

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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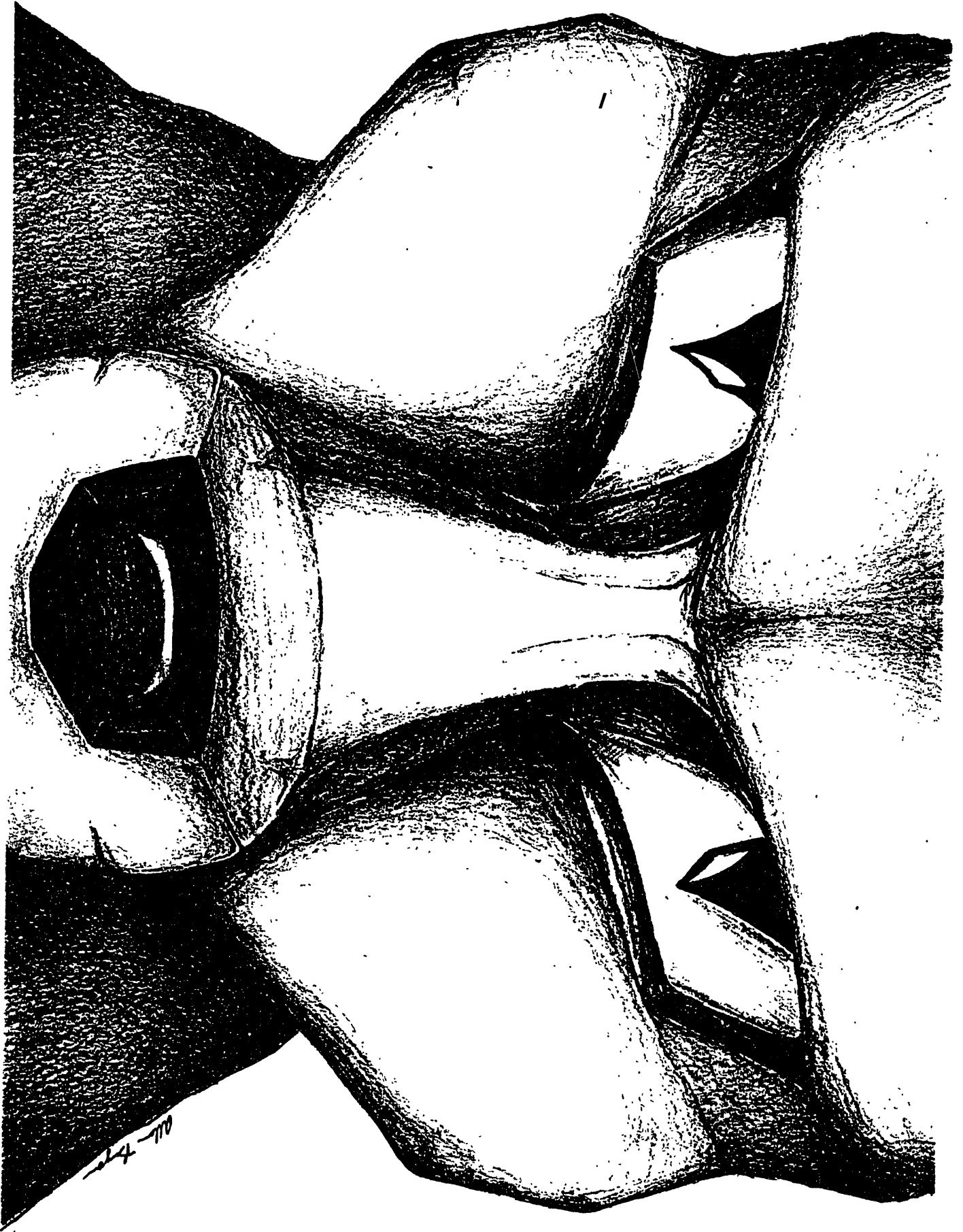
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TEXAS ETHICS COMMISSION

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

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

Texas Ethics Commission

Opinions

AOR-236. The Texas Ethics Commission has been asked to consider the scope of §572.055 of the Government Code, which restricts the fundraising activities of employee organizations of regulatory agencies.

The Texas Ethics Commission is authorized by the Government Code, Chapter 571, Subchapter D, §1.29, to issue advisory opinions in regard to the following statutes: (1) the Government Code, Chapter 572, Subchapter D; (2) Government Code, Chapter 302; (1) Government Code, Chapter 305; (3) Election Code, Title 15; (5) Penal Code, Chapter 36; and (6) Penal Code, Chapter 39.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439894

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: April 28, 1994





EMERGENCY RULES

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

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

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.19

The General Services Commission adopts, on an emergency basis, an amendment to §113.19, concerning the catalogue purchase procedure for automated information systems. The amendment eliminates unnecessary requirements for vendors to be designated as qualified information system vendors. The amendment is adopted on an emergency basis because it is necessary to immediately eliminate and prevent the unnecessary costs passed on to state agencies and political subdivisions through higher prices resulting from vendor compliance with unnecessary paperwork. The amendment is also being simultaneously proposed for public comment elsewhere in this issue of the *Texas Register*.

The amendment is adopted, on an emergency basis, under Texas Civil Statutes, Article 601b, §3.081, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section.

§113.19. Catalogue Purchase Procedure for Automated Information Systems.

(a) Upon registration on the commission's bidders list, a vendor wishing to sell or lease automated information systems to eligible purchasers in accordance with this rule shall apply to the commission for designation as a qualified information systems vendor by completing and submitting an [a written] application and catalogue. [on company letterhead detailing its:]

(1) abilities to satisfy the state's automation information systems needs;

(2) number of years in business;

(3) name, address, telephone number and point of contact for three business references; and

[(4) signature of an authorized representative.]

(b) An application must include the following: [The following must accompany a vendor's application]:

[(1) the vendor's catalogue describing:

[(A) all products and services eligible for purchase or lease;

[(B) the list price of each product or service; and

[(C) the discounted price to the state for each product and service to the state.

[(D) a separate alphabetical index referencing the page number of all products offered in vendor's catalogue; and

[(E) licensing agreements or other contracts authorizing vendor to distribute each product listed in vendor's catalogue.]

(1)[(2)] the vendor's maintenance, repair and support plan for all eligible products and services;

(2)[(3)] proof of the vendor's financial resources and ability to perform;

(3)[(4)] a guarantee that the vendor will make available repair and replacement parts as well as technical information required for repair of products sold for at least three years from the date of a product's discontinuance;

(4)[(5)] a statement detailing the geographic area in Texas to which the vendor desires to market catalogue products and services;

(5)[(6)] a statement certifying that:

(A) the vendor has reviewed the rules promulgated by the Department of Information Resources (DIR) and that all

products and services offered in the vendor's catalogue conform and comply with all applicable standards adopted by the DIR;

(B) the vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with catalogue purchase transactions;

(C) the vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas under Tax Code, Chapter 171;

(D) the vendor assigns to purchaser any and all claims for overcharges associated with any catalogue transaction which arise under the antitrust laws of the United States or the State of Texas; and

(E) the vendor will protect eligible purchasers from claims involving infringement of patents or copyrights.

(6)[(7)] a statement acknowledging that any terms and conditions in the vendor's catalogue that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding.

(7) the name, address, telephone number and point of contact for three customer references; and

(8) the signature of the vendor's authorized representative.

(c) (No change.)

(d) Upon receipt of a properly completed application and catalogue, the Director for Purchasing or the Director's designee shall give consideration to the following standards and criteria when deciding to designate a vendor as a qualified information systems vendor:

(1) the technical adequacy and reliability of the vendor's products as demonstrated by conformity to all state and

federal requirements, including but not limited to ANSI, FCC, NEMA, OSHA and UL standards;

(2) all factors set forth in Texas Civil Statutes, Article 601b, §3.11(e);

(3) the vendor's past and current status on the commission's bidders list and any unresolved complaints on record; and

(4) the ability of the vendor, as determined by the commission in its sole discretion, to provide adequate and reliable support and maintenance, currently and in the future, for all products and services detailed in the vendor's catalogue for the geographic area in Texas to which the vendor desires to market products and services.

(e) (No change.)

(f) An application that is incomplete or that contains inaccurate information will not be approved [rejected] and the vendor will be notified of corrections needed.

(g) Each catalogue supplied by a vendor shall:

[(1) be printed on 8-1/2 by 11 inch recycled paper;

[(2) be three-hole punched for inclusion in a three ring binder of catalogues;

[(3) list available products and services utilizing the five digit class and item numbering structure of the commission's Commodity Code Book;]

[(1)[(4)] describe all products or[and] services eligible for purchase;

[(2)[(5)] include the list price of each product or service;

[(3)[(6)] show the discounted price to the state for each product or [and] service;

[(7) show discounted pricing for quantity discounts and specific terms for prompt payment discounts that may be earned;]

[(4)[(8)] include an [bear its] effective date;

[(9) detail the geographic area in Texas the vendor has been authorized by the commission to cover;]

[(5)[(10)] provide necessary ordering information (vendor name, ordering address, points of contact, phone numbers, etc.); and

(6) [(11)]contain [bear] the statement: "This is a true and accurate copy of the catalogue approved and on file with the General Services Commission."

(h) The vendor is encouraged to print their catalogue on recycled paper and to itemize [include an itemization in their catalogue] or otherwise identify any

and all automation information systems products which:

(1) contain recycled or remanufactured parts, including the percentage of the total product that is recycled or remanufactured and the percentage of recycled material that is post consumer; and

(2) possess energy saving features

(i)-(j) (No change.)

