact: Anne McKenna, P O Box 12487, Austin, Texas 78711, (800) 204-2222

Filed: April 25, 1994, 4 23 p m

TRD-9439764

State Board of Barber Examiners

Tuesday, May 3, 1994, 8:30 a.m.

9101 Burnet Road, Suite 103

Austin

According to the agenda summary, the Board will open the meeting with roll call, read and possibly approve minutes from November 2, 1993, February 8, 1994, February 21, 1994, and April 12, 1994 meetings, sign letters, appearance of Inspector Allen Taylor, and legal counsel before the board, then the board will go into executive session to meet with assistant attorney generals to seek legal advice regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director, Mike Rice, and inspector, Bettie Sam, and/or to hear complaints or charges against the executive director, Mike Rice, and/or Bettie Sam, and/or to discuss contemplated litigation, pursuant to Texas Government Code, §551 071, return to open session for further discussion and possibly act on items in preceeding executive session as required, return to executive session to consider the appointment, employment, evaluation, reassignment duties, discipline, or dismissal of the executive director, Mike Rice, and/or Bettie Sam, pursuant to Texas Government

Code, §551 074; return to open session to possibly act on items in preceeding executive session as required, return to executive session to consider the appointment, employment, and duties of an acting executive director, pursuant to Texas Government Code, §551 074, return to open session to possibly act on items in proceeding executive session as required, hear discussion and possible action on reports to the board by the executive director, read, discuss, and possibly act on letters to the board, old business, new business; and adjourn

Contact: B Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040

Filed: April 25, 1994, 2 46 p m

TRD-9439733

Texas Commission for the Blind

Friday, May 6, 1994, 9:00 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard

Austin

According to the complete agenda, the Board will discuss approval, minutes from February 18, 1994, discussion and approval executive director's report on agency activities, approval capital outlay, discussion and approval repeal of and proposed new rules of §163 30, Order of Selection, discussion resolution passed by the Business Enterprises Program Elected Committee of Managers, discussion and approval strategic plan, discussion and board direction legislative appropriations request, and discussion and decision date and location for next regular meeting

Contact: Diane Vivian, 4800 North Lamar Boulevard, Austin, Texas 78758, (512) 459-2601

Filed: April 25, 1994, 9 00 a m

TRD-9439705

Texas Commission on Children and Youth

Friday, May 6, 1994, 9:00 a.m.

300 Durango Street, City Council Chambers, City Hall, Second Floor

El Paso

According to the agenda summary, the Texas Commission on Children and Youth will discuss organizational matters, guest speakers, public testimony, lunch, and public testimony continues.

Contact: Ginny McKay, P O Box 13106, Austin, Texas 78711, (512) 305-9056

Filed: April 25, 1994, 4:27 p.m.

TRD-9439771

Credit Union Department

Friday, April 29, 1994, 10:00 a.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

According to the complete agenda, the Credit Union Commission, Commissioner Evaluation Committee will conduct an executive session to discuss the commissioner's performance, and consider action to be taken on commissioner's evaluation and the need and date of next committee meeting, if any

Contact: Penny A Black, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236

Filed: April 21, 1994, 3 14 p m

TRD-9439585

Texas Education Agency

Monday, May 2, 1994, 1:00 p.m.

Region XX Education Service Center, Room D, 1314 Hines Avenue

San Antonio

According to the complete agenda, the Investment Advisory Committee on the Permanent School Fund will meet to review the proposed Long Term Strategic Asset Allocation Plan, and other ancillary recommendations for the operation of the Permanent School Fund The strategic plan focuses on an analysis of the current investment status, and incorporates necessary reallocation of assets to optimize the investment portfolio

Contact: Carlos Resendez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9169

Filed: April 22, 1994, 3 22 p m

TRD-9439659

Tuesday, May 3, 1994, 9:00 a.m.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

Austin

According to the complete agenda, the State Board of Education (SBOE) Committee on Long-Range Planning will hold a work session to discuss American 2000-The National Goals for Education, evaluation of State Board of actions to achieve the goals and objectives of Quality, Equity, Accountability The Long-Range Plan for Public Education, 1991-1995, development of the State Board of Education Long-Range Plan

for Public Education, 1995-1999; proposed sites and dates for public hearings on the Long-Range Plan for Public Education, 1995-1999; status of the Texas Education Agency strategic plan; and update on revisions to the Texas Education Code.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: April 25, 1994, 10:33 a.m.

TRD-9439722

Friday, May 6, 1994, 10:00 a.m.

1701 North Congress Avenue, Room 8-101
Austin

According to the complete agenda, the Committee on Student Learning will welcome; discuss the report of the State Panel on Student Skills and Knowledge-Lionel Meno and Cynthia Levinson will present the draft report on the State Panel on Student Skills and Knowledge and will provide the committee the opportunity to review this report, proposed plan for curriculum revision-Ann Smisko will present how the report of the State Panel will be used in the revision of the public school curriculum; review of the committee and its actions, 1992-1994-Janice Boyd will provide a historical perspective of the committee's activities, and open discussion with the commissioner-Lionel Meno will provide an opportunity for the committee to raise any additional questions or suggestions and for the commissioner to thank the committee for its work

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533

Filed: April 22, 1994, 11:01 a.m.

TRD-9439622

Tuesday, May 17, 1994, 1:00 p.m.

Region XX Education Service Center,
Room E, 1314 Hines Avenue
San Antonio

According to the complete agenda, the Investment Advisory Committee on the Permanent School Fund will meet to review the proposed Long Term Strategic Asset Allocation Plan, and other ancillary recommendations for the operation of the Permanent School Fund. The strategic plan focuses on an analysis of the current investment status, and incorporates necessary reallocation of assets to optimize the investment portfolio.

Contact: Carlos Resendez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9169.

Filed: April 22, 1994, 3:23 p.m.

TRD-9439660

Advisory Commission on State Emergency Commu- nications

Tuesday, May 3, 1994, 9:00 a.m.

15th Street and North Congress Avenue,
John H. Reagan Building, Room 106

Austin

According to the complete agenda, the Administration Committee will call the meeting to order and recognize guests, hear public comment; staff reports: audit of ACSEC operations, COG and ACSEC annual 9-1-1 administration budget process, list of potential legislative issues, and ACSEC financial report; discussion and commission action on transfer of poison surcharge funds to the 9-1-1 fund account for reimbursement of 9-1-1 Funded Poison Control Program expenses; discussion and commission action on ACSEC office space lease options, discussion of COG fringe benefits and indirect costs; discussion and commission action on proposed audit costs associated with Coastal Bend Council of Governments' 9-1-1 related activities, discussion and commission action on proposed format for documenting and reporting ACSEC committee meetings proceedings; discussion and commission action on proposed agency public education activities, and adjourn

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911

Filed: April 25, 1994, 4:28 p.m.

TRD-9439772

Tuesday, May 3, 1994, 10:30 a.m.

15th Street and North Congress Avenue,
John H. Reagan Building, Room 101

Austin

According to the complete agenda, the Poison Control Implementation Committee will call the meeting to order and recognize guests; hear public comment, staff reports, current status of Poison Control Program and Poison Control Program financial report; report on and commission action to endorse federal funding share through telecommunications grant application, discussion and commission action, if necessary, on adoption of proposed Poison Control Program grant rule; report on results of the Poison Control strategic planning session, and adjourn

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke 1101 Capital of Texas Highway South, B 100, Austin, Texas 78746, (512) 327-1911

Filed: April 25, 1994, 4 26 p m

TRD-9439766

Tuesday, May 3, 1994, 1:00 p.m.

John H Reagan Building, Room 106, 15th Street and North Congress Avenue

Austin

According to the complete agenda, the Addressing Committee will call the meeting to order and recognize guests, hear public comment, staff report Attorney General Opinion on appraisal districts participation in addressing, discussion of distribution of addressing pool funds, review of and commission action on proposed addressing plan amendment for Alamo Area Council of Governments (Atascosa County), and adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327 1911

Filed: April 25, 1994, 4 43 p m

TRD-9439773

Tuesday, May 3, 1994, 2:00 p.m.

15th Street and North Congress Avenue,
John H Reagan Building, Room 109

Austin

According to the complete agenda, the Call Box Task Force will call to order and recognize guests, hear public comment, staff report update on call box test sites, discussion and commission action on recurring costs for current test sites after July 1994, review and discuss cost components for call box model cellular vs wireline, discussion and commission action on possible funding options for statewide call box program, discussion and commission action on future action on call box activities, and adjourn

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South B-100, Austin, Texas 78746, (512) 327-1911

Filed: April 25, 1994, 4 43 p m

TRD-9439774

Tuesday, May 3, 1994, 3:00 p.m.

John H Reagan Building, Room 104, 15th Street and North Congress Avenue

Austin

According to the complete agenda, the Planning and Implementation Committee will call to order and recognize guests; hear public comment, presentation and recommendations by the Warner Group on the Denco Consolidation Study; staff report (update on PCS wireless communications and related topics; update on Telepak equipment upgrade); discussion and commission action (surcharge assessment from private switch providers; surcharge assessment on extended area services (EAS) and cellular services; university private switch 9-1-1 exemption process, policy, guidelines, and costs for paging equipment), commission authorization to Border to Border Telephone Company to begin billing fees in Zapata County; discussion and commission action on strategic plan process; review of and commission action on proposed 9-1-1 plan amendments (Coastal Bend Council of Governments, Lower Rio Grande Valley Development Council, Concho Valley Council of Governments, West Central Texas Council of Governments, Ark-Tex Council of Governments, Alamo Area Council of Governments; Central Texas Council of Governments, East Texas Council of Governments, Heart of Texas Council of Governments, Brazos Valley Development Council); and adjourn

Persons requesting interpreter services for the hearing-and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911

Filed: April 25, 1994, 4 43 p m

TRD-9439775

Wednesday, May 4, 1994, 9:00 a.m.

**John H. Reagan Building, Room 106, 15th Street and North Congress Avenue
Austin**

According to the agenda summary, the Advisory Commission on State Emergency Communications will call the meeting to order; discuss and act on strategic plan implementation issues, ACSEC staff reports on audit operations, annual 9-1-1 administrative budget process, legislative issues, ACSEC financial report, discuss and act on transfer of poison surcharge funds, office space lease options, COG fringe benefits and indirect costs and other related activities, documenting and report ACSEC committee meeting proceedings, Public Education Program; discuss and act on committee reports; approve minutes of April meeting and adjourn

Persons requesting interpreter services for the hearing-and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100 Austin, Texas 78746, (512) 327-1911.