(k) The vendor must provide the commission with the following information to maintain its qualification status:

(1) semiannual reports, due to the commission by the 15th of March and September, detailing the volume and value of orders placed by each eligible purchaser during the preceding six calendar months, showing:

(A) the eligible purchaser's identity; and

(B) the purchaser's requisition or purchase order number and its date. [;]

[(C) the class and item designations of the products and services ordered;

[(D) a brief description of the items ordered,

[(E) the quantity of each item ordered, and

[(F) each item's unit cost and the order total; or semiannual reports shall be provided indicating no orders placed with the vendor during the reporting period, if applicable]

[(2) immediate reports of any and all additional terms and conditions negotiated with eligible purchasers; such additional terms and conditions are subject to disclosure under the Texas Open Records Act]

(l)-(m) (No change)

(n) [State agencies covered by the Information Resources Management Act and local governments that have complied with the commission's rules regarding participation in the Cooperative Purchasing Program may purchase or lease automated information systems products and services directly from a qualified information systems vendor, and may negotiate additional terms and conditions to be included in contracts for the purchase or lease, provided the purchase or lease represents the best value available and is in the state's best interests.] Preference shall be given to qualified infor-

mation systems vendors who sell or lease products or services pursuant to Texas Civil Statutes, Article 601b, §3.20. [In this section, the best value available means the lowest overall cost of considering the following factors, as well as any other relevant factors:

[(1) the overall life cycle cost of the system or equipment, including the purchase price, installation costs and hardware costs;

[(2) estimated cost of employee training and estimated increase in employee productivity;

[(3) estimated software and maintenance costs;

[(4) compatibility to facilitate exchange of existing data;

[(5) capacity for expansion and upgrading to more advanced levels of technology,

[(6) quantitative reliability factors,

[(7) the level of training required to bring end-users to a stated level of proficiency;

[(8) the technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and

[(9) compliance with applicable statewide standards adopted by the DIR or a subsequent entity as validated by criteria established by administrative rule.]

(o) In this section an eligible purchaser is a state agency subject to the Information Resources Management Act (Texas Civil Statutes, Article 4413(32j)) or a local government that participates in the Cooperative Purchasing Program under Texas Local Government Code, §§271.081 et.seq. [Purchases of automated information systems shall be made using the catalogue purchase procedure unless the commission or eligible purchaser determines that the best value available accrues from an alternative purchase method authorized by Texas Civil Statutes, Article 601b, in which case the purchase shall be made using that method of purchase.]

(p) (No change.)

Issued in Austin, Texas, on April 26, 1994.

TRD-9439916

Judith M. Porras
General Counsel
General Services
Commission

Effective date: April 28, 1994

Expiration date: August 27, 1994

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

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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.15, §113.18

The General Services Commission proposes an amendment to §113 15, concerning invoicing and payment, and new §113 18, concerning auditing of purchase documents and payment vouchers. The amendments and new section update rules to conform to Uniform Statewide Accounting System (USAS) requirements and clarify the applicability of interest imposed on late payments under the Prompt Pay Act, Texas Government Code, §§2251.001 et. seq.

Pat Martin, director, Purchasing Division, has determined that for the first five-year period the amendment and new section are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Ms. Martin also has determined that for each year of the first five years the amendment and new section are in effect the public benefit that will be anticipated as a result of enforcing these amendments will be the elimination of procedures that are no longer required. The implementation of the Uniform Statewide Accounting System and associated procedures have been modified. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment and new section as proposed.

Comments may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment and new section are proposed under Texas Civil Statutes, Article 601b, and Texas Government Code, Chapter 2251, which provide the General Services Commission with the authority to promulgate

rules necessary to accomplish the purposes of the Article and Chapter.

§113 15. Invoicing and Payment.

(a) To receive payment, vendors must submit a two- [five-] part invoice to the agency receiving the goods or services. The invoice must include:

- (1) the agency requisition number;
- (2) the commission's purchase order number;
- (3) a valid payee identification number (PIN); and
- (4) other relevant information supporting and explaining the payment requested. If the required information is not included or if an invoice is thought to contain an error, the agency must notify the vendor of the error or omission no later than 21 calendar days after receipt of the invoice from the vendor. After the invoice is corrected by the vendor, it shall be processed within the time provided in subsection (d) of this section.

(b) When an invoice is received, the agency shall date stamp it and submit it to the commission attached to a properly executed purchase voucher on the form prescribed by that state comptroller's office and in accordance with the Uniform Statewide Accounting System (USAS) User Manual, certifying that the goods or services were received in accordance with the purchase order and that the invoice is correct and properly payable [Agencies are not required to submit invoices for spot purchases in amounts less than \$1,000, however].

(c) When satisfied that the payment is correct, the commission will approve for payment those vouchers for which pre-auditing is required on the USAS system [the voucher and invoice and forward them to the state comptroller for payment]. Shipment or delivery of all goods or services is not required before initial payment. Partial payments may be made for partial shipments

(d) Invoices, vouchers, and warrants will be processed according to the following schedule:

(1) the originating agency must transmit electronically the voucher to the comptroller [submit the invoice and voucher to the commission] no later than 11 calendar days after the later of:

(A) the date the agency received the invoice from the vendor;

(B) the date the agency received the supplies, material, or equipment; or

(C) the date on which the performance of services was completed.

(2) The commission must electronically approve the voucher on the USAS system (on pre-audit categories) no later [and submit it to the state comptroller no more] than eight calendar days after receipt of the invoice and voucher from the originating agency.

(3) The state comptroller must submit the warrant to the originating agency or mail the warrant to the vendor (or electronically transmit the payment to the vendor's financial institution) no more than 11 calendar days after receipt of the voucher from the commission.

(e) A payment is considered mailed on the date it is postmarked or on the date it is electronically transmitted to the vendor's financial institution. Any payment owed by an agency must be mailed to the vendor no later [more] than 30 days after the later of:

(1) the day on which the agency received the supplies, material, equipment, or services; or

(2) the day on which the agency received the invoice for the supplies, material, equipment, or services.

(f)-(h) (No change.)

(i) Subsections (d)-(h) of this section do not apply [if]:

(1) to bona fide disputes between governmental entities and a vendor or contractor [the terms of the contract establish different times and methods of payment, methods of resolving disputes, or interest owed];

(2) if the terms of a federal contract, grant, regulation, or statute prevent the state from making a timely payment with federal funds; or

(3) if the invoice is not submitted to the originating agency in strict accordance with instructions on the purchase order, if any.

(j) (No change.)

§113.18 Auditing of Purchase Documents and Payment Vouchers.

(a) General. The commission audits payment vouchers and the associated purchasing documents which established the basis for the claim for payment from state appropriated funds in accordance with Texas Civil Statutes, Article 601b, §3.

(b) Auditing Procedure. The commission audits purchasing data for compliance with applicable statutes and rules of the commission. The commission may audit either 100% of State of Texas purchase vouchers and associated purchase documentation of any agency, or may audit only specific types of purchases or a combination of agencies and specific purchases. The commission may determine the extent and method of audits to be performed. The commission may perform audits at the 100% level or may use a statistical random sample and the samples may be stratified. The sampling selection process may be stratified by dollar amounts or other parameters. These random sample audit may be performed prior to (pre-payment audits) or after (post-payment audits) the vouchers are paid by the Comptroller of Public Accounts. Each agency will be audited at least once in each state fiscal biennium. Agencies will be required to furnish copies of purchase documents to the commission for these audits. Audits may be performed at the agency site or by mail.

(c) Auditing Parameters.

(1) For 100% audits, delegated and non-delegated, the results must be at or above the 90% compliance level for each agency

(2) For the random sample audits, delegated and non-delegated, the results must be within the following parameters:

(A) minimum confidence level-90%;

(3) maximum error level-10%;

(4) minimum sample size-10 per agency and 10 per Purchase Category Code;

(5) period of time-monthly, quarterly, semiannual, annual, or biennial; and

(6) selection of sample-may be by table of random numbers or any other interval method.

(d) Agency Notification. The commission will send results of these audits to the agency head, agency's Directors of Purchasing, and Fiscal and/or Business Manager. If the results are not within the established parameters, the agency will be offered support and assistance to maintain an acceptable level of compliance. Agencies will be given a period of six months to bring their purchasing compliance within the established parameters. If the results of the second (re-audit) still do not fall within the parameters, then delegation of authority for some or all purchase categories may be suspended.

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 26, 1994.

TRD-9439915

Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 463-3583

• 1 TAC §113.19

(Editor's Note: The General Service Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The General Services Commission proposes an amendment to §113.19, concerning catalogue purchase procedures. The amendment deletes unnecessary requirements that do not add value to the state and unnecessarily restrict participation by vendors in the catalogue purchasing process. The amendment is also being simultaneously adopted on an emergency basis elsewhere in this issue of the *Texas Register*.

Pat Martin, director, Purchasing Division, has determined that for the first five-year period the amendment is in effect a reduction of costs to state agencies and local governments is anticipated as a result of enforcing or administering the amendment; however, the amount of anticipated reduced costs cannot be determined.

Ms. Martin also has determined that for each year of the first five years the amendment is in effect, the anticipated public benefit will be

reduced costs of automated information goods and services. There will be a positive effect on small businesses as a result of eliminating compliance requirements for all vendors. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Capitol Station, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, §3.081, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section.

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 26, 1994.

TRD-9439917

Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 463-3583

TITLE 4. AGRICULTURE Part II. Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.1

The Texas Animal Health Commission proposes an amendment to §35.1 concerning definitions

The proposed amendment is necessary to remove the requirement for an adult vaccination permit as it is no longer needed.

Sharman Eskew, acting director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to provide less requirements for a movement of cattle. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply the section as proposed

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.081, which provides the Texas Animal Health Commission with the authority to promulgate rules regulating the movement of animals into the State, and §163.061 and §163.064 which provide the Commission with the authority to adopt rules that relate to the testing or vaccination of cattle or to the movement of cattle into and within an area.

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

Permit-A document adopted by the Commission with specified conditions relative to movement, testing and vaccinating of cattle which is required to accompany the cattle entering, leaving or moving within the State of Texas.

"E" Permit [and "AV" Permits]-Premovement authorization [authorizations] for entry of cattle into the State by the Texas Animal Health Commission-The "E" permit states the conditions under which movement may be made, and restrictions and test requirements after arrival [The "AV" permit states the conditions for entry of designated nonvaccinated female cattle born after January 1, 1983, and over 12 months of age from other states. Designated female cattle are: Female beef and dairy cattle from Class "Free" and "A" states and only female beef cattle from Class "B" states. In addition, the designated cattle must be from a herd which has been established for at least 120 days.

"S" Permit-A premovement authorization for exposed, suspect or nontested cattle in marketing channels having restricted destination.

"B" Permit (VS Form 1-27)-A premovement authorization for movement of reactor cattle in marketing channels moving to slaughter.

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-9439935 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 719-0714

◆ ◆ ◆
• 4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35.2, concerning general requirements.

The proposed amendment is necessary to require heifers in infected herds to be tested prior to being vaccinated for brucellosis and if classified as reactors to be handled as any

other reactor. Also to remove obsolete language regarding adult vaccination.

Sharman Eskew, acting director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to provide evidence that any heifer vaccinated for brucellosis in infected herds will be negative prior to vaccination and provides updated language on adult vaccination. 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 may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.041, which provides the Texas Animal Health Commission with the authority to promulgate rules to eradicate or control any disease affecting livestock, and §163.061 and §163.064, which provide the Commission with the authority to require testing and vaccination.

§35.2. General Requirements.

(a)-(k) (No change.)

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

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

(5) The plan will consist of the following.

(A) Testing Procedures:

(i) all eligible cattle in the herd including all nonvaccinated heifers over six months of age shall be presented for testing or retesting at intervals stated in the herd plan until the quarantine is released;

(ii) all cattle to be added to the herd shall be tested prior to commingling with the herd;

(iii) all stray cattle found in the herd shall be presented for testing;

(iv) cattle identified as reactors shall be removed in accordance with subsection (j) of this section;

(v) heifers born in the herd shall be removed in accordance with subsection (k) of this section;

(vi) upon release of quarantine, the owner/caretaker shall retest all test-eligible cattle in the herd in not less than six months nor more than 12 months from the releasing test.

(B) Vaccination Procedures:

(i) all nonvaccinated heifers shall be presented as soon as possible after they reach the age of four months and before the age of six months for dairy heifers and eight months for beef heifers to be tested for brucellosis and vaccinated with Strain 19, B. abortus, vaccine. In the event heifers tested at the time of vaccination disclose reactor level titers, they will be classified and handled as reactors;

(ii) all female cattle over eight months of age in beef herds and six months of age in dairy herds shall be presented to be adult vaccinated within ten days of their negative serological test with Strain 19 B. abortus, vaccine;

(iii) replacement female cattle over eight months of age for beef or over six months of age for dairy shall be presented within ten days after a negative test, to be adult vaccinated prior to their addition to an already vaccinated herd. The epidemiologist will determine if adult vaccination of replacements must continue if the quarantine extends past 18 months, or if only calfhood vaccines may be add;

(iv) previously vaccinated negative female cattle shall be presented for revaccination with Strain 19 B. abortus vaccine as determined by the epidemiologist.

(6)-(8) (No change.)

(m) Official vaccination requirements.

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

[(4) Requirements for vaccination of adult females in noninfected herds. Vaccination will be done by State/Federal personnel following a negative test within ten days prior to adult vaccination. A hold order will be placed on adult vaccinates at time of vaccination. Each animal may be released following its negative classification.]

(n)-(u) (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 20, 1994.

TRD-9439934 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 719-0714

• 4 TAC §35.4

The Texas Animal Health Commission proposes an amendment to §35.4, concerning entry and change of ownership.

The proposed amendment is necessary to clarify the type of permit required to enter from a foreign country as an "E" Permit and updates language regarding recommendations for calfhood vaccination in Texas that had previously been changed.

Sharman Eskew, acting director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to provide clarity and make current language changes to the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.081, which provides the Texas Animal Health Commission with the authority to promulgate rules regulating the movement of animals into the State, and §163.061, which provides the Commission with the authority to adopt rules relating to the movement of cattle into an area.

§35.4. Entry and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. All cattle must obtain an "E" [a] permit from the Texas Animal Health Commission prior to moving to a destination in Texas. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2)-(7) (No change.)

(b) (No change.)

(c) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle between [born after January 1, 1983.] four and 12 months of age being [and older, and] purchased or sold for use in grazing, breeding, or dairying operations [, or confinement in a dry lot not under quarantine] be officially vaccinated.

(2) (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 20, 1994.

TRD-9439933 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 719-0714



Chapter 41. Fever Ticks

• 4 TAC §41.2

The Animal Health Commission proposes an amendment to §41.2 concerning quarantine line; defining and establishing tick eradication areas

The proposed amendment is necessary to expand the tick quarantine line in Webb County. The H. B. Zachary Ranch, known as the Rancho Blanco, located South of Laredo will be included inside the permanent tick quarantine line. The double fence, which encompasses this ranch, is no longer believed to be an effective barrier against the spread of ticks.

Sharman Eskew, acting director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a more effective barrier will be in place to prevent the spread of fever ticks and thus protect the livestock and premises against the spread of ticks. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §167.003, which provides the Texas Animal Health Commission with the authority to promulgate rules regulating eradication of all ticks capable of carrying Babesia in the state and protect all land, premises and livestock from ticks and exposure to them; and §167.006 which provides the Commission with the authority to adopt rules that relate designation of a county or a part of a county that the commission determines may contain ticks.

§41.2. Quarantine Line; Defining and Establishing Tick Eradication Areas.

(a) (No change.)

(b) Quarantined areas are as follows:

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

(4) Webb County. Beginning at a point where the Maverick-Webb County line intersects the Mines Road and following this road in a southeasterly direction to where it intersects the North fence of the Las Minas Ranch Tasita Pasture approximately 43 1/2 miles; thence, following the North fence of the Las Minas Ranch Tasita Pasture in an easterly direction to the northeast corner of the same, approximately 1.8 miles; thence, following the East fence of the Tasita Pasture in a southerly direction to the Southeast corner of the same, approximately 1.3 miles; thence, following the South fence of the Tasita Pasture in westerly direction to where it intersects the Mines Road, approximately 2 1/10 miles; thence, following the Mines Road in a south-easterly direction to its intersection with Del Mar Boulevard and IH-35, approximately 18.3 miles; thence, following IH 35 in a southerly direction to its intersection with Matamoros Street (U.S. Highway 83) approximately 4.1 miles; thence, following Matamoros Street in an easterly direction approximately one mile to where Matamoros Street becomes Guadalupe Street; thence, following Guadalupe Street in an easterly direction approximately 1 1/2 miles to where U.S. Highway 83 turns in a southerly direction; thence, following U.S. Highway 83 in a southerly direction, approximately 16.7 [12.3] miles to where it intersects the Webb-Zapata county line [north double fence of the H. B. Zachary Ranch; thence, following the meanderings of this double fence in a westerly direction to the northwest corner of the same double fence, approximately 5.5 miles; thence, following the meanderings of the H. B. Zachary west double fence in a southeasterly direction to a corner, approximately 4 1/2 miles; thence, following same fence in an easterly direction to a corner, approximately 3/8 mile; thence, following the same fence in a southerly direction to a corner, approximately 3/8 mile; thence, following the H. B. Zachary ranch south double fence in an easterly direction to where it intersects U.S. Highway 83 at the Webb-Zapata County line, approximately four miles].

(5)-(8) (No change.)

(c)-(d) (No change.)

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

Issued in Austin, Texas, on April 20, 1994.

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 719-0714

TITLE 7. BANKING AND SECURITIES

Part IV. Texas Savings and Loan Department

Chapter 63. Fees and Charges

• 7 TAC §63.15

The Texas Savings and Loan Department proposes a new §63.15, concerning fees charged for copies of public records as defined in Texas Civil Statutes, Article 6252-17a and requested pursuant to the Texas Open Records Act. This rule is proposed based on House Bill 1009, passed by the 73rd Legislature, Regular Session. Section 9A(b) of this law requires each state agency to specify by rule the charges the agency will make for copies of public records. This is being done so that the public can be informed about the charges for copies of records of the Department that they have access to under the Texas Open Records Act prior to making a request for such records.

James L. Pledger, commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Pledger also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be access to public information that is not cost prohibitive. There will be no effect on small businesses. The proposed rule will have no local employment impact.

The anticipated economic cost to persons who are required to comply with the proposed section is nominal, unless the information requested is not readily available and is voluminous.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114 which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

The following statute is affected by this rule: Texas Civil Statutes, Article 852a.

§63.15. Fees for Open Records Requests.

(a) The fees for copies of records of the Department which are subject to public examination pursuant to the Texas Open Records Act shall be as follows:

(1) \$0.10 per page for readily available information which takes less than 15 minutes to obtain, with less than 50 pages of standard-size paper up to 8 inches by 14 inches;

(2) an additional \$15 per hour personnel charge for readily available information of 50 pages or more;

(3) \$0.10 per page, plus \$15 per hour personnel charge, plus \$3.00 per hour overhead charge for any quantity of information that requires over 15 minutes to obtain and is therefore not readily available;

(4) \$0.50 per minute if computer resources are required to obtain the requested information;

(5) actual postage and shipping charges are added to all requests;

(6) \$0.10 per page for a local facsimile transmission, \$0.50 per page for a long distance facsimile transmission in the same area code, and \$1.00 per page for a long distance facsimile transmission in a different area code;

(7) nonstandard-size copies would consist of a diskette at \$2.00 each, an audio cassette at \$1.00 each, and paper larger than 8 inches by 14 inches at \$0.50 per page;

(8) if certification is requested of any item, a charge of \$5.00 will be added to the total charges;

(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and

(10) a reasonable deposit may be required for requests where the total charges are over \$200.

(b) All requests will be treated equally. The Commissioner may waive charges at his discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department and will be at the discretion of the Commissioner.

(d) Confidential documents will not be made available for examination or copying except under court order or other directive.