Filed: April 25, 1994, 4:27 p m.

TRD-9439767

Friday, May 6, 1994, 9:00 a.m.

ACSEC Offices, Suite B-100, 1101 Capital of Texas Highway South

Austin

According to the complete agenda, the One-Call Legislation Discussion Committee will call the meeting to order and recognize guests, hear public comment; introductions and summary of October meeting; review of goals and objectives, review of existing one-call systems, identify problems and solutions; and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: April 22, 1994, 1:30 p m

TRD-9439648

State Employee Charitable Campaign

Thursday, April 28, 1994, Noon

2902 Leopard

Corpus Christi

According to the complete agenda, the Local Employee Committee, Corpus Christi held an organization meeting to provide overview of state employee charitable campaign and selected local campaign manager

Contact: Ray Valdez, P O Box 9297, Corpus Christi, Texas 78469, (512) 888-5301

Filed: April 22, 1994, 10 17 a m

TRD-9439608

Thursday, April 28, 1994, 3:00 p.m.

1200 Golden Key Circle, Fourth Floor, Conference Room #5

El Paso

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and selected local campaign manager

Contact: Hazel Baylor, 1200 Golden Key Circle, El Paso, Texas 79936, (915) 599-3742

Filed: April 22, 1994, 10 17 a m

TRD-9439609

Friday, April 29, 1994, Noon

700 South Alamo

San Antonio

According to the complete agenda, the Local Employee Committee will hold an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Dr. John Howe III, 7703 Floyd Curl Drive, San Antonio, Texas 78284, (210) 567-2000.

Filed: April 22, 1994, 10:18 a.m.

TRD-9439610

Friday, April 29, 1994, 3:00 p.m.

500 Summit Avenue

Arlington

According to the complete agenda, the Local Employee Committee will hold an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: John Minor, University of Texas at Arlington, Arlington, Texas 76019, (817) 273-3461.

Filed: April 25, 1994, 3:14 p.m.

TRD-9439735

Monday, May 2, 1994, 2:00 p.m.

Texas Department of Public Safety, 2405 South Loop 250 West, New Classroom

Midland

According to the complete agenda, the Local Employee Committee will hold an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Captain Kevin Napier, 2405 South Loop 250 West, Midland, Texas 79703-7410, (915) 694-9301.

Filed: April 25, 1994, 3:14 p.m.

TRD-9439736

Thursday, May 5, 1994, 3:00 p.m.

Texas Woman's University Classroom, Faculty, Office Building, 13th Floor Conference Room

Denton

According to the complete agenda, the Local Employee Committee will hold an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Dr. Derrell Bulls, Box 23805, Denton, Texas 76204, (817) 898-2102.

Filed: April 22, 1994, 10:18 a.m.

TRD-9439611

Texas Employment Commission

Tuesday, April 26, 1994, 9:00 a.m.

TEC Building, Room 644, 101 East 15th Street

Austin

Emergency Revised Agenda

According to the agenda summary, the Texas Employment Commission added an item to executive session: Sondra Dawn, et al. vs. Texas Employment Commission

Reason for emergency: To meet court-imposed litigation schedule.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 25, 1994, 4:14 p.m.

TRD-9439762

Tuesday, May 3, 1994, 9:00 a.m.

TEC Building, Room 644, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will consider prior meeting notes; staff reports; report on TAA application process; internal procedures of Commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 18; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291

Filed: April 25, 1994, 4:15 p.m.

TRD-9439763

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Friday, April 29, 1994, 8:00 p.m.

Board Room, Courtyard by Marriott, 5660 North IH-35

Austin

According to the complete agenda, the Applications Subcommittee will discuss and possibly act on the following applications: William L. Boyer, Roy W. Boyd, Roger D. Clark, Roland K. Denison, Kyle Durbin, Greg Keeney, Douglas R. Norris, Danny R. Perkins, Doyle L. Taliaferro, William D. Warner, and Gary A. Utey

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T D D

(512) 458-7708 at least two days prior to the meeting.

Filed: April 21, 1994, 2 09 p.m.

TRD-9439582

Friday, April 29, 1994, 8:30 p.m.

Board Room, Courtyard by Marriott, 5660 North IH-35

Austin

According to the complete agenda, the Complaints Subcommittee will discuss and possibly act on the following complaints #3-001, 3-008, F3-002, FD/94-0003, FD/94-0005, FD/94-0006, FD/94-0009, FD/94-0010, FD/94-0011, FD/94-0012, FD/94-0014, FD/94-0015, FD/94-0017-21, FD/94-0024-25, FD/94-0027-32, and FD/94-0034-36

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T D D (512) 458-7708 at least two days prior to the meeting

Filed: April 21, 1994, 2 09 p.m.

TRD-9439583

Saturday-Sunday, April 30-May 1, 1994, 8:00 a.m.

Board Room, Courtyard by Marriott, 5660 North IH-35

Austin

According to the complete agenda, the Rules Subcommittee will discuss and possibly act on draft/proposed rules

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T D D (512) 458-7708 at least two days prior to the meeting.

Filed: April 21, 1994, 2:08 p.m.

TRD-9439581

Texas House of Representatives

Wednesday, May 25, 1994, 9:00 a.m.

Capitol Extension, E2 028

Austin

According to the agenda summary, the Business and Industry Subcommittee on Public Insurance Pools will call to order, roll call, explanation of charge and opening remarks, invited testimony, public testimony, closing remarks, set date for next meeting, and adjourn

Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78768, (512) 463-0766

Filed: April 22, 1994, 1:30 p.m.

TRD-9439647

Thursday, May 26, 1994, 10:00 a.m.

Capitol Extension, Room E2 028

Austin

According to the agenda summary, the Business and Industry Subcommittee on State Employees Workers' Compensation will call to order, roll call, explanation of charge and opening remarks, invited testimony, public testimony, closing remarks, set date for next meeting, and adjourn

Contact: Mance Bowden, P O Box 2910, Austin, Texas 78768, (512) 463-0766

Filed: April 22, 1994, 1 26 p.m.

TRD-9439645

General Land Office

Tuesday, May 3, 1994, 10:00 a.m.

S F.A Building, 1700 North Congress Avenue, Room 831

Austin

According to the complete agenda, the School Land Board will consider approval of previous board meeting minutes, pooling application, Nine Mile Point Field, Aransas County, excess acreage applications, Kinney County, consideration of water line easement on Camp Mabry land, Travis County, to City of Austin, coastal public lands, commercial lease renewal, Brazos River, Brazoria County, commercial lease assignment, Chocolate Bay, Calhoun County, commercial lease application, Copano Bay, Aransas County, easement application, Hynes Bay, Calhoun County, structure permit (cabin) request, Laguna Madre, Kleberg County, structure permit (cabin) renewals, Laguna Madre, Kenedy County, Laguna Madre, Kleberg County, Laguna Madre, Willacy County, Bastrop Bay, Brazoria County, Chocolate Bay, Brazoria County, Titlum Tatum, Brazoria County, and executive session-pending and proposed litigation

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016

Filed: April 25, 1994, 4 27 p.m.

TRD-9439768

Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Friday, April 29, 1994, 8:30 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin

According to the complete agenda, the Investment Committee will consider and possibly act on Investment of Association funds.

This meeting will be conducted by telephone conference and some or all of the committee members may participate by telephone or in person. The meeting is open to the public and those interested in attending should appear at the stated time, at the above location, which has teleconferencing facilities.

Contact: C. S. LaSelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: April 21, 1994, 2.08 p.m.

TRD-9439580

Texas Natural Resource Conservation Commission

Wednesday, May 4, 1994, 9:00 a.m.

1700 Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters: Class Three permit modification; water quality permit; water quality renewals; temporary order; district matters, water utility matters; settled hearings, in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 22, 1994, 12 25 p.m.

TRD-9439640

Wednesday, May 4, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the complete agenda, the Texas Natural Resource Conservation Commission will consider approving the following matters: solid waste management plan; rules; examiner's proposal for decision; executive session, in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905

Filed: April 22, 1994, 12.26 p.m.

TRD-9439642

Thursday, May 5, 1994, 10:00 a.m.

750 Channelview Drive, University of Texas Marine Science Institute, Auditorium Port Aransas

According to the complete agenda, the Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program will call to order, introductions, minutes, program update; subcommittee reports (six); discussion of fiscal year 1995 project scopes or services, additional items, and adjourn

Contact: Richard Volk, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: April 22, 1994, 3 22 p.m.

TRD-9439657

Friday, May 6, 1994, 9:00 a.m.

6300 Ocean Drive, Texas A&M University Corpus Christi, Conrad Blucher Institute Corpus Christi

According to the complete agenda, the Citizens Advisory Committee of the Corpus Christi Bay National Estuary Program will call to order, introduction, minutes, program update; public participation strategy (draft), subcommittee reports (five), discussion of fiscal year 1995 project scopes of work, additional items, and adjourn

Contact: Richard Volk, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: April 22, 1994, 3 22 p.m.

TRD-9439658

Board of Nurse Examiners

Monday, May 9, 1994, 10:00 a.m.

9101 Burnet Road, Conference Room, Suite 104

Austin

According to the complete agenda, the Ad Hoc Committee on Communications Plan will call to order, roll call; purpose of committee; new business, review draft of communication plan and discuss report to full board on May 10, 1994, and adjourn

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: April 22, 1994, 1.40 p.m.

TRD-9439649

Monday, May 9, 1994, 1:00 p.m.

9101 Burnet Road, Conference Room, Suite 104

Austin

According to the complete agenda, the Strategic Planning Committee will consider old business, review action plan for objectives 3.3 and 3.4; new business, review report of status of fiscal year 1994 action, review comments received from colleagues about the strategic plan, and discuss report to full board on May 10, 1994, and the committee will also receive the minutes from the March 7, 1994, meeting.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: April 22, 1994, 1 40 p.m.

TRD-9439650

Monday, May 9, 1994, 3:00 p.m.

9101 Burnet Road, Conference Room, Suite 104

Austin

According to the agenda summary, the Executive and Integrated Model Ad Hoc Committees will meet jointly to follow up on issues arising from the executive director's evaluation; follow up on August strategic planning retreat; discuss protocols for board member activities, and prepare report for regular meeting of the board.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: April 22, 1994, 1:41 p.m.

TRD-9439651

Monday, May 9, 1994, 3:00 p.m.

9101 Burnet Road, Conference Room, Suite 104

Austin

Revised Agenda

According to the complete revised agenda, the Executive and Integrated Regulatory Model Ad Hoc Committee will add, under new business, the item, consider executive director bonus.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: April 25, 1994, 9.00 a.m.