(e) All open records requests will be referred to the Commissioner's designee before the Department will release the information.

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-9439906

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: June 6, 1994

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

Chapter 77. Loans, Investments, Savings, and Deposits

Authorized Loans and Investments

• 7 TAC §77.31

The Texas Savings and Loan Department proposes an amendment §77.31(a), concerning loan documentation. The rule would be amended to more closely track the lending and loan documentation requirements applicable to federal savings associations. The proposed amendment would: delete the specific definition of a "current" financial statement; delete the provision requiring the board of directors of a savings bank to separately approve a specific list of acceptable appraisers; and increase the threshold for which appraisals are required for real estate loans to \$250,000. Recent federal interagency regulations were adopted to establish the requirement for appraisals at \$250,000.

James L. Pledger, commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government.

Mr. Pledger also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the the ability of state-chartered savings banks to make loans similar to federally chartered savings banks or savings associations, and state or national banks. There will be no effect on small businesses.

The anticipated economic cost to persons who are required to comply with the proposed section is none.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

The following statute is affected by this rule: Texas Civil Statutes, Article 489e.

§77.31. Loan Documentation.

(a) Prior to funding any type of secured loan (other than a loan fully secured by an account on deposit at the savings bank), made or purchased under this chapter, a savings bank shall insure that the following documents and records are in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank:

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

(3) current financial statements signed by the borrower and all guarantors and current documented credit reports disclosing the financial ability of the borrower and guarantors [(a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared];

(4)-(10) (No change.)

(11) for real estate loans in which the transaction value exceeds \$250,000, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank [who are on a list of appraisers approved by the board of directors] is required. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the savings bank, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage corporation, the Federal National Mortgage Corporation and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the savings bank, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection;

(12)-(14) (No change.)

(b)-(k) (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-9439905

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: June 6, 1994

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

◆ ◆ ◆
Chapter 79. Miscellaneous

Fees and Charges

• 7 TAC §79.108

The Texas Savings and Loan Department proposes a new §79.108, concerning fees charged for copies of public records as defined in Texas Civil Statutes, Article 6252-17a and requested pursuant to the Texas Open Records Act. This rule is proposed based on House Bill 1009, passed by the 73rd Legislature, Regular Session. Section 9A(b) of this law requires each state agency to specify by rule the charges the agency will make for copies of public records. This is being done so that the public can be informed about the charges for copies of records of the Department that they have access to under the Texas Open Records Act prior to making a request for such records.

James L. Pledger, commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Pledger also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be access to public information that is not cost prohibitive. There will be no effect on small businesses.

The anticipated economic cost to persons who are required to comply with the proposed section is nominal, unless the information requested is not readily available and is voluminous.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

The following statute is affected by this rule: Texas Civil Statutes, Article 489e.

§79.108. Fees for Open Records Requests.

(a) The fees for copies of records of the Department which are subject to public examination pursuant to the Texas Open Records Act shall be as follows:

(1) \$0.10 per page for readily available information which takes less than 15 minutes to obtain, with less than 50 pages of standard-size paper up to 8 inches by 14 inches;

(2) An additional \$15 per hour personnel charge for readily available information of 50 pages or more;

(3) \$0.10 per page, plus \$15 per hour personnel charge, plus \$3.00 per hour overhead charge for any quantity of information that requires over 15 minutes to obtain and is therefore not readily available;

(4) \$0.50 per minute if computer resources are required to obtain the requested information;

(5) actual postage and shipping charges are added to all requests;

(6) \$0.10 per page for a local facsimile transmission, \$0.50 per page for a long distance facsimile transmission in the same area code, and \$1.00 per page for a long distance facsimile transmission in a different area code;

(7) nonstandard-size copies would consist of a diskette at \$2.00 each, an audio cassette at \$1.00 each, and paper larger than 8 inches by 14 inches at \$0.50 per page;

(8) if certification is requested of any item, a charge of \$5.00 will be added to the total charges;

(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and

(10) a reasonable deposit may be required for requests where the total charges are over \$200.

(b) All requests will be treated equally. The Commissioner may waive charges at his discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department and will be at the discretion of the Commissioner.

(d) Confidential documents will not be made available for examination or copying except under court order or other directive.

(e) All open records requests will be referred to the Commissioner's designee before the Department will release the information.

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 28, 1994.

TRD-9439907

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: June 6, 1994

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

Statements of Policy

• 7 TAC §79.121

The Texas Savings and Loan Department proposes new §79.121, concerning the application of the statutory savings bank parity provision and the procedure for overriding the effect of the parity provision set forth in the Texas Savings Bank Act, §7.11. This provision differs from the parity provision in the Texas Savings and Loan Act in that it is subject to limitations and restrictions that may be prescribed by rule of the commissioner and the Finance Commission. While the ability of the commissioner and the Finance Commission to limit parity is important to maintain from a supervisory perspective, such limitations on parity should be intentional and very specific in order to avoid confusion. General regulations which might be interpreted as limiting the availability of parity should not have the effect of overriding this parity provision. Parity should only be overridden when it is the specific intent of the commissioner and the Finance Commission to do so. This proposed rule is designed to clarify that intent and procedure related to parity so that the rules applicable to savings banks will be clear and not subject to varying interpretations.

James L. Pledger also has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Pledger also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the ability of savings banks to effectively compete with other types of financial institutions, thus maintaining the viability of the dual financial system. There will be no effect on small businesses. The proposed rule will have no local employment impact.

The anticipated economic cost to persons who are required to comply with the proposed section is none.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

The following statute is affected by this rule: Texas Civil Statutes, Article 489e.

§79.121. Application of the Statutory Parity Provision. A savings bank may make any loan or investment or engage in any activity permitted under state law for banks or savings and loan associations or under the laws of the United States for federal savings and loan associations, savings banks or national banks with principal offices located in this

state. The commissioner and the Finance Commission reserve the authority to impose by rule limitations or restrictions on the preceding parity provision. However, any such limitations and/or restrictions shall only be effective if such rule specifically states that it overrides the §7.11 parity provision of the Texas Savings Bank Act.

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 28, 1994.

TRD-9439908

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: June 6, 1994

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

◆ ◆ ◆ Part V. Office of Consumer Credit Commissioner

Chapter 82. Administration

• 7 TAC §82.2

The Consumer Credit Commissioner and the Finance Commission propose new §82.2 to establish procedures and fees for inspection and/or photocopying of public records under Chapter 552 of the Texas Government Code, commonly known as the Texas Open Records Act (the Act).

Pursuant to Acts 1993, 73rd Legislature, Chapter 428, §4, and amendments to the Act made therein (see text following Texas Government Code, §552.261), each agency must adopt rules to recover the agency's full cost of providing copies of public records. Proposed §82.2 will accomplish this objective.

Ms. Leslie L. Pettijohn, Assistant Consumer Credit Commissioner, has determined that, for the first five year period the proposed new sections will be in effect there will be no significant fiscal implications for state government or local government or small business. The proposed rule will amend existing agency copy charges and will result in a nominal decrease in revenue to state government.

Ms Pettijohn also has determined that, for each year of the first five years these proposed new sections are 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 Office of Consumer Credit Commissioner may be accessed by members of the general public.

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

Comments on the proposal to be considered by the Office of Consumer Credit Commis-

sioner should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Leslie L. Pettijohn, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, to be assured of consideration.

The new section is proposed under the provisions of Acts 1993, 73rd Legislature, Chapter 428, and the 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.

§82.2. 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 Consumer Credit Commissioner.

(2) Department—The Office of Consumer Credit Commissioner.

(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 programming, 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 agency 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 directive, 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 Consumer Credit Commissioner, provided that no fee will be charged for requests for less than ten standard-size copies.

(c) Copy and service charges.

(1) A charge of \$0.10 per page will be made for standard-size copies of readily available information.

(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, plus \$3.00 per hour for overhead, shall be added to the copy charges specified by paragraph (1) of this subsection.

(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.

(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, §§111.61-111.71.

(6) If the anticipated charges under this subsection (c) plus anticipated charges under subsection (d) of this section exceed \$100, the agency may require 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 delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly.

(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 agency may refuse to fax more than 20 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 agency. 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 agency 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 28, 1994.

TRD-9439945

Allo B. Crow, Jr.
General Counsel
Office of Consumer Credit
Commissioner

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 479-1280

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATION**

**Part II. Public Utility
Commission**

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.21

The Public Utility Commission of Texas proposes an amendment to §23.21 concerning cost of service. The purpose of the amendment is to reflect the fact that no interexchange carrier is subject to the provisions of §23.21 and to correct a typographical error.

Joyce Gonzalez, assistant general counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the amendment.

Ms. Gonzalez also has determined that, for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will include implementation of Senate Bill 377, Acts of the 73rd Legislature, providing that the term "dominant carrier" does not include an interexchange carrier that is not a certificated local exchange carrier. There will be no effect on small businesses. There will be no economic cost of complying with the amendment as proposed.

Ms. Gonzalez also has determined that for each of the first five years the proposed amendment is in effect the amendment will have no effect on employment in the state.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12194.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Cross-reference to statute: Senate Bill 377, Acts of the 73rd Legislature, which amended Texas Civil Statutes, Article 1446c, §§3(c)(3)(2); 18(c), (d), and (f); and 78 and repealed §100 and §101.

§23.21. Cost of Service.

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

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) (No change.)

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows.

(A) (No change.)

(B) Working capital allowance to be composed of, but not limited to the following.

(i)-(ii) (No change.)

(iii) A reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital.

(I)-(IV) (No change.)

(V) For all investor-owned electric utilities, [all telephone interexchange utilities,] and all telephone local exchange carriers with 50,000 or more access lines, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a)-(-g-) (No change.)

(VI)-(VII) (No change)

(C)-(F) (No change.)

(d) Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session, 1991.

(1) Each utility that is subject to the commission's rate setting jurisdiction, pays state franchise taxes, and has not had a rate proceeding under the Act, §42 or §43, in which the effects of House Bill 11 were considered in the setting of rates shall be subject to this subsection. Except as provided in the following sentence, on or before December 1 of each year, each utility subject to this subsection shall file with the commission a tariff sheet, or tariff sheets, applicable to each rate class setting forth an interim House Bill 11 tax adjustment factor. If a utility chooses not to request an increase under this subsection or if the utility has otherwise limited itself by agreement to recovering tax changes that are the subject of this subsection by a method different from that prescribed in this subsection, the utility need not file tariff sheets but shall make an informational filing showing its calculations including an explanation and all underlying supporting documentation showing the effect of House Bill 11 on its taxes. If the adjustment is a decrease that amounts to less than \$.50 per customer for electric utilities or access line for telephone utilities on an annual basis, the tariff shall not include a factor, but shall state that the reduction will be applied against the adjustment for future years. In all other tariffs, the factors set forth in the tariff sheets shall be calculated as set forth in the following paragraphs. Utilities that are required to file tariff sheets shall include an explanation of how the interim factor was calculated as well as showing all the calculations. For state taxes to be paid during 1992, all utilities subject to this subsection shall make the initial filing as soon as practical, but no later than 90 days, after the adoption of this rule.

(2)-(7) (No change.)

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

Issued in Austin, Texas, on April 28, 1994.

TRD-9439969

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: June 8, 1994

For further information, please call: (512) 458-0100

◆ ◆ ◆
• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23 concerning the rate design for local transport services offered by local exchange carriers. The proposed amendment provides definitions of terms used in the section, establishes the rate elements for switched transport services

and sets the pricing standards for such services. The amendment also requires that all local exchange telephone companies amend their tariffs to comply with the new rate design, sets a time schedule for the submission of tariff filings and establishes the procedure to be followed for approval of the filings.

Patrick J. Sullivan, Assistant General Counsel, 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. Sullivan 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 rule as proposed is the establishment of a rate structure that would encourage the efficient use of switched transport facilities and facilitate competition in the interexchange market as well as the intrastate access market. The growth in competition in the local transport market is expected to have a positive effect on both small and large businesses. There is no anticipated economic costs to persons who are required to comply with the proposed section because any affected providers are being permitted to structure and charge rates that reflect the way the network is used and appropriate costs are incurred.

Mr. Sullivan also has determined that for each of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section

Comments on the proposal (15 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 12682.

The Commission is interested in receiving specific comments on what constitutes an appropriate relationship between the rates for the various transport services. Accordingly, in addition to comments on the proposed transport rate relationship, General Counsel requests comments on the appropriateness of requiring that the rate differences between tandem-switched transport, DS1 direct-trunked transport and DS3 direct-trunked transport respectively, on an equivalent unit of capacity basis, should be no higher than the difference in the LRIC for each transport option.

General Counsel expects to conduct workshop(s) as necessary in connection with this rulemaking project. All parties filing comments on the proposed rule will be notified of the time and date of the workshop. Parties that do not wish to file comments but are interested in attending the workshop must so notify the commission within 30 days after publication of the proposed rule by filing with the commission a letter to that effect which refers to Project Number 12682.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas

with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §18, which provides that the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace.

The following statute is affected by this rule: Texas Civil Statute, Article 1446c.

§23.23. Rate Design

(a)-(c) (No change)

(d) Telephone.

(1) (No change)

(2) Definitions. The following words and terms, when used within this subsection, shall have the following meanings, unless the context clearly indicates otherwise

(A)-(B) (No change.)

(C) Dedicated signalling transport-Transmission of out-of-band signalling information between an access customer's common channel signalling network and a LEC's signalling transport point on facilities dedicated to the use of a single customer.

(D) Direct-trunked transport-Transmission of traffic between the serving wire center and another LEC office, without intermediate switching, which is charged on a flat-rate basis.

(E)[(C)] Equal access-LEC access which is provided to access customers on a tariffed basis, which is equal in type, quality and price to Feature Group C, and for which the rates are unbundled. From an end user's perspective, equal access is characterized by the availability of 1-plus dialing with the end user's interexchange carrier of choice on interLATA calls.

(F) Entrance facilities-The transmission between the access customer's (such as an interexchange carrier's) point of demarcation and the serving wire center.

(G)[(D)] High Cost Assistance (HCA)-A program administered by the commission in accordance with the provisions of §23.53(d) of this title (relating to Universal Service Fund).

(H)[(E)] Interexchange Carrier (IXC)-A carrier other than a LEC pro-

viding any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. An entity is not an IXC solely because of:

(i) the furnishing, or furnishing and maintenance of a private system;

(ii) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(iii) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(iv) the provision of shared tenant service.

(I)(F) Interexchange Carrier Access Charge (ICAC)—A usage-sensitive rate that is usually assessed in conjunction with carrier common line (CCL) usage. The revenues from the assessment of the ICAC are pooled and distributed to LECs pursuant to commission order. The ICAC is to be phased down and eliminated pursuant to the provisions of this subsection. During the phasedown, the ICAC will be referred to as the transitional ICAC.

(J)(G) Intrastate—Refers to communications which both originate and terminate within Texas state boundaries.

(K)(H) Meet point billing—An LEC access billing arrangement for services to access customers when local transport is jointly provided by more than one LEC

(L)(I) Percent Interstate Usage (PIU)—An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the LEC unless the LEC's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by LECs between the interstate and intrastate jurisdictions.

(M) Residual charge—The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(N) Serving wire center (SWC)—The LEC-designated central office which serves the access customer's point of demarcation.

(O) Special access—A transmission path connecting customer-designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not utilizing the local exchange carrier's end office switches.

(P)(J) Switched access—Access service that is provided by LECs to access customers and that requires the use of LEC network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls.

(Q)(K) Switched access demand—Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(R)(L) Switched access minutes or access minutes of use—The measured or assumed duration of time that LEC network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(S) Tandem-switched transport—Transmission of traffic between the serving wire center and another LEC office that is switched at a tandem switch and charged on a usage basis.

(T)(M) Transitional ICAC—A rate, calculated pursuant to paragraph (5) of this subsection.

(3) (No change.)

(4) Access rates. The structure and rates for all LECs' intrastate switched access services shall be established in accordance with the following requirements.

(A)-(E) (No change.)

(F) Local transport rate structure and pricing. Local transport rates shall not contain unreasonable distance sensitivity. Each local exchange carrier, as defined in §23.61 of this title (relating to Telephone Utilities), shall comply with clauses (i)-(x) of this subparagraph, unless indicated otherwise.

(i) Transport Services.

Each local exchange carrier that is subject to this subparagraph shall offer transport services that consist of the following elements: entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signalling transport, and a residual charge.

(ii) Entrance Facilities.

(I) All access customers that use the LEC's facilities between the customer-designated point of demarcation and the SWC shall be assessed a flat-rated entrance facilities charge per unit of capacity.

(II) Rates for entrance facilities shall be set no lower than 105% of the long run incremental cost (LRIC). The LRIC shall be developed pursuant to substantive rule §23.91(g) of this title (relating to Long Run Incremental Cost Methodology for LEC Services).

(III) The LEC may charge distance-sensitive rates for entrance facilities as enumerated in clause (viii). Mileage shall be measured as airline mileage between the point of demarcation and the SWC.

(iii) Direct-Trunked Transport.

(I) All access customers that use the LEC's direct-trunked transport facilities shall be assessed a flat-rated direct-trunked transport charge per unit of capacity.

(II) Rates for direct-trunked transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC). The LRIC shall be developed pursuant to substantive rule §23.91(g) of this title. Additionally, these rates shall be set consistent with the requirement in clause (vii) of this subparagraph.

(III) The LEC may charge distance sensitive rates for direct-trunked transport, as enumerated in clause (viii). Mileage shall be measured as airline mileage between the SWC and end office or between customer-designated points.

(IV) Centralized equal access providers are not required to provide direct-trunked transport services. Local exchange carriers that do not have measurement and billing capabilities at their end offices are not required

to provide direct-trunked transport services at those end offices.

(iv) Tandem-Switched Transport.

(I) All access customers that use the LEC's tandem-switched transport facilities shall be assessed the following rates:

(-a-) a per access minute tandem switching charge; and

(-b-) a per access minute tandem-switched transmission charge.

(II) The rates for tandem-switched transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC). The LRIC shall be developed pursuant to substantive rule §23.91(g) of this title. Additionally, these rates shall be set consistent with the requirements in clause (vii) of this subparagraph.

(III) The LEC may charge distance-sensitive rates for tandem-switched transmission elements, as enumerated in clause (viii) of this subparagraph. Mileage shall be measured as airline mileage between the SWC and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

(v) Dedicated Signalling Transport.

(I) Dedicated signalling transport shall consist of two subelements, a signalling link charge and a signalling transfer point (STP) port termination charge.

(II) A flat-rated signalling link charge per unit of capacity shall be assessed upon all access customers that use facilities between the access customer's common channel signalling network and the LEC's signalling transfer point or equivalent facilities. If the LEC charges distance-sensitive rates for the signalling link, mileage shall be measured as airline mileage between the access customer's common channel signalling network and the LEC's signalling transfer point.

(III) A flat-rated STP port termination charge per port shall be assessed upon all access customers that use dedicated signalling transport.

(IV) Rates for dedicated signalling transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC). The LRIC shall be developed pursuant to substantive rule §23.91(g) of this title.

(vi) Residual Charge.

(I) A residual charge per access minute shall be assessed upon all access customers and other entities interconnecting with the LEC's switched access network.

(II) The initial residual charge contained in the initial tariff amendments filed pursuant to clause (x)(IV) of this subparagraph shall be computed as set forth in items (-a)-(-c) of this subclause:

(-a-) The rates developed pursuant to this subparagraph for entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport services shall be multiplied by 1993 demand to calculate an estimated revenue.