TRD-9439706

Texas Council on Offenders With Mental Impairments

Wednesday, May 4, 1994, 9:30 a.m.

TDCJ-Pardons and Paroles Division, Hearing Conference Room, 8610 Shoal Creek Boulevard

Austin

According to the complete agenda, the Research and Evaluation Committee will call the meeting to order, hear introductions, presentation by Dr. John Chiles of the UT Health Science Center in San Antonio, status report on parolee study, have a general discussion on research needs, and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406

Filed: April 22, 1994, 3:23 p.m.

TRD-9439661

Texas State Board of Pharmacy

Tuesday-Wednesday, May 3-4, 1994, 9:00 a.m.

1812 Centre Creek, Room 203

Austin

According to the agenda summary, the Public Hearing and Board Business Meeting will commence in open session to hear testimony regarding proposed rules §§291.111-291.115, concerning Home and Community Services Support Agency Pharmacies (Class F), introduce new board members, consider for approval, the February 15, 1994 Board Business Meeting minutes, consider for final adoption amendments to §283.2 and §283.4, concerning student interns from out-of-state colleges of pharmacy, §§291.31-291.36, 309.3, and 309.5, concerning standards for non-sterile compounding, §291.52, concerning qualifications for pharmacist-in-charge of a nuclear pharmacy, and new rules §281.74, concerning charges for open records, and §§291.111-291.115, concerning Class F Pharmacy (Home and Community Services Support Agency) licensing, consider for approval TSBP board policy regarding individuals wishing to appear and speak to the board, hear reports on the status of the Task Force on Class C Pharmacy Practice Standards, the Health Professions Council, the joint statement from TSBP, Medical Board, Nursing Board, and Food and Drug regarding sample distribution, fiscal year 1994 expenditures to date, review and approve the fiscal years 1995-1999 strategic plan, fiscal year 1996-1997 proposed bud-

gets, fiscal year 1996-1997 cash flow projections, fiscal year 1995 calendar of events, discuss exemption from labeling requirements for food production animals under Texas Dangerous Drug Act, changes to the Pharmacy Act for 1995 legislative session, DEA comment regarding emergency dispensing of controlled substances, rules regarding sources for determining genetic equivalency, supervision of supportive personnel, the use of an automated dispensing system to affix the prescription label in a Class A Pharmacy, The Texas Society of Hospital Pharmacists White Paper on Pharmacist Prescriptive Authority Under Protocol, receive a report on recent conferences and events, upcoming conferences and events, status of active/pending complaints, consider and take action on proposed Agreed Board Orders, and proposal for decision in TSBP vs Duane Bourett Asp, discuss board member/staff recognition of appointments and awards, and executive session to consider personnel matters, Agreed Board Orders involving impaired pharmacists and proposal for decision in TSBP vs Duane Bourett Asp.

Contact: Gay Dodson, R.Ph., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754-4594, (512) 832-0661

Filed: April 22, 1994, 3:44 p.m.

TRD 9439663

Public Utility Commission of Texas

Monday, May 2, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12792-joint petition of Southwestern Bell Telephone Company to provide extended area calling service from the Cuero Exchange to the Victoria Exchange.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: April 21, 1994, 10:51 a.m.

TRD-9439571

Texas Racing Commission

Monday, May 2, 1994, 10:00 a.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

According to the complete agenda, the Texas Racing Commission will call to or-

der, roll call, executive session pursuant to Government Code §551.074, to discuss the duties of members of the commission, consideration of and action on the following request by Corpus Christi Greyhound Race Track for approval of simulcasting, request by Manor Downs to cancel live race dates, request by Retama Park Association for approval of pre-opening simulcasting, old and new business, and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461

Filed: April 22, 1994, 4:32 p.m.

TRD 9439669

Monday, May 2, 1994, 1:30 p.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

According to the complete agenda, the Texas Racing Commission will conduct a public forum to present information regarding the effect of polyethylene glycol (PEG) on drug testing conducted on race animals. The commission will receive public comment and respond to questions regarding the commission's current policies and procedures pertaining to polyethylene glycol (PEG).

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461

Filed: April 22, 1994, 4:32 p.m.

TRD 9439668

Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, May 11, 1994, 7:00 p.m.

Radisson Hotel, Capitol Room 111 East First Street

Austin

According to the agenda summary, the Workshop of the Board of Directors will meet to discuss the Authority's five-year strategic plan, the fiscal year 1995 operating budget, and the fiscal year 1996-1997 legislative appropriations request.

Contact: L. R. Jacob, Jr., PE, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292

Filed: April 26, 1994, 7:54 a.m.

TRD 9439778

Wednesday, May 11, 1994, 8:30 p.m.

Radisson Hotel, Capitol Room 111 East First Street

Austin

According to the agenda summary, the Budget Committee of the Board of Directors will consider the fiscal year 1995 operating budget and the fiscal year 1996-1997 legislative appropriations request.

Contact: L. R. Jacobi, Jr., P.E., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: April 26, 1994, 7:54 a.m.

TRD-9439779

Thursday, May 12, 1994, 8:30 a.m.

John H. Reagan Building, Room 106

Austin

According to the agenda summary, the Board of Directors will approve minutes; hear the Budget Committee report and make committee appointments; hear the general manager's report on the year-to-date financial status, consider budget adjustments, approve the amended strategic plan, and approve the 1996-1997 legislative appropriations request; discuss the U.S. Department of Energy surcharge rebate procedures, be updated on national compacts, proposed rule making for operation, management, and waste acceptance, and consider the approval to retain outside legal counsel; be given status reports on the license application, site access, and agency contracts; hear a report on community development in Sierra Blanca, the distribution of local assistance funds, and county working groups, public information program, and the quality assurance program. The board will consider a proposed contract for emergency services in Hudspeth County, adopt a resolution of appreciation for a past board member, and consider an amendment to a current contract. Hear public comments and adjourn.

Contact: L. R. Jacobi, Jr., P.E., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: April 26, 1994, 7:53 a.m.

TRD-9439777

◆ ◆ ◆
Railroad Commission of Texas

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the division director's report on budget, personnel, and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967,

Austin, Texas 78711-2967, (512) 463-7110

Filed: April 22, 1994, 11:21 a.m.

TRD-9439629

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: April 22, 1994, 11:21 a.m.

TRD-9439630

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Personnel Division director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative, or procedural matters, strategic planning, personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981

Filed: April 22, 1994, 11:21 a.m.

TRD-9439631

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters. The commission will consider and act on the Information Resource Manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251

Filed: April 22, 1994, 11:21 a.m.

TRD-9439632

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901

Filed: April 22, 1994, 11:22 a.m.

TRD-9439633

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the agency budget, fiscal and administrative matters, and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257

Filed: April 22, 1994, 11:22 a.m.

TRD-9439634

Monday, May 2, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921

Filed: April 22, 1994, 11:23 a.m.

TRD-9439635

◆ ◆ ◆
Texas Senate

Wednesday, May 4, 1994, 1:00 p.m.

1400 Congress Avenue, Capitol Extension,

Room E1.036

Austin

According to the agenda summary, the Senate Committee on Natural Resources, Interim Charge on Permitting Process at the Texas Natural Resource Conservation Commission will call to order; opening remarks; public testimony; and closing remarks.

Contact: Carol McGarah, P.O. Box 12068, Austin, Texas 78711, (512) 463-0390.

Filed: April 25, 1994, 9:00 a.m.

TRD-9439704

Thursday, May 5, 1994, 10:00 a.m.

4800 Alberta, Regional Academic Health Center, Texas Tech University

El Paso

According to the agenda summary, the Joint Interim Committee on Health Insurance Access will call to order; roll call and opening remarks; address committee charge; public testimony; other business; and adjourn.

Contact: Carla Searcy, P.O. Box 12068, Austin, Texas 78711, (512) 463-0124.

Filed: April 25, 1994, 4:27 p.m.

TRD-9439769

Wednesday, May 11, 1994, 10:00 a.m.

Lubbock Methodist Hospital, Knipling Conference Center, 21st and Louisville

Lubbock

According to the agenda summary, the Joint Interim Committee on the Family Code will call to order; roll call and opening remarks; address committee charge; invited testimony; public testimony; other business; and adjourn

Contact: Becki Gregg, P.O. Box 12068, Austin, Texas 78711, (512) 463-0395.

Filed: April 25, 1994, 4:27 p.m.

TRD-9439770

◆ ◆ ◆
Texas State Board of Examiners of Social Worker Examiners

Saturday, April 30, 1994, 9:00 a.m.

Drury Inn North, Room 424, 6511 IH-35 North

Austin

According to the complete agenda, the Compliance/Complaints Committee will discuss and possibly act on: review of statutory provisions, existing rules and resource materials relating to complaints, investigations, and hearings; development of a draft set of rules, policies, and procedures on complaints, investigations, and hearings to

present to the Texas State Board of Social Worker Examiners; and pending complaints.

Contact: Michael Doughty, 1100 West 49th Street, Austin, Texas 78756 (512) 719-3521. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 22, 1994, 2:03 p.m.

TRD-9439653

◆ ◆ ◆
Teacher Retirement System of Texas

Friday, April 22, 1994, 11:00 a.m.

1000 Red River, Fifth Floor, Board Room Austin

Emergency Revised Agenda

According to the complete agenda, the Real Estate Committee considered proposal to extend international financial tower loan payoff request.

Reason for Emergency: justification for considering requested extension of time for loan prepayment by borrower was not established until after normal meeting notice deadline for the Real Estate Committee. If loan prepayment is to occur under the extended deadline, it must be approved before the next scheduled Real Estate Committee meeting.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: April 21, 1994, 10:56 a.m.

TRD-9439575

◆ ◆ ◆
Texas Department of Transportation

Friday, April 22, 1994, 2:00 p.m.

Dewitt C. Greer Building, 125 East 11th Street, Second Floor Conference Room

Austin

Emergency Meeting

According to the complete agenda, the Texas Transportation Commission met in executive session pursuant to Government Code, Chapter 551, §551.071-consultation with, and advice from, legal counsel concerning pending/contemplated litigation and negotiations, in the matter of the Court of Inquiry, in 65th Judicial District Court of El Paso County, Texas; and to consider retaining private legal counsel in the matter of the Court of Inquiry, in 65th Judicial District Court of El Paso County, Texas.

Reason for emergency: Immediate action was required to enable the commission and the department to protect the vital interests, safety, and welfare of the citizens and the travelling public.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: April 22, 1994, 11:20 a.m.

TRD-9439628

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The University of Texas at Austin

Monday, April 25, 1994, 11:30 a.m.

Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas

Austin

According to the agenda summary, the Council for Intercollegiate Athletics for Women called to order; discussed approval of minutes of the previous meeting; new business; announcements/information reports; executive session; and adjourned.

Contact: Jody Conratt, UT Austin, D3800, BEL 718, Austin, Texas 78712, (512) 471-7693.

Filed: April 21, 1994, 1:37 p.m.

TRD-9439577

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The University of Texas Health Center at Tyler

Thursday, May 5, 1994, 11:30 a.m.

Biomedical Research Building, Room 116, UTHCT, Highway 155 at 271

Tyler

According to the agenda summary, the Animal Research Committee will consider approval of minutes; chair report; veterinarian report; old business; new business; and adjournment.

Contact: Joe Godwin, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7756.

Filed: April 25, 1994, 12:45 p.m.

TRD-9439727

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Texas Council on Workforce and Economic Competitiveness

Monday, May 2, 1994, 9:00 a.m.

816 Congress Avenue, 13th Floor Conference Room

Austin

According to the agenda summary, the Evaluation and Performance Committee will consider a staff report on the input provided by the constituency groups on the draft of performance measures to be included in the strategic plan, public comment on the draft of performance measures to be included in the strategic plan, a committee discussion on the proposed draft of performance measures, and an action item to adopt a set of performance measures to be recommended to the Strategic Planning Task Force.

Persons with disabilities who plan to attend and need auxiliary aids or services, or assistance in having English translated into Spanish, should contact Val Blaschke, (512) 305-7008, at least two days before this meeting so an arrangement can be made

Contact: Michael Gutierrez, 816 Congress Avenue, Suite 1293, Austin, Texas 78701, or P.O. Box 2241, Austin, Texas 78768, (512) 305-7009

TRD-9439598

Regional Meetings

Meetings Filed April 21, 1994

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 420, San Antonio, April 26, 1994, at 1:00 p.m. Information may be obtained from Al J. Noizon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201 TRD-9439572.

The Bosque County Central Appraisal District Board of Directors met at 202 South Highway 6, Meridian, April 28, 1994, at 7:00 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9439574.

The Dallas Central Appraisal District Appraisal Review Board met at 2949 North Stemmons Freeway, Dallas, April 27, 1994, at 8:00 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9439579

The Gulf Coast Quality Workforce Planning TechForce 2000, Inc. will meet at the Harris County Private Industry Council, 1-10 East at Federal Road, Nations Bank Building, May 3, 1994, at 10:00 a.m. Information may be obtained from Karen E. Bard, 250 North Sam Houston Parkway East, Houston, Texas 77060, (713) 591-9306 TRD-9439576

The Kempner Water Supply Corporation General Membership met at the Kempner Fire Station, Pecan Street, Kempner, April 28, 1994, at 7:00 p.m. Information may be

obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701 TRD-9439584

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, April 28, 1994, at 8:30 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701 TRD-9439586

The Lubbock Regional MHMR Center Board of Trustees met in the Board Room, 1602 Tenth Street, Lubbock, April 25, 1994, at Noon. Information may be obtained from Gene Menefee, 1602 Tenth Street, Lubbock, Texas 79401, (806) 766-0202 TRD-9439588

The MHMR Authority of Brazos Valley Board of Trustees met in Conference Room A, 804 Texas Avenue, Bryan, April 28, 1994, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467 TRD-9439587

The Panhandle Regional Planning Commission Board of Directors met in the PRPC Board Room, 415 West Eighth Avenue, April 28, 1994, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9439594.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at the Pecan Valley MHMR Region Clinical Office, 104 Pirate Drive, Granbury, April 27, 1994, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806 TRD-9439589

Meetings Filed April 22, 1994

The Andrews Center Board of Trustees met in the Board Room, 2323 West Front Street, Tyler, April 28, 1994, at 3:00 p.m. Information may be obtained from Richard J. DeSanctis, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351 TRD-9439665.

The Austin-Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, April 26, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141 TRD-9439646

The Austin-Travis County MHMR Center Board of Trustees met in the Board Room, 1430 Collier Street, Austin, April 28, 1994, at 7:30 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141 TRD-9439664

The Colorado County CAD Appraisal Review Board met at the Colorado County Courthouse, 400 Spring, Columbus, April 28, 1994, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222 TRD-9439600

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street, Suite 102, New Braunfels, May 11, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8527 TRD-9439599

The Dallas Area Rapid Transit Audit Committee met in Conference Room C, 1401 Pacific Avenue, Dallas, April 26, 1994, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371 TRD-9439667

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, April 26, 1994, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163 TRD-9439726

The Dallas Area Rapid Transit Board met in the Board Room, 1401 Pacific Avenue, Dallas, April 26, 1994, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163 TRD-9439666

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, April 28, 1994, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552 TRD-9439627

The Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, April 27, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872 TRD-9439641

The Golden Crescent Regional Planning Commission Board of Directors met at the Nordheim Shooting Club, North Broadway, Nordheim, April 27, 1994, at 8:45 p.m. Information may be obtained from Rhanda Stasny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587 TRD-9439597

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, Waco, April 28, 1994, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822 TRD-9439621

The Jack County Appraisal District Board of Directors met at 210 North Church

Street, Jacksboro. April 25, 1994, at 7:00 p.m. Information may be obtained from Gary L. Zeidler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301 TRD-9439656

The Local Government Investment Cooperative (Rescheduled from April 25, 1994.) Board of Directors met at 7001 Preston Road, Suite 300, Dallas, April 28, 1994, at 3 00 p.m. Information may be obtained from Kathleen R. Ellison, 1301 McKinney, Suite 5100, Houston, Texas 77010-3095, (713) 651-3612 TRD-9439655

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, April 28, 1994, at 1:30 p.m. Information may be obtained from Kenneth N Jones, Jr., 4900 North 23rd Street, McAllen, Texas (210) 682-3481 TRD-9439643.

The Texas Municipal League Group Benefits Risk Pool Texas Municipal Center Owners Association, Inc. met at the Regal McCormick Ranch, Scottsdale, April 28, 1994, at 8:00 a.m. Information may be obtained from Suzanne Steindorf, 1821 Ruthertford Lane, Suite 300, Austin, Texas 78754-5151, (512) 719-6521. TRD-9439595

The Texas Municipal League Group Benefits Risk Pool Board of Trustees, Group Benefits Risk Pool met at the Regal McCormick Ranch, Scottsdale, April 28, 1994, at 9:00 a.m. Information may be obtained from Suzanne Steindorf, 1821 Ruthertford Lane, Suite 300, Austin, Texas 78754-5151, (512) 719-6521 TRD-9439596.

The Regional IV Education Service Center Board of Directors met in the Board Room, Region IV Education Service Center, 7145 West Tidwell, Houston, April 27, 1994, at 4 00 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77092-2096, (713) 744-6534 TRD-9439607

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply Corporation, Route 5, Box 50361, Wunnsboro, April 25, 1994, at 7.00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Wunnsboro, Texas 75494, (903) 342-3525 TRD-9439654

The Tax Appraisal District of Bell County Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, April 27, 1994, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9439662.

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Meetings Filed April 25, 1994

The Austin-Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, April 26, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141 TRD-9439708.

The Carson County Appraisal District Appraisal Review Board will meet at 102 Main Street, Panhandle, April 29, 1994, at 9.00 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9439734.

The Central Plains Center for MHMR & SA Board of Trustees will meet at 208 South Columbia, Plainview, April 29, 1994, at 6:00 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9439732.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, May 2, 1994, at 9.30 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296 TRD-9439730.

The Lavaca County Central Appraisal District Appraisal Review Board met at 113 North Main Street, Hallettsville, April 28, 1994, at 8:30 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396 TRD-9439760

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, May 9, 1994, at 4 00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396 TRD-9439761

The Middle Rio Grande Development Council (Emergency Revised Agenda.) Board of Directors met in the Sage Room, Holiday Inn, 920 East Main, Uvalde, April 27, 1994, at 1:00 p.m. (Reason for emergency: Agenda items added required immediate action before end of the month.) Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3555. TRD-9439729.

The Millersview-Doole Water Supply Corporation Board of Directors will meet at the Corporation's Business Office, one block west of FM 765 and FM 2134, Millersview, May 2, 1994, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9439732.

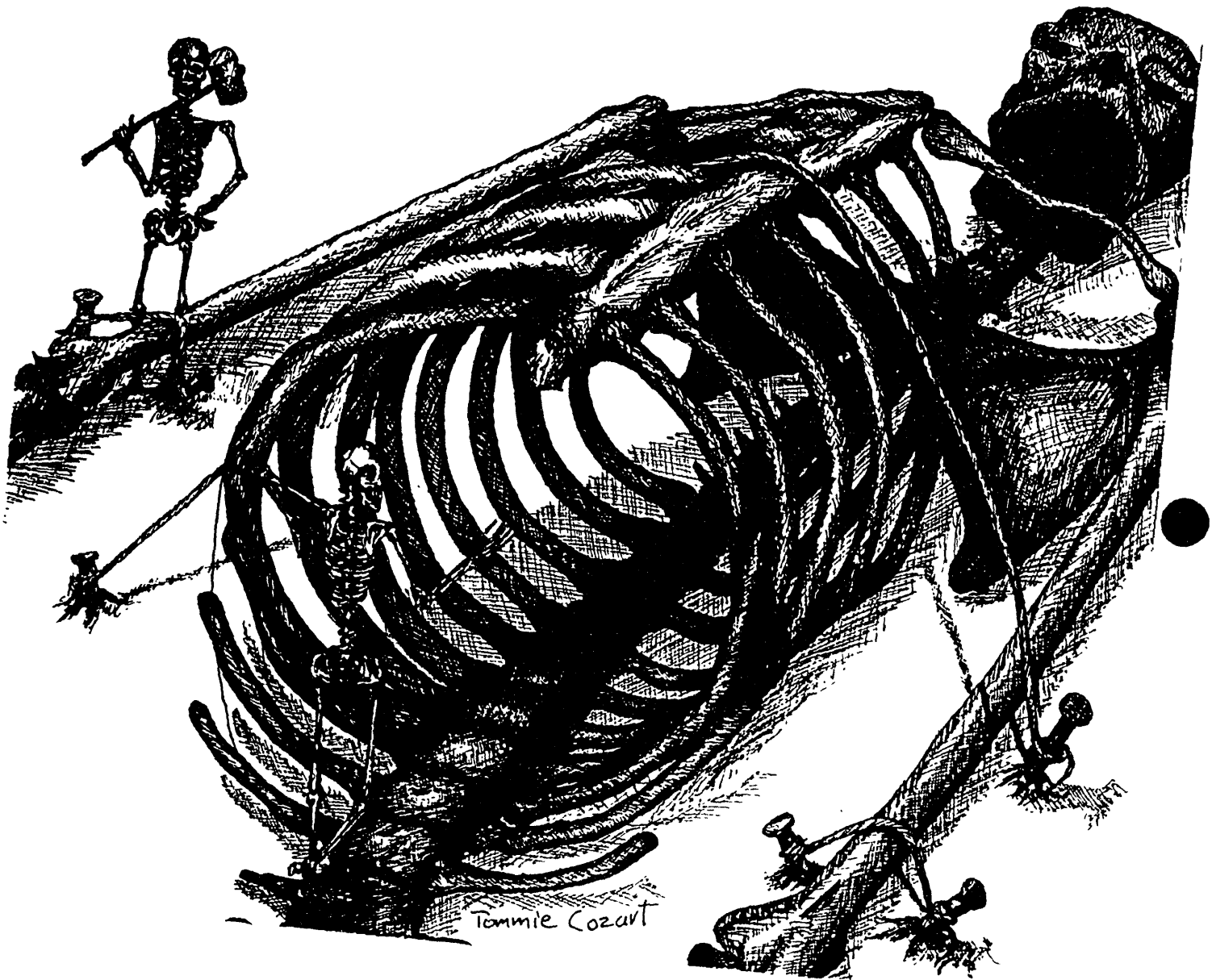
The Mills County Ag Advisory Board will meet in the Jury Room, Mills County Courthouse, Goldthwaite, May 3, 1994, at 9:00 a.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9439713.