(-b-) The estimated revenue shall be subtracted from the intrastate local switched transport service revenues for 1993 to calculate a residual amount.

(-c-) The residual amount shall be divided by the total intrastate switching access minutes for 1993 to calculate the residual charge.

(III) Centralized equal access providers are not required to assess a residual charge.

(vii) Transport Rate Ratio. The rate differences between tandem-switched transport, DS1 direct-trunked transport and DS3 direct-trunked transport, shall be reasonable. The ratio of the rates of DS1 direct-trunked transport and DS3 direct-trunked transport shall not exceed the ratio of the LRICs of DS1 direct-trunked transport and DS3 direct-trunked transport. The ratio of the rates of tandem-switched transport and DS1 direct-trunked transport shall not exceed the ratio of the LRICs of tandem-switched transport and DS1 direct-trunked transport.

(viii) Distance Sensitive Rates. If the LEC employs distance-sensitive rates for entrance facilities, direct-trunked transport and/or tandem-switched transmission elements, they shall be assessed in the following manner:

(I) a distance-sensitive component shall be charged for the use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the transmission link; and

(II) a nondistance-sensitive component shall be charged for the use of the circuit equipment at the ends of the transmission link.

(ix) Density zone pricing. The rates for switched transport services shall not reflect density zone pricing.

(x) Tariff Provisions.

(I) Nonrecurring charges shall be waived for a period of 180 days from the effective date of the initial tariff filings made pursuant to this subparagraph, when an access customer reconfigures its trunks between tandem-switched transport and direct-trunked transport or orders the disconnection of overprovisioned trunks.

(II) Volume and term discounts, if cost-justified, may be offered by a LEC if either of the two conditions specified in items (-a)-(-b) of this subclause is met, but in no event earlier than 180 days from the effective date in subclause (I) of this clause.

(-a-) At least 100 DS1-equivalent cross-connects have been purchased in the state for the transmission of switched transport traffic.

(-b-) Thirty percent of the switched transport services within the LEC's service area statewide is not provided by the LEC.

(III) Tariff revisions shall be filed to remove any resale or sharing restrictions for switched transport services.

(IV) Initial tariff amendments to implement the provisions of this subparagraph shall be filed according to the following schedule:

(-a-) LECs with 1,000,000 or more access lines shall file no later than 120 days from the effective date of this subparagraph;

(-b-) LECs with 50,000 or more access lines but fewer than 1,000,000 access lines shall file no later than 180 days from the effective date of this subparagraph;

(-c-) LECs with fewer than 50,000 access lines shall file

no later than 240 days from the effective date of this subparagraph.

(V) Initial tariff amendments filed in compliance with this subsection shall be filed pursuant to §23.26 of this title (relating to New and Experimental Services). Tariff revisions filed pursuant to this subparagraph shall not be combined in a single application with any other tariff revision and shall not be permitted to become effective before expanded interconnection for switched transport services becomes available from the LEC.

(VI) Local exchange carriers not subject to substantive rule §23.91 of this title may propose charges that are the same as the charges in effect for the carrier's interstate provision of the same service or adopt the switched transport rates of another LEC that are developed pursuant to substantive rule §23.91(g) of this title.

(G)-(I) (No change.)

(5)-(7) (No change.)

(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 28, 1994.

TRD-9439966 John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 458-0100



• 16 TAC §23.25

(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Public Utility Commission of Texas proposes the repeal of §23.25 concerning long distance rates. The purpose of the repeal is to reflect the fact that there is no interexchange carrier whose rates are subject to the Commission's jurisdiction.

Joyce Gonzalez, assistant general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Gonzalez also has determined that, for each year of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing the repeal will include implementation of Senate Bill 377, Acts of the 73rd Legislature, providing that the term "dominant carrier" does not include an interexchange carrier that is not a certificated local exchange carrier. There will be no effect on small businesses. There will be no economic cost of complying with the repeal as proposed.

Ms. Gonzalez has also determined that for each of the first five years the proposed repeal is in effect the repeal will have no effect on employment in the state.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12194.

The repeal is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Cross-reference to statute: Senate Bill 377, Acts of the 73rd Legislature, which amended Texas Civil Statutes, Article 1446c, §§3(c)(3)(2), 18(c), (d), and (l); and 78 and repealed §100 and §101.

§23.25. Long Distance Rates.

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 28, 1994

TRD-9439967 John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 458-0100



• 16 TAC §23.29

(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Public Utility Commission of Texas proposes the repeal of §23.29, concerning cost allocation. The purpose of the repeal is to reflect the fact that there is no interexchange carrier subject to the Commission's jurisdiction regarding cost allocation.

Joyce Gonzalez, Assistant General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for the state or local government as a result of the repeal.

Ms. Gonzalez also has determined that, for each year of the first five years the repeal is in effect, the public benefits anticipated as a result of enforcing the repeal will include implementation of Senate Bill 377, Acts of the Seventy-Third Legislature, providing that the term "dominant carrier" does not include an interexchange carrier that is not a certificated local exchange carrier. There will be no effect on small businesses. There will be no economic cost of complying with the repeal as proposed.

Ms. Gonzalez has also determined that for each of the first five years the proposed repeal is in effect the repeal will have no effect on employment in the state.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12194.

The repeal is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Cross-reference to statute: Senate Bill 377, Acts of the 73rd Legislature, which amended Texas Civil Statutes, Article 1446c, §§3(c)(3)(2), 18(c), (d), and (l); and 78 and repealed §100 and §101.

§23.29. Cost Allocation.

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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Secretary of the
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of Texas

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For further information, please call: (512) 458-0100



Customer Service and Protection

• 16 TAC §23.53

The Public Utility Commission of Texas proposes an amendment to §23.53 concerning the universal service fund. The purpose of the amendment is to delete a reference to §23.25, which is proposed for repeal.

Joyce Gonzalez, Assistant General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the amendment.

Ms. Gonzalez also has determined that, for each year of the first five years the amend-

ment is in effect, the public benefits anticipated as a result of enforcing the amendment will include the deletion of a reference to a section of the Commission's Substantive Rules that has been repealed. There will be no effect on small businesses. There will be no economic cost of complying with the amendment as proposed.

Ms. Gonzalez also has determined that for each of the first five years the proposed amendment is in effect the amendment will have no effect on employment in the state.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days after publication. Comments should refer to Project Number 12194.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Cross-reference to statute: Senate Bill 377, Acts of the 73rd Legislature, which amended Texas Civil Statutes, Article 1446c, §§3(c)(3)(2); 18(c), (d), and (1); and 78 and repealed §100 and §101.

§23.53. Universal Service Fund.

(a)-(c) No change.)

(d) High Cost Assistance (HCA).

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

(5) Universal Service Fund Assessment.

(A)-(B) (No change.)

(C) Division of Assessment among Telecommunications Utilities.

(i) (No change)

(ii) The assessment to each telecommunications utility, excluding or including LECs as described in subparagraph (B) of this paragraph, shall be the amount of that utility's total access MOU multiplied by the assessment rate for the current period calculated pursuant to clause (i) of this subparagraph. The Administrator may develop a methodology to allow each LEC to net its HCA requirement against its assessment and forward the difference to the Administrator [The assessment shall be treated as an access charge for purposes of §23.25 of this title (relating to Long Distance Rates). However, monthly changes to the assessment as a result of volume fluctuations or factors other than a change in the overall HCA requirements, shall not require a separate flow through filing more than once annually.]

(iii) (No change.)

(D) (No change.)

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

Issued in Austin, Texas, on April 28, 1994.

TRD-9439970

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

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For further information, please call: (512) 458-0100

Quality of Service

• 16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61 concerning telephone utilities. The purpose of the amendments is to reflect the fact that the term "dominant carrier" does not include an interexchange carrier that is not a certificated local exchange carrier.

Joyce Gonzalez, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the amendments.

Ms. Gonzalez also has determined that, for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of enforcing the amendments will include implementation of Senate Bill 377, Acts of the 73rd Legislature, providing that the term "dominant carrier" does not include an interexchange carrier that is not a certificated local exchange carrier. There will be no effect on small businesses. There will be no economic cost of complying with the amendments as proposed.

Ms. Gonzalez also has determined that for each of the first five years the proposed amendments are in effect the amendments will have no effect on employment in the state.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12194.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

Cross-reference to statute: Senate Bill 377, Acts of the 73rd Legislature, which amended Texas Civil Statutes, Article 1446c, §§3(c)(3)(2); 18(c), (d), and (1); and 78 and repealed §100 and §101.

§23.61. Telephone Utilities.

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

(1)-(16) (No change.)

(17) Dominant carrier-

(A) a provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market;

(B) any provider of local exchange telephone service within a certificated exchange area as to such service;

(C) this term does not include an interexchange carrier that is not a certificated local exchange carrier, with respect to interexchange services.

(18)-(31) (No change.)

(32) Nondominant carrier-[carriers-Interexchange]

(A) an interexchange telecommunications carrier [carriers] (including a reseller [resellers] of interexchange telecommunications services);[.]

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier [carriers, other resellers];

(ii) any other reseller of communications[, other];

(iii) any other communications carrier who conveys, transmits, or receives [carriers who convey, transmit, or receive] communications in whole or in part over a telephone system; or [, and providers]

(iv) a provider of operator services who is not a subscriber [(except that subscribers] to customer-owned pay telephone service [shall not be deemed to be telecommunications utilities) who are not dominant carriers].

(33)-(39) (No change.)

(40) Telecommunications utility-A dominant carrier or a [utilities-Dominant carriers and] nondominant carrier [carriers].

(41)-42)(No change.)

(b) -(k)(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 28, 1994.