The Panhandle Quality Work Force Planning Committee met at the Farwell ISD Administration Office, 705 Sixth Street, Farwell, April 28, 1994, at 2:00 p.m. Information may be obtained from David T. McReynolds, Plaza II, Suite 1020, Amarillo, Texas 79101, (806) 371-7577, Fax (806) 371-9519. TRD-9439707.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of Filter Plant, Lake Proctor, April 28, 1994, at 6: 30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9439776.

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Meetings Filed April 26, 1994

The Tyler Council Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, May 7, 1994, at 4.00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9439780.



Tommye Cozart

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.

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse (TCADA), under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, gives notice of a treatment services request for proposal (TS95 RFP). The purpose of this RFP is to solicit applications for chemical dependency treatment services.

To request a copy of the treatment services RFP, call the Funding Processes Department at (512) 867-8752, or write to Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 710 Brazos, Austin, Texas 78701-2576. TS95 RFPs will also be available at the funding information workshops.

The closing date for receipt of applications is 5:00 p.m. on May 25, 1994. Subject to provisions and requirements cited in the RFP, contracts will be executed for the period September 1, 1994-August 31, 1995.

The amount of funds available for the award period will not be known until the summer of 1994. TCADA currently administers two sources of public funds that can be used for treatment services: Substance Abuse Prevention and Treatment Block Grant (SAPT), Part B, Public Health Services Act, Fiscal Year 1994 Award-\$75.1 million and Article II, State Appropriations Act, Fiscal Year 1995 Amount-\$30 million.

Eligible providers are private nonprofit, public, or for-profit entities. Additional eligibility requirements can be found in the RFP.

Organizations interested in making application through the TS95 RFP are encouraged to attend one of the following funding information workshops listed. The workshops will provide potential applicants an opportunity to meet TCADA staff, discuss the intent of the RFP, potential for funding, and obtain help with the application. Following the workshop, TCADA staff may provide telephone assistance regarding application forms and submission requirements. For more information about workshop locations, contact the Funding Processes Department at (512) 867-8265.

The date, time, city, and location of each workshop are as follows: Tuesday, April 26, 1994, 9:00 a.m.-4:00 p.m., McAllen, McAllen Public Library, First Floor Exhibit Room, 601 North Main, McAllen, Texas, 78501; Wednesday, April 27, 1994, 9:00 a.m.-4:00 p.m., Houston, St. Paul United Methodist Church, Fondren Hall, 5501 South Main, Houston, Texas 77004; Thursday, April 28, 1994, 9:00 a.m.-4:00 p.m., Dallas Scottish Rite Hospital Auditorium, 2222 Welborn Street, Dallas, Texas 75219; Friday, April 29, 1994, 9:00 a.m.-4:00 p.m., Abilene, Abilene Public Library Auditorium, 202 Cedar Street, Abilene, Texas 79601; Monday, May 2, 1994, 9:00 a.m.-4:00 p.m., Austin, Balcones Conference Center, Commons Building, Room 1.102, 10100 Burnet Road, Austin, Texas 78758; Monday, May 2, 1994, 9:00 a.m.-4:00 p.m., El Paso, Houchen Community Center, 609 Tays, El Paso, Texas 79901.

Individuals needing auxiliary aids or services should notify Lynn Brunn-Shank at (512) 867-8113 at least two working days prior to the workshop by mail, telephone, or RELAY Texas (1-800-735-2989).

Issued in Austin, Texas, on April 20, 1994.

TRD-9439520

David P. Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed April 20, 1994

State Banking Board

Notice of Hearing Cancellation

As no opposition has been noted in the application for the Antoine National Bank, Houston, Texas, to convert to a state banking institution under the name of The State Bank of Texas, the hearing previously scheduled for Monday, April 21, 1994, has been canceled.

Issued in Austin, Texas, on April 20, 1994.

TRD-9439652

Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed April 22, 1994

Texas Department of Commerce

Request for Proposals for JTPA Follow-Up Survey Research Project

In accordance with the Job Training Partnership Act (JTPA) [P.L. 97-300], the Texas Department of Commerce (Commerce) announces a request for proposal to select a Texas-based organization to conduct statewide survey research related to the post-program follow-up of former JTPA program participants.

The services requested are associated with an on-going survey research project. Similar services are currently provided by Texas A&M University's Public Policy Resources Laboratory (PPRL).

Detailed information regarding the project and the proposal submission process will be provided in the Request for Proposal (RFP) Instructions which will be available on or about April 29, 1994, at the following location Texas Department of Commerce, Work Force Development Division, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711

The deadline for submission of proposals in response to this request will be 4:00 p.m. (CST) on Tuesday, May 31, 1994. Proposals, and any subsequent modifications, must be received by the deadline to be eligible for consideration. Commerce intends to use the responses due May 31, 1994, as a basis for selecting a bidder who will be invited to participate in further discussions and negotiations in response to detailed project specifications. The projected start date for the project is on or about July 1, 1994.

Selection will be based on demonstrated competence, bidder qualifications, quality and cost effectiveness of the proposed approach, and evidence of conformance with proposal criteria. In addition to detailed information regarding a proposed plan of work, bidders will be asked to provide information related to key staff qualifications related to multiple-site survey research and associated sampling strategies, general organizational capability to coordinate, manage and staff a large-scale, on-going statewide survey project; availability of bilingual interviewers and qualified data processing staff, demonstrated effectiveness on prior efforts of a similar nature, especially those related to post-program tracking of participants in employment and training or other human resource-related programs, and other information as specified in the RFP Instructions.

As the agency responsible for the JTPA program administration, Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement; the material provided may be used only as a means of identifying the various contractor alternatives. The RFP does not commit Commerce to pay any costs incurred prior to the execution of a contract.

Issuance of the material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. In addition, Commerce reserves the right to vary all provisions set forth at any time prior to the execution of a contract when deemed to be in the best interest of the State of Texas.

For further information regarding this notice, please contact Teresa Alvarez, Evaluator, or Sarah Bailey, Planning Supervisor, at Texas Department of Commerce, Work Force Development Division, P.O. Box 12728, Austin, Texas 78711, (512) 320-9800, TDD (512) 320-9698.

Issued in Austin, Texas, on April 22, 1994

TRD-9439670 Deborah C. Kastrin
Acting Executive Director
Texas Department of Commerce

Filed: April 23, 1994

Texas Board of Criminal Justice Correction of Error

The Texas Board of Criminal Justice submitted a Request for Consultant Services. The document appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2565).

In the fifth paragraph Art Mosley's phone number was incorrectly listed as "(409) 294-4023" it should be "(409) 291-4023"

Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, May 11, 1994, at 9:00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744, (512) 389-4360, fax (512) 389-4394.

Issued in Austin, Texas, on April 21, 1994

TRD-9439555 John Williams
Secretary
Texas Environmental Awareness Network

Filed: April 21, 1994

Governor's Office of Immigration and Refugee Affairs

Request for Proposals

SUMMARY The Governor's Office of Immigration and Refugee Affairs is pleased to announce the availability of Refugee Social Service Grant Funds for the purpose of providing services to the eligible refugee population in Texas. The actual amount of the award will be contingent upon federal appropriation.

The Code of Federal Regulations (CFR) 45, Parts 400 and 401 give the State the authority to contract with public or private non-profit agencies to provide services to refugees. In Texas, the Governor's Office of Immigration and Refugee Affairs is responsible for the administration of the Refugee Social Services Program.

Funds will be awarded on a competitive basis to those applicants that can demonstrate the greatest aptitude for effectively serving the desired constituents. All contracts will be on a cost reimbursement basis.

All public or private agencies and organizations that can demonstrate the expertise necessary to provide services to the refugee communities of Texas are encouraged to submit proposals. Proposals must be typewritten or printed, and five copies must be submitted to: Debbie Desmond, Refugee Program Manager, Governor's Office of Immigration and Refugee Affairs, 9101 Burnet Road 216, Austin, Texas 78758.

APPLICATION DEADLINE DATE. All proposals must be received in the Governor's Office of Immigration and Refugee Affairs by 4:00 p.m. CST on July 1, 1994. No proposal received after that deadline will be considered.

EVALUATION OF PROPOSAL AND AWARD. The final selection of grantees for award shall be made by the Governor's Office of Immigration and Refugee Affairs after careful evaluation of each proposal according to the

attached evaluation criteria and in accordance with applicable state and federal laws and regulations.

A copy of the complete RFP package including a detailed explanation of the RFP and the evaluation criteria will be sent upon written request. Please contact Debbie Desmond at the above address.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439728 David A. Talbot
General Counsel
Office of the Governor

Filed: April 25, 1994

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Texas Department of Health
Correction of Errors

The Texas Department of Health submitted proposed amendment to §§130.2, 130.3, 130.5-130.7, 130.9, 130.10, 130.12, concerning the registration of code enforcement officers. The rules appeared in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2360).

The department's submission of §130.6(b)(2)(A) was submitted as new language and therefore should have been published as bold print to indicate new language.