TRD-9439971

John M Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

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For further information, please call (512) 458-0100



Telephone

• 16 TAC §23.92

The Public Utility Commission of Texas proposes an amendment to §23.92, concerning expanded interconnection with local telephone company facilities. All local exchange companies that have interstate expanded interconnection tariffs in effect will be required to provide expanded interconnection for intrastate switched transport services. The amendment provides definitions for terms used in the section and clarifies the requirements for expanded interconnection for intrastate special access and private line services. The amendment also requires each affected local exchange company to file tariffs offering expanded interconnection for intrastate switched transport service at the same locations, in the same manner, and except for price, under the same terms and conditions as it offers expanded interconnection for interstate switched transport. The amendment establishes deadlines and the procedure for filing of tariff changes required by the rule. Finally, the amendment provides for waivers, voluntary agreements and bona fide requests for service at locations not covered by the interstate tariffs.

Patrick J Sullivan, Assistant General Counsel, 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. Sullivan 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 rule as proposed is enhanced competition in the local transport market which in turn should increase incentives for efficiency, foster rapid deployment of advanced technologies that facilitate new and innovative services, and bring prices of the affected services closer to costs. Expanded interconnection should also provide additional service choices to customers that value redundancy and route diversity, as well as increase access providers' responsiveness to customers in the provision of existing services. The growth in competition in the local transport market is expected to have a positive effect on both small and large businesses

that can avail themselves of the increased service choices made possible by expanded interconnection. There is no anticipated economic costs to persons who are required to comply with the proposed rules because such access providers are being permitted to charge rates that would ensure the recovery of appropriate costs incurred by the provision of expanded interconnection.

Mr. Sullivan also has determined that for each of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

In its orders on expanded interconnection, the Federal Communications Commission (FCC) has required local exchange companies to provide a "fresh look" period during which customers of LEC services under existing contracts for special access and/or mixed use facilities could terminate their contracts upon payment of termination charges determined reasonable by the FCC. The Commission requests comments upon whether the Commission should adopt a similar policy for intrastate special access private line and/or mixed use facilities. Parties supporting inclusion of "fresh look" provisions are encouraged to submit draft language for such provisions with their comments. Additionally, the Commission requests comments concerning whether adding "fresh look" provisions to this proposed rule would require republication before a final rule is adopted.

Comments on the proposal (15 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 12683.

General Counsel expects to conduct workshop(s) as necessary in connection with this rulemaking project. All parties filing comments on the proposed rule will be notified of the time and date of the workshop. Parties that do not wish to file comments but are interested in attending the workshop must so notify the commission within 30 days after publication of the proposed rule by filing with the commission a letter to that effect which refers to Project Number 12683.

The amendment is proposed under Texas Civil Statutes, Article 1446c, § 16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §18, which provides that the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace.

The following statute is affected by this rule: Texas Civil Statute, Article 1446c.

§23.92. Expanded Interconnection.

(a) Applicability. This section applies to each local exchange carrier, as

defined in §23.61 of this title (relating to Telephone Utilities), that has interstate tariffs in effect that provide for expanded interconnection with local telephone company facilities for special access and/or switched transport services.

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

(1) Central Office-The central switching unit of a local exchange carrier where customer lines and trunks terminate and are interconnected with the rest of the network.

(2) Contribution Charge-A charge for switched transport or special access interconnection that recovers specifically identified subsidies or non-cost based allocations other than joint and common costs.

(3) Interconnection-The point in a network where a customer interfaces with the local exchange carrier's network under the provisions of this section.

(4) Interconnector-A customer that interfaces with the local exchange carrier's network under the provisions of this section.

(5) Special Access-A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not utilizing the local exchange carrier's end office switches.

(6) Switched Transport-Transmission between a local exchange carrier's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(c) Expanded Interconnection for Special Access and Private Line Services.

(1)[(b)] Expanded interconnection for DS1 and DS3 Special Access Services, and Special Access Services for which interstate expanded interconnection has been granted. Each local exchange carrier that is subject to this section shall offer expanded interconnection as specified in this subsection [section] for the services listed in subparagraphs [paragraphs] (A)-(C) [(1)-(3)] of this paragraph [subsection]. The LEC shall offer expanded interconnection for these services at the same locations, in the same manner, and, except for price, under the same terms and conditions as it offers expanded interconnection for interstate special access services, unless ordered otherwise by the commission. This paragraph [subsection] applies to the following intrastate special access services:

(A)[(1)] special access DS1;

(B)[(2)] special access DS3;

and

(C)[(3)] special access services for which interstate expanded interconnection has been granted.

(2)[(c)] Expanded interconnection for all Special Access and Private Line Services. Each local exchange carrier that is subject to this section shall offer expanded interconnection as specified in this subsection [section] for the services listed in subparagraphs [paragraphs] (A)-(B) [(1)-(2)] of this paragraph [subsection]. The LEC shall offer expanded interconnection for these services at the same locations, in the same manner, and, except for price, under the same terms and conditions as it offers expanded interconnection for interstate special access services, unless ordered otherwise by the commission. This paragraph [subsection] applies to the following intrastate services:

(A)[(1)] all private line services, as that term is defined in §23.61 of this title (relating to Telephone Utilities); and

(B)[(2)] all special access services.

(3)[(d)] Tariff Provisions.

(A)[(1)] Each local exchange carrier that is subject to this section shall file tariff revisions to unbundle each service for which expanded interconnection shall be offered and to remove any resale or sharing restrictions for each such service. As used in this subparagraph [paragraph], to unbundle means to make available, on an unrestricted basis, the individual rate elements necessary to provide a special access service or a private line service.

(B)[(2)] Each local exchange carrier that is subject to this section shall file tariffs to establish connection charges for the use of equipment and facilities that are associated with offerings of expanded interconnection under this subsection [section]. Unless ordered otherwise by the commission, the definitions of such connection charges and the regulations governing their application shall be the same as those contained in the carrier's interstate expanded interconnection tariffs. The local exchange carrier shall not impose a separate contribution charge for interconnection for special access or private line services.

(4)[(e)] Implementation. All local exchange carriers subject to this section shall file tariff amendments in compliance with paragraph (3) [subsection (d)] of this subsection [section].

(A)[(1)] Initial filing to implement paragraph (1) [subsection (b)] of this subsection [section]. The LEC shall file initial tariff amendments to implement the provisions of paragraph (1) [subsection (b)] of this subsection [section] not later than 30 days after February 22, 1994 [the effective date of this section].

(B)[(2)] Initial filing to implement paragraph (2) [subsection (c)] of this subsection [section]. The LEC shall file initial tariff amendments to implement the provisions of paragraph (2) [subsection (c)] of this subsection [section] not later than 270 days after February 22, 1994 [the effective date of this section].

(C)[(3)] Initial filings [Filings] in compliance with this subsection [section] shall be filed pursuant to §23.26 of this title (relating to New and Experimental Services). Initial [All] tariff amendments filed in compliance with this subsection [section] shall be filed pursuant to §23.26; provided, however, the provisions of §23.26(c)(6) shall not apply with respect to rates proposed in compliance with paragraph (3)(A) or (3)(B) [subsection (d)(1) or (d)(2)] of this subsection [section] if the local exchange carrier proposes charges that are the same as the charges in effect for the carrier's interstate provision of the same, equivalent or substitutable service. Tariff revisions filed pursuant to this subsection [section] shall not be combined in a single application with any other tariff revision.

(D)[(4)] Additional filings. A local exchange carrier shall make, within 15 days of the effective date of an interstate tariff providing for expanded interconnection, such additional tariff filings as are required to remain in compliance with this subsection [section]. The proposed effective date of such additional tariff filings shall be not later than 60 days after the filing date, unless suspended.

(5)[(f)] Customer Specific Contracts. This subsection [section] does not require the unbundling or removal of resale prohibitions in customer specific contracts in effect on or before February 22, 1994 [the effective date of this section].

(d) Expanded Interconnection for Switched Transport Services.

(1) Expanded Interconnection for all Switched Transport Services. Each local exchange carrier that is subject to

this section shall offer expanded interconnection as specified in this subsection for all switched transport services at the same locations, in the same manner, and except for price, under the same terms and conditions as it offers expanded interconnection for interstate switched transport services, unless ordered otherwise by the commission.

(2) Tariff Provisions and Implementation. Each local exchange carrier that is subject to this section shall file tariffs to establish connection charges for the use of equipment and facilities that are associated with offerings of expanded interconnection under this subsection.

(A) Unless ordered otherwise by the commission, the definitions of such connection charges and the regulations governing their application shall be the same as those contained in the carrier's interstate expanded interconnection tariffs.

(B) Absent additional costs, the local exchange carrier shall impose a single charge when the same facilities are used to provide expanded interconnection for both special access and switched transport services. If additional facilities are used, the local exchange carrier may assess additional connection charge subelements.

(C) The local exchange carrier shall not impose a separate contribution charge for interconnection for switched transport services.

(D) A local exchange carrier shall apply nonrecurring reconfiguration charges in a neutral manner to customers of either the interconnector or local exchange carrier unless justified by specific identifiable cost differences. In addition, any differences between the charges applicable when a customer shifts to an interconnector's service and those applicable when a customer reconfigures its service with the local exchange carrier must be cost-based.

(E) The LEC shall file initial tariffs to implement the provisions of this subsection not later than 60 days after the effective date of this subsection, with tariffs becoming effective not later than 120 days after the effective date of this subsection, unless suspended.

(F) Initial tariff filings in compliance with this subsection shall be filed pursuant to the provisions of §23.26,

except §23.26(f)(1) shall not apply to tariff filings made pursuant to this subsection. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(G) A local exchange carrier shall make, within 15 days of the effective date of an interstate tariff providing for expanded interconnection, such additional tariff filings as are required to remain in compliance with this subsection. The proposed effective date for such additional tariff filings shall be not later than 60 days after the filing date, unless suspended.

(e) Waivers. A LEC may seek a waiver from the requirements of subsections (c) and (d) of this section at a location where the opportunity for the application of an FCC waiver does not exist. The request shall be granted if the presiding officer of the commission finds that the local exchange carrier has demonstrated that it is not feasible to provide interconnection at a specific location due to lack of space.