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The Texas Department of Health submitted adopted amendments to §§125.1-125.8, concerning special care facilities. The rules appeared in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2395).

The department's submission of §125.2(a)(14) contained errors and should be corrected to read as follows:

"(14) a written policy for publicly known natural disaster preparedness for residents. The written policy shall include a plan for the reasonable mechanism for triaging residents; the notification of appropriate personnel, family members and significant other in the event of a disaster; the identification of appropriate community resources; and the identification of possible evacuation procedures. The policy shall require how the facility will actually evacuate, transport or triage residents should the circumstances of the disaster require such action."

◆ ◆ ◆
Notices of Emergency Cease and Desist
Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Tricorp of Tennessee of Springfield, Tennessee, to cease and desist operating any sources of radiation at any location in Texas until the company's service has been properly registered with the bureau or the company has been granted reciprocity to perform the service in Texas. The bureau determined that the use of mobile x-ray services that have not been registered nor granted reciprocal recognition constitutes an immediate threat to public health and safety and the existence of an emergency. The company is further required to provide evidence satisfactory to the bureau regarding the actions

taken to properly register with the bureau or obtain reciprocal recognition and pay all appropriate fees, and the methods employed to prevent the recurrence of the violations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on April 25, 1994.

TRD-9439716 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: April 25, 1994

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Frisco Medical and Surgical Clinic (registrant-R14073) of Frisco to cease and desist using the fluoroscopic system of the Picker x-ray unit at the registrant's facility until actions are taken to either disable the fluoroscopic system or equip it with an image intensification system. The bureau determined that the continued use of this radiation source at the facility results in an excessive amount of radiation exposure to the patient than that needed to produce a diagnostic image, and constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct the violation and the methods to prevent its recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on April 25, 1994.

TRD-9439715 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: April 25, 1994

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Notice of Emergency Impoundment
Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered South Texas Radiology Group (registrant R-01292) of San Antonio to immediately surrender to the bureau for impoundment the source of radiation in the registrant's possession that is used for mobile mammographic screening. The order was issued because the use of radiation machines and the performance of mobile mammographic screening not authorized in the certificate of registration constitutes an immediate threat to public health and safety and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed and approved the written evidence supplied by the registrant regarding the actions taken to comply with Texas radiation regulations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on April 25, 1994.

TRD-9439717 Susan K Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed April 25, 1994

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**Notice of Intent to Revoke Certificates
of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant. Larry L. Cunningham, D D S, Inc., Bedford, R10541

The department intends to revoke the certificate of registration, order the registrant to cease and desist use of radiation machine(s), order the registrant to divest himself of such equipment, and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaint are corrected within 30 days of the date of complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays)

Issued in Austin, Texas, on April 25, 1994.

TRD-9439718 Susan K Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed April 25, 1994

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Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order. Emergency Cease and Desist Order and Notice of Violation issued March 23, 1994, to Chase/Medstat, Inc., 870 Dorothy Drive, Suite 700, Richardson, Texas 75081, holder of Certificate of Registration Number R09577.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8.00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on April 25, 1994.

TRD-9439719 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed April 25, 1994

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**Texas Health and Human Services
Commission**

Public Notices

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-22, Amendment Number 407.

The amendment allows for reimbursement to licensed dietitians for nutritional services provided to the EPSDT population. The amendment is effective July 1, 1993.

If additional information is needed, please contact Janet Kres, Texas Department of Health, at (512) 338-6465

Issued in Austin, Texas, on April 20, 1994.

TRD-9439512 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994

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The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-30, Amendment Number 415.

The amendment adds "special transportation services" to the list of services covered under Texas' benefit package entitled School Health and Related Services (SHARS). The amendment is effective August 1, 1993.

If additional information is needed, please contact Ray Gudur, Texas Department of Health, at (512) 338-6469.

Issued in Austin, Texas, on April 20, 1994.

TRD-9439513 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994

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The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-34, Amendment Number 419.

The amendment incorporates coding changes resulting from implementation of the new Form 3650, Level of Care. The amendment is effective October 1, 1993.

If additional information is needed, please contact Kathy Hall, Texas Department of Health, at (512) 450-3702.

Issued in Austin, Texas, on April 20, 1994

TRD-9439514 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-35, Amendment Number 420

The amendment eliminates one facility (Crossroads, Developmental Center) from the special facility rate class because that facility no longer meets the eligibility criteria. The amendment is effective October 1, 1993

If additional information is needed, please contact Kathy Hall, Texas Department of Health, at (512) 450-3702

Issued in Austin, Texas, on April 20, 1994

TRD-9439515 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 94-01, Amendment Number 430

The amendment removes the \$312.50 and 62.5% limitations to outpatient psychiatric benefits. The amendment is effective February 1, 1994

If additional information is needed, please contact Gene DeKneef, Texas Department of Health, at (512) 338-6509.

Issued in Austin, Texas, on April 20, 1994

TRD-9439516 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 94-03, Amendment Number 432.

The amendment adds heart/lung transplants as a covered service under the Texas Medicaid Program. The amendment is effective January 1, 1994

If additional information is needed, please contact Gene DeKneef, Texas Department of Health, at (512) 338-6509.

Issued in Austin, Texas, on April 20, 1994

TRD-9439517 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 94-06, Amendment Number 435

The amendment establishes the outpatient hospital reimbursement methodology at 94.6% of cost during state fiscal year 1994 and 89.4% of cost during state fiscal year 1995. The amendment is effective February 1, 1994

If additional information is needed, please contact Gene DeKneef, Texas Department of Health, at (512) 338-6509

Issued in Austin, Texas, on April 20, 1994

TRD-9439518 Tim Graves
Deputy Commissioner
Texas Health and Human Services
Commission

Filed April 20, 1994



Texas Department of Human Services Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Personal Assistance Services rate of the Nursing Facility Waiver program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on May 5, 1994, at 9:00 a.m. in Board Room (125F) of the John H. Winters Building (701 West 51st Street, Austin, Texas, First Floor, East Tower). If you are unable to attend the hearing, but wish to comment on the rates, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sherri Williams. Written comments may be mailed to the address in this notice, delivered to the receptionist in the lobby of the John H. Winters Center or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on, or after April 20, 1994, by contacting Sherri Williams, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by May 2, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 22, 1994

TRD-9439626 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed April 22, 1994



**Texas Department of Insurance
Third Party Administrators**

The following third party administrators (TPA) applications have been filed with the Texas Department of Insurance and are under consideration

Application for incorporation in Texas for The Bowling Shaver Group, Inc., a domestic third party administrator. The home office is in Denton, Texas

Application for a name change in Texas for Comprehensive Benefits Service Company, Inc., (doing business under the assumed names of Comprehensive Benefits Service Company, Inc. and CBSC), a foreign third party administrator. The proposed new name is EBP HealthPlans, Inc. The home office is Minneapolis, Minnesota.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Chuck Waites, 333 Guadalupe Street, M/C 105-6A, Austin, Texas 78701

Issued in Austin, Texas on April 21, 1994

TRD-9439590 D J Powers
 Legal Counsel
 Texas Department of Insurance

Filed: April 21, 1994



**Texas Commission on Law
Enforcement Officer Standards and
Education**

**Texas Peace Officers' Memorial
Advisory Committee to the Texas
Commission on Law Enforcement
Officer Standards and
Education—Committee Actions
Concerning Inductions and Enrollments**

The Texas Peace Officers' Memorial Advisory Committee to the Texas Commission on Law Enforcement Officer

Standards and Education ("Committee") considers information concerning the death of Texas peace officers who die in the line of duty, conforming to the Eligibility Criteria Rule, §§229.1-229.20, published in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1940). Information is accepted by the Director of the Memorial, in Austin, from any source and a pending file is created. Each case is researched and verified, and recommendations are made by the Director to the Committee at regularly scheduled meetings. Law enforcement agencies and families of the officers are asked to help document the life and career of each officer, as well as the fatal incident. Actions taken by the Committee are printed in the *Texas Register*, the officers' agencies are notified, and family members are contacted, if known and if appropriate. Each of the procedures in the eligibility process was published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 119) and each indicates the verification status of the individual case.

The Committee met on March 7, 1994, to consider 14 names for induction and 21 names for enrollment. The following list shows the action taken by the Committee in each case.

Any person who has information concerning the fatal incidents on the lives and careers of the persons listed, or any Texas Peace Officer who has died in the line of duty since August 5, 1823, should contact Edward T Laine, Director-Special Programs, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

<u>Officer's Name, Position, and Agency</u>	<u>Date of Death</u>	<u>Committee Action</u>
Dan LaFayette McDuffie Texas Ranger Texas Department of Public Safety	July 7, 1931	Induction
Louis Mackey Chaudoin Deputy Sheriff Cameron County Sheriff's Department	February 19, 1936	Induction
Henry R. Taylor Assistant Chief of Police Brenham Police Department	September 14, 1941	Induction
Albert Walter Jakubek Chief Deputy Sheriff LaVaca County Sheriff's Department	October 12, 1969	Induction
Travis Ed Williams Police Officer Mesquite Police Department	September 23, 1974	Induction

William Riley Mullins, Jr. Patrol Officer Yorktown Police Department	July 12, 1976	Induction
Bennie Royce Everett Lieutenant Athens Police Department	January 6, 1977	Induction
William Thomas Laws, Jr. Patrolman Cedar Park Police Department	December 20, 1979	Induction
Gordon Terry Toal Police Corporal Odessa Police Department	August 19, 1982	Induction
Ed Holcomb, Jr. Sergeant Conroe Police Department	September 14, 1982	Induction
Michael Ray Williamson, Sr. Police Officer Eules Police Department	November 28, 1982	Induction
Lowell Clayton Tribble Police Officer Farmers Branch Police Department	August 27, 1983	Induction
Robert Darrell Wright Deputy Sheriff Williamson County Sheriff's Department	August 6, 1985	Induction
Larry J. Miller Deputy Sheriff Hood County Sheriff's Department	January 26, 1992	Induction
Marion Dyer "M.D." Hodges Reserve Deputy Sheriff Gregg County Sheriff's Department	August 31, 1991	Enrollment
Lyndon Fred King Police Officer Grand Prairie Police Department	March 1, 1982	Enrollment
Donald Clark Arnold Sergeant Sherman Police Department	December 23, 1969	Enrollment
Milton Charles Boortz City Marshal Malone City Marshal N/K/A Malone Police Department	March 25, 1971	Enrollment
Milligan Ray Burk Patrolman McKinney Police Department	January 30, 1970	Enrollment

Charlie Lester Fields Deputy Henderson County Sheriff's Department	March 7, 1956	Enrollment
Jesse Earl McFarland, III Deputy Liberty County Sheriff's Department	May 21, 1990	Enrollment
Richard Scott Rogiers Deputy Marshal Balcones Heights Police Department	March 12, 1989	Enrollment
Bennett Thomas Spradley Police Officer Nacogdoches Police Department	December 2, 1948	Enrollment
Patrick Lynn Grun Police Officer Village Police Department	January 6, 1987	Enrollment
William Keith Thurston Sergeant Denton County Sheriff's Department	December 10, 1986	Enrollment
Walter Tommy Collins Lieutenant Wichita Falls Police Department	July 25, 1989	Enrollment
Walter Edwin Rappolee, Jr. Officer Wichita Falls Police Department	August 22, 1968	Enrollment
Robert Edward Fellows Officer Wichita Falls Police Department	August 22, 1968	Enrollment
Russell Scott Officer Wichita Falls Police Department	November 28, 1958	Enrollment
Charles Sleigh "Doc" Carlisle Officer Wichita Falls Police Department	June 29, 1933	Enrollment
Robert Glenwood Robinson Sergeant Corsicana Police Department	December 23, 1962	Enrollment
James Michael Carpenter Officer Crowley Police Department	February 13, 1979	Enrollment
Jalmar Lamar Wilson Sheriff Motley County Sheriff's Department	November 12, 1976	Enrollment

Roger Charles Hobden
Police Officer
Duncanville Police Department

December 3, 1979

Enrollment

Michael O. Poe
Sergeant
Duncanville Police Department

December 3, 1979

Enrollment

Issued in Austin, Texas, on April 21, 1994

TRD-9439592

Truman Lewis
Assistant Director
Texas Commission on Law Enforcement
Officer Standards and Education

Filed April 21, 1994

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**Texas Natural Resource Conservation
Commission**

Call for Comment

The Texas Natural Resource Conservation Commission (commission) requests written comments pertaining to specific challenges, concerns, and technical difficulties encountered in the implementation of the rules of Subchapter R of 30 Texas Administrative Code (TAC), Chapter 335

In the initial publication of these rules (November 13, 1992), the commission stated its intention to reevaluate the rules and publish a summary of how the rule was affecting waste management, disposal, classification and general compliance by October 1, 1994. This request for information is made to assist the commission in fulfilling this commitment and the submitted information will be used in evaluating whether the rule should be modified.

The commission staff requests comments about positive or negative effects of the rules and examples of challenges, concerns or difficulties in complying either technically or procedurally with the rules. Information is needed on whether the rule, as written, is understandable and whether the ultimate disposal and management of wastes will be affected and to what extent. The commission is interested in which waste streams have changed classifications and whether the management standard for any new classifications correspond with the actual threat to human health or the environment posed by that waste stream.

The commission seeks comment on the following specific topics: classification of empty containers, disposal levels and analytical testing requirements for total petroleum hydrocarbon (TPH)-containing (or TPH-contaminated) wastes, use and comprehension of the classification variance process, ability to achieve regulatory detection levels using Environmental Protection Agency or commission approved analytical test methods, usefulness of the generic plant trash classification, identification and classification of construction debris, classification and management of contaminated personal protective equipment, and classification and disposal of stabilized wastes. Further discussion on a majority of these topics is set forth below.

The commission requests comments on the efficiency and practicality of using other test methods for analyzing TPH-

containing or TPH-contaminated wastes. Possible approaches to the classification of such wastes include specifying within the rule the classification of wastes that are regulated under another commission program, or specifying wastes which are not a major environmental concern. Another option would be to utilize TPH values to indicate when additional testing to determine potential harm would be required for a less stringent classification. In order to explore this option, the commission requests information on the various carcinogenic/toxic/hazardous components that are found in various petroleum products and wastes to develop a more customized list of potentially harmful constituents.

The commission requests feedback on the usefulness of the plant refuse classification (particularly supplemental plant production refuse) as it now reads, as well as potential improvements.

The commission requests comment on managing uncontaminated construction debris as a specifically classified waste stream, such as the waste streams described in 30 TAC §335.508.

The commission is also interested in the long-term stability of the various stabilization techniques, methods and the techniques utilized to determine the long-term stability.

The commission requests information on whether, under normal laboratory performance conditions, the concentrations listed in Table 1, Appendix 1 of the rules can be achieved. If not, why, as well as what levels are achievable. The commission is interested in "achievable" detection levels for these constituents, as well as the achievable levels when performing the 7-Day Distilled Water Leachate Test.

Proposed improvements, solutions, examples and general comments shall be provided in written form and sent to Grace M. Montgomery Faulkner, Texas Natural Resource Conservation Commission, Industrial and Hazardous Waste Division, Waste Evaluation Section, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted 60 days after publication of this notice.

issued in Austin, Texas, on April 25, 1994

TRD 9439702

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed April 23, 1994

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Enforcement Orders

The Texas Natural Resource Conservation Commission submitted a notice of an enforcement order issued to

International Estate Corporation (No Permit). The order was issued on March 18, 1994. The first paragraph on the notice contained an error as submitted. It should read: An Enforcement Order was issued to International Estate Corporation (Expired Permit Number 12634-01) on March 18, 1994, assessing \$810 in administrative penalties.

Issued in Austin, Texas, on April 22, 1994

TRD-9439605 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 22, 1994

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An agreed enforcement order was entered regarding Mobil Oil Corporation-Beaumont Refinery (Permit Number SWR 30587) on April 12, 1994, assessing \$498,640 in administrative penalties with \$198,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Gene Montes, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0664.

An agreed enforcement order was entered regarding City of Texas City (Permit Number 10375-01) on April 15, 1994, assessing \$25,500 in administrative penalties with \$5,600 deferred

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An agreed enforcement order was entered regarding Domestic Utility Company (Permit Number 11762-01) on April 15, 1994, assessing \$8,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678

An agreed enforcement order was entered regarding Phillips Petroleum Company (Permit Number SWR 30048) on April 12, 1994, assessing \$537,742 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sally Jo Hahn, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0682

Issued in Austin, Texas, on April 19, 1994

TRD-9439604 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 22, 1994

Notice of Application for Waste Disposal Permits

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of April 18-22, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number, the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908

Akzo Chemicals, Inc., a Fluidized Cracking Catalyst Hydro Processing Catalyst, Polymer Chemicals and Eureka plants, the plant site is in Friendswood Development's Bayport Industrial Park at 13000 Bay Park Road in the City of Pasadena, Harris County, Texas; renewal; 02182

Brushy Creek Municipal Utility District; the Brushy Creek Municipal Utility District South Wastewater Treatment Facilities, are at the intersection of County Road 174 (Brushy Creek Road) and Great Oaks Drive in Williamson County, Texas, amendment, 11865-01

Coe Utilities, Inc., the Victoria Station Wastewater Treatment Facilities, the plant site is approximately 1-1/2 miles southwest of the intersection of FM Road 149 and FM Road 2978 in Montgomery County, Texas; renewal, 12687-01

City of Collinsville, the wastewater treatment facilities; are approximately 0.5 mile southeast of the intersection of U.S. Highway 377 and FM Road 902 in Grayson County, Texas, renewal, 10151-01.

Lafarge Corporation, the Balcones Cement Plant, the plant site is at the intersection of Wald Road and Solms Road.

approximately 0.75 miles north of Interstate Highway 35 and approximately 1.8 miles southwest of the City of New Braunfels in Comal County, Texas; renewal; 02179.

Hallco Texas, Inc.; a nonhazardous industrial solid waste landfill; the plant site is on the south side of State Highway 72 approximately ten miles east of the City of Tilden in McMullen County, Texas; new; 03665.

Harris County Municipal Utility District Number 148; the North Wastewater Treatment Facilities; the plant site is at 11750 Currin Forrest Drive, approximately 1,600 feet south-southeast of the intersection of North Lake Houston Parkway and Kings Lake Forrest Drive in Harris County, Texas; renewal; 11818-01.

Harris-Fort Bend Counties Municipal Utility District Number One; the Falcon Point Wastewater Treatment Facilities; the plant site is on the north side of Rosner Road; approximately 3,000 feet northeast of the intersection of Green-Busch Road and Rosner Road; approximately 2.5 miles southeast of the intersection of Interstate Highway 10 and FM Road 1463 in Fort Bend County, Texas; renewal; 12805-01.

City of Hidalgo; the wastewater treatment facilities; are east of the City of Hidalgo, approximately 0.5 mile north of U.S. Highway 281 and 0.5 mile east of FM Road 336 in Hidalgo County, Texas; renewal; 11080-01.

J. C. Viramontes, Inc., doing business as Economy Laundries; a laundering facility which washes blue jean garments; the plant site is at 12651 Montana Avenue, approximately one mile east of the intersection of State Highway Loop 375 and Montana Avenue (U.S. Highway 62/180) east of the City of El Paso, El Paso County, Texas; amendment; 03165.

Kent County, Kent County Courthouse; the wastewater treatment facility and irrigation site; are approximately 1,200 feet south of FM Road 1228 and approximately 7,500 feet west of the intersection of FM Road 1228 and State Highway 70 in Kent County, Texas; new; 13698-01.

LS Feeders, Inc.; the cattle feedlot; is approximately 3.75 miles west of the intersection of FM Roads 145 and 168, immediately south of FM Road 145 and immediately east of a County Road, approximately 3.5 miles west-southwest of the Town of Hart in Castro County, Texas; amendment; 01397.

Longview Refining Associates, Inc.; a petroleum refinery; the plant site is at 601 Premier Road in the City of Longview, Gregg County, Texas; renewal; 00572.

Mountain Man, Inc.; the Caddo Village Wastewater Treatment Facilities; the facilities are approximately 2,100 feet north of FM Road 1097 and 1.9 miles east-northeast of the City of Willis in Montgomery County, Texas; renewal; 12670-01.

Nueces County Water Control and Improvement District Number Four; the District Mustang Island South Wastewater Treatment Facilities; the facilities are on Mustang Island on the west side of Park Road 53, approximately 6.25 miles southwest of the intersection of Avenue G and Park Road 53 in the City of Port Aransas in Nueces County, Texas; renewal; 10846-02.

Warren Owen and Bobby Owen; a cattle feedlot; is on Dairy Road, approximately 0.5 mile east of the Town of Hereford, approximately one mile east of the intersection of Progressive Road and Dairy Road, and approximately

1.8 miles south-southeast of the intersection of U.S. Highway 60 and Progressive Road in Deaf Smith County, Texas; new; 03641.

S. A. Healy, Company, DART Construction Site; a tunnel excavation and construction areas; the plant site is a construction site along U.S. Highway 75 and north of the intersection of U.S. Highways 75 and 67 in the City of Dallas, Dallas County, Texas; new; 03504.

Steve Vanden Berge; the dairy; is approximately four miles south on FM 219 from its junction with Highway 6 in Dublin, Erath County, Texas; 03687.

Texas A&M University Animal Science Teaching and Research Complex (ASTREC); the complex contains a maximum of 330 heifers and steers in pastures and 100 cows at the existing Beef Center; 543 sheep and goats at the Sheep and Goat Center; 40 total animals at the Animal Euthenics Center; 520 total animals (cattle, swine and lambs) at the Nutrition and Physiology Center and 1,496 head of swine at the Swine Center; the ASTREC site is on the south side of Highway 60 approximately four miles southwest of the intersection of Highway 60 and FM Road 2818 in Brazos County, Texas; new; 03673.

West Harris County Municipal Utility District Number 11; the wastewater treatment facilities; are adjacent to the west side of Sam Houston Toll Road and the north side of a Harris County Flood Control Ditch, south of West Road and east of White Oak Bayou in Harris County, Texas; new; 13689-01.

Wilbur C. and Clyde W. McCloy; the cattle feedlot; is on the east side of an unnamed county road, approximately two and one-half miles north of FM Road 1595 and three and one-half miles west of the Community of Pringle in Hutchinson County, Texas; new; 03655.

Issued in Austin, Texas, on April 22, 1994.

TRD-9439637
Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 22, 1994

Notice of Award

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Texas Natural Resource Conservation Commission is filing notice that it has entered into an interlocal contract for consulting services on April 19, 1994. The notice inviting responses to a Request for Proposals resulting in this contract was published in the *Texas Register* on December 3, 1993 (18 TexReg 9022). The consultant will advise and assist the Texas Natural Resource Conservation Commission in the development and implementation of a model Master Composter training program for community coordinators and volunteers. The consultant selected is the City of Grapevine, with the contract developed under the auspices of "Earthworks," the environmental education entity within the Grapevine Parks and Recreation Department, 1280 South Main, Suite 101, Grapevine, Texas 76051. The contract is an interlocal contract entered into pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791. The total cost of the contract will not exceed \$26,000, and the term of the contract is expected to be February 1, 1994, through August 31, 1994. The consultant will provide a marketing plan and graphics for the publicity campaign, a detailed

curriculum for the training program, a model site plan for building a demonstration site, and a plan for each of Master Composter training three workshops by April 20, 1994; conduct first training workshop by April 30, 1994; conduct second workshop by May 31, 1994; conduct third workshop by June 30, 1994; deliver a master set of all handouts by July 8, 1994; and provide a follow-up survey and report summarizing overall impact of the training program by August 8, 1994.

Questions concerning this award may be directed to Kitty Coley, Composting Manager, Recycling and Waste Minimization Section, Pollution Prevention and Recycling, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 or call (512) 239-6771.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439703 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation
Commission

Filed: April 23, 1994

Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed conditions which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application by Fort Bend County Municipal Utility District Number 25, for a minor amendment to Permit Number 12003-01 in order to add an Interim II phase with a discharge volume not to exceed an average flow of 358,000 gallons per day via Outfall 001. The permit

currently authorizes a discharge of treated domestic wastewater effluent at an interim volume not to exceed an average flow of 260,000 gallons per day and a final volume not to exceed an average flow of 500,000 gallons per day via Outfall 001, which will remain the same. The wastewater treatment plant is approximately 2,900 feet east of FM Road 1464 and approximately 400 feet north of Old Richmond Road (Richmond-Gains Road) in Fort Bend County, Texas.

Application by Huckabee and Sons Dairy, Inc., for a minor amendment to Permit Number 03220 to modify the capacity and location of the waste storage ponds as designed in the original permit. The permit authorizes the disposal of waste and wastewater from a daily operation. The dairy will contain a maximum of 600 milking head. Washdown water, flushwater and stormwater will be retained in two storage ponds, where subsequently it will be used to irrigate agricultural land. Manure/solids will be disposed of as fertilizer on agricultural land. No discharge of pollutants into water in the State is authorized by this permit. The dairy is on an unnamed county road, south of FM Road 205, approximately seven miles east of the intersection of US highway 377 and FM Road 205 in Brath County, Texas.

Application by Sojo, Inc., for a minor amendment to Permit Number MSW2183 in order to revise the operating hours to Monday-Friday from 6:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 5:00 p.m. The plant site is at 1401 East Highway 80 in Abilene, Taylor County, Texas.

Application Number 23-801B by City of Edinburg to combine municipal water rights owned, in whole or in part, in Certificates of Adjudication Numbers 23-138, 13-140, 23-158, 23-220, 23-256, 23-441, as amended, with the water rights authorized by Certificate Number 23-801, as amended, under Certificate Number 23-801, as amended, designating such combination as Certificate Number 23-801B. Applicant seeks to divert and use not to exceed a combined total of 2202.72 acre-feet of water per annum from the Rio Grande with municipal priority for use within the City's service area in Hidalgo County, Texas in the Rio Grande Basin.

Application Number 23-3997K by City of Laredo for a Texas Water Code, §11.122, Water Use Permit Application. Application to sever portions of the water rights they own under Certificate of Adjudication Numbers 23-138 and 23-158, both as amended, from the certificates and to combine these rights under Certificate of Adjudication Number 23-3997, as amended and combined, to authorize municipal use in Webb County, Texas.

Issued in Austin, Texas, on April 22, 1994.

TRD-9439636 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 22, 1994

Notice of Public Hearings

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017; Texas Government Code Annotated, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the U.S. Environmental Protection Agency (EPA) regulations, concerning State Implementation Plans (SIPs), the

Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony concerning revisions to Chapter 114 and the SIP.

The TNRCC proposes revisions to §114.3, concerning Inspection Requirements; §114.5, concerning Exclusions and Exceptions; the Ozone Control Strategy for Motor Vehicle Inspection and Maintenance (I/M) programs; and a new §114.6, concerning Hardship Waiver Eligibility Criteria. The amendments to Chapter 114 and the Control Strategy are intended to provide a more cost-effective I/M program, to enable the EPA to determine that the I/M SIP meets the requirements of the Federal Clean Air Act, and to clarify intent and eliminate any conflict between the SIP, Chapter 114, and the inspection facilities operating contract.

Public hearings on the proposal will be held at the following times and locations: May 23, 1994, 7:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston, Texas; May 24, 1994, 7:00 p.m., John Gray Institute, 855 Florida Avenue, Beaumont, Texas; May 25, 1994, 6:00 p.m., City of El Paso Council Chambers, Two Civic Center Plaza, El Paso, Texas; and May 26, 1994, 7:00 p.m., Central Library Auditorium, 801 West Irving Boulevard, Irving, Texas.

The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to each hearing and will be available to answer questions informally.

Written comments not presented at the hearings may be submitted to the TNRCC Central Office, P.O. Box 13087, Austin, Texas 78711-3087 through June 3, 1994. Material received by the TNRCC Mobile Source Division by 4:00 p.m. on June 3, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the Central Office of the TNRCC Mobile Source Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas and at all TNRCC regional offices. For further information, contact Sherry Bryan at (512) 239-1994.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on April 20, 1994.

TRD-9439699 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: April 23, 1994

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Notice of Receipt of Application on Municipal Solid Waste Permit Number MSW42-C

Attached is a Notice of Receipt of Application and Declaration of Administrative Completeness for a municipal solid waste permit issued during the period of April 18-22, 1994.

This application has been determined to be administratively complete, and will now be subject to a technical

evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that the application is subject to change based on such evaluation.

Notices are issued pursuant to the Texas Health and Safety Code, §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the Commission. The Commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning permit applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Waste Management of Texas, Inc.; Ferris; Type I; 1201 North Central, on the north side of the City of Ferris, on the west side of U.S. Highway 75 in Ferris, Dallas and Ellis Counties, Texas; amendment; MSW42-C.

Issued in Austin, Texas, on April 19, 1994.

TRD-9439606 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 22, 1994

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Public Hearing Notice

The Texas Natural Resource Conservation Commission will conduct a public hearing beginning at 9:00 a.m., on Monday, May 9, 1994, in room 201S of the "E" Building in the TNRCC's Park 35 Office Complex in Austin, Texas. The Park 35 Office Complex is located at 12118 North IH-35, in Austin.

This hearing is scheduled to update and clarify the public on modifications to the new proposed regulations concerning on-site sewage facility program administration and design criteria. These regulations were proposed in the January 25, 1994, issue of the *Texas Register* (19 TexReg 405). This hearing is not scheduled to receive public comments.

The public is encouraged to attend the hearing so that agency staff can answer any questions regarding the new regulations. The Commission will be considering the new regulations for final adoption at their June 29, 1994, agenda. For additional information or questions regarding this hearing contact Sherman Hart, TNRCC, Flood Management and Groundwater Program, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7972.

Issued in Austin, Texas, on April 20, 1994.

TRD-9439701 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: April 23, 1994

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Texas State Board of Podiatry Examiners

Correction of Error

The Texas State Board of Podiatry Examiners submitted an adopted new §379.1 and §379.2. The rules appeared in

the April 12, 1994, issue of the *Texas Register* (19 TexReg 2722).

Section 379.1 and §379.2 should be effective July 1, 1994.

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**Texas State Board of Examiners of
Psychologists**

Correction of Errors

The Texas State Board of Examiners of Psychologists submitted a proposed amendment to §471.1, concerning Notifications of Renewals. The rule appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2467).

In §471.1 the last line should read "The second notice will not be mailed prior to the last day of their birth-month".

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Public Utility Commission of Texas
Notice of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Diagnostic Center Hospital, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Diagnostic Center Hospital pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 12933.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Diag-

nostic Center Hospital. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 19, 1994.

TRD-9439542 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 20, 1994

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Texas Racing Commission
Correction of Errors

The Texas Racing Commission submitted a proposed amendment to §311.1, concerning the applicability of Chapter 311 of the Commission's rules. The rule appeared in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2818).

Section 311.1 should read: "*§311.1. Applicability. This chapter applies to:*

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The Texas Racing Commission submitted a proposed amendment to §311.2, concerning the use of best effort in pari-mutuel races. The rule appeared in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2819).

Section 311.2 should read: "*§311.2. Best Effort.*"

Section 313.2(a): There should be a period after the word "official".

1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14