(f) Voluntary Agreements. A local exchange carrier and one or more interconnectors may agree to alternative interconnection arrangements at a specific location that are different from those required by subsections (c) and/or (d) of this section, provided such arrangements are tariffed and made generally available for that location. Any such agreement shall not modify the local exchange carrier's obligations under subsections (c) and (d) with respect to any other interconnector that does not elect to subscribe to the voluntary arrangement.

(g) Bona Fide Requests. If a local exchange carrier would be required to provide expanded interconnection for interstate special access or switched transport services at a particular location upon receipt of a bona fide request, it shall provide interconnection for intrastate services as required by subsections (c) and (d) of this section upon receipt of a bona fide request for such intrastate interconnection, subject to the same conditions and exceptions that would be applicable to a request for interconnection for interstate services.

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

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John M. Renfrow
Secretary of the
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Public Utility Commission
of Texas

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For further information, please call: (512) 458-0100

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter B. Organization of the Commission of Licensing and Regulation

• 16 TAC §60.25

The Texas Department of Licensing and Regulation proposes an amendment to §60.25, concerning the general powers and duties of the Commission of Licensing and Regulation. The amendment clarifies where department fees are published.

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

Mr. Brush 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 clarification of rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 9100, which authorize the Texas Department of Licensing and Regulation 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 proposed amendment affects Texas Civil Statutes, Article 9100.

§60.25 General Powers and Duties of Commission

(a)-(f) (No change.)

(g) The reasonable and necessary fees, authorized by Texas Civil Statutes, Article 9100, to cover costs of administering the programs and activities of the department, are published as listed in Subchapter C, §60.80 of this title (relating to Program fees) [set as outlined in Subchapter C of this chapter (relating to Fees)]. The fees are based on a cost management procedure which aids in determining with reasonable accuracy the cost to the department of each program and activity.

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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TRD-9440012

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

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 463-3127

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter C. Fees

• 16 TAC §§60.61-60.70, 60.75, 60.78, 60.79, 60.80

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

The Texas Department of Licensing and Regulation proposes the repeal of §§60.61-60.70, 60.75, 60.78, 60.79, and 60.80, concerning fees established by the Texas Commission of Licensing and Regulation. These fees are proposed for repeal to eliminate duplicate listings of fees since they are currently published in Chapter 60, Subchapter C of this title and the individual program rules.

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

Mr. Brush 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 a clarification of where to locate program fees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

The repeals are proposed under Texas Civil Statutes, Article 9100, which authorize the Texas Department of Licensing and Regulation 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 following are the Articles that are affected by this rule: §60.61-Articles 9100 and 8501-1; §60.82-Articles 9100 and 5221a-8;

§60.63—Articles 9100 and 5221a-7; §60.64—Articles 9100 and 5221a-10; §60.65—Article 9100 and Health and Safety Code, Chapter 755; §60.66—Articles 9100 and 8886; §60.67—Articles 9100 and 8700; §60.68—Articles 9100 and 9102; §60.69—Articles 9100 and 5221f; §60.70—Articles 9100 and 5221f-1; §60.75—Articles 9100 and 8861; §60.78—Articles 9100 and 5221a-9; §60.79—Articles 9100 and 6687-9a; §60.80—Articles 9100 and 6687-9b.

§60.61. *Boxing Fees*

§60.62. *Career Counseling.*

§60.63. *Personnel Employment Services.*

§60.64. *Employers of Certain Temporary Common Workers.*

§60.65. *Bowler Division Fees*

§60.66. *Property Tax Consultants.*

§60.67. *Auctioneer Fees.*

§60.68. *Elimination of Architectural Barriers*

§60.69. *Manufactured Housing Division Fees*

§60.70. *Industrialized Housing and Building Division Fees*

§60.75. *Air Conditioning and Refrigeration Fees.*

§60.78. *Talent Agency Fees*

§60.79. *Vehicle Storage Facility.*

§60.80. *Tow Truck Fees*

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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TRD-9440011

Jack W Ganson
Executive Director
Texas Department of
Licensing and
Regulation

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

• 16 TAC §60.80, §60.81

The Texas Department of Licensing and Regulation proposes new §60.80 and §60.81, concerning fees established by the Texas Commission of Licensing and Regulation. The new §60.80 lists the Chapter where individual program fees are published and §60.81 establishes new charges for providing copies of public information.

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 fiscal implications for state or local government as a result of enforcing or administering the new sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase in revenue of less than \$100 per year for fiscal years 1994-1998. There will be no effect on local government.

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 increased awareness of cost and service to the public for public records. There will be no effect on small businesses. There is a \$.10 per copy anticipated economic cost to persons who are required to comply with the sections as proposed.

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, Austin, Texas 78711

The new sections are proposed under Texas Civil Statutes, Article 9100, which authorize the Texas Department of Licensing and Regulation 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 following are the Articles that are affected by this rule. §60.80.—Articles 9100, 8501-1; 5221a-8; 5221a-7; 5221a-10; 8886, 8700, 9102; 5221f; 5221f-1; 8861; 5221a-9; 9104; 9103; Health and Safety Code, Chapter 755, and Health and Safety Code, Chapter 754. §60.81.—Articles 9100 and Chapter 552 Government Code.

§60.80 *Program Fees.* Commission set fees are published in the following Chapters:

(1) Chapter 61 of this title (relating to Boxing);

(2) Chapter 62 of this title (relating to Career Counseling Services);

(3) Chapter 63 of this title (relating to Personnel Employment Services);

(4) Chapter 64 of this title (relating to Employers of Certain Temporary Common Workers);

(5) Chapter 65 of this title (relating to Bowlers);

(6) Chapter 66 of this title (relating to Registration of Property Tax Consultants);

(7) Chapter 67 of this title (relating to Auctioneers);

(8) Chapter 68 of this title (relating to Architectural Barriers);

(9) Chapter 69 of this title (relating to Manufactured Housing);

(10) Chapter 70 of this title (relating to Industrialized Housing and Buildings);

(11) Chapter 71 of this title (relating to Nonagricultural Public Warehouses);

(12) Chapter 72 of this title (relating to Staff Leasing Services);

(13) Chapter 74 of this title (relating to Elevators, Escalators, and Related Equipment);

(14) Chapter 75 of this title (relating to Air Conditioning and Refrigeration Contractor License Law); and

(15) Chapter 78 of this title (relating to Talent Agencies).

§60.81. *Charges for Providing Copies of Public Information*

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

(1) Full cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs

(2) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-sized paper copy.

(3) Readily available information—Information that already exists in printed form; or information stored electronically and is ready to be printed or copied without requiring any programming, or information that exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(4) Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy.

(b) Material fees

(1) Standard-size copy reproduced on a copier or computer printer is \$10 for each printed side of a page. No charge for 24 or less pages of readily available information.

(2) The charge for non-standard size copies is as follows

- (A) diskette-\$1.00 each;
- (B) computer magnetic tape-\$10;
- (C) VHS video cassette-\$2.50;
- (D) audio cassette-\$1.00;
- (E) paper-.50; and
- (F) other-actual cost.

(c) Personnel cost for processing information is \$15 per hour, (prorated by the minute) for more than 50 pages or for information that is not readily available. Personnel time spent determining the releasability of the information may not be charged.

(d) An overhead charge of 20% of any personnel cost is to recover such cost as depreciation of capital assets, rent, maintenance and repairs, utilities, and administrative overhead

(e) Copies of microfiche and microfilm are \$.10 per page for standard size paper plus personnel cost for the time required to make copies if a master copy is available. If the requestor desires a copy of the fiche or film the fee will be the actual cost of having the copy made.

(f) Computer fees are as follows:

- (1) minicomputer/mid-range computing-\$3.00 per CPU minute;
- (2) PC or LAN computing-.50 per minute; and
- (3) on-line access accounts-.16 per minute.

(g) A programming fee of \$26 per hour (prorated by the minute) shall be charged for the time a programmer is required to enter data to execute a program or to create a new program.

(h) The actual cost of postage/shipping and miscellaneous supplies such as boxes, labels, mailers, etc. shall be added to the total charge.

(i) FAX fees are as follows:

- (1) local-.10 per page;
- (2) Long distance, same area code-.50 per page; and
- (3) Long distance, different area code-\$1 per page

(j) A deposit in the amount of the estimated charges will be required for requests exceeding \$100 and for on-line access accounts.

(k) A personnel fee of \$15 per hour may be charged to prepare information for inspection if the information is not readily available or if more than 50 pages of readily available information is requested, or the information must be processed for viewing.

(l) The Commissioner may furnish public records without charge or at a reduced charge if it is determined that a waiver or reduction of fee is in the public interest.

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 29, 1994.

TRD-9440010 Jack W. Garison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 463-3127

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TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Education • 22 TAC §131.91

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.91, concerning educational requirements for registration. Subsection (b), paragraph (1) of the section is amended to clarify the degree requirements for professional engineering registration.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr Nemir 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 clarification that a bachelor's degree in an engineering technology curriculum will be required for registration. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Box 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a) , which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.91. Educational Requirements for Registration.

(a) (No change.)

(b) A curriculum in engineering or related science as used in the Act, §12(a)(2), is construed by the board to be a bachelor or graduate degree in an engineering or related science program. These programs will include the following:

(1) a bachelor of [an] engineering technology curriculum that is accredited by the Technology Accreditation Commission (TAC) of the Accreditation Board for Engineering and Technology, Inc. (ABET), referred to as TAC/ABET;

(2) (No change.)

(c)-(d) (No change.)

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

Issued in Austin, Texas, on April 28, 1994.

TRD-9439918 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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Professional Conduct and Ethics

• 22 TAC §131.156

The Texas State Board of Registration for Professional Engineers proposes an amendment §131.156, concerning responsibility to the engineering profession. Subsection (a), paragraph (12) of this section is amended to clarify the professional engineer's responsibility to reveal circumstances that create public safety endangerment.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Nemir 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 clarification of the engineer's responsibility to the profession in accordance with professional conduct and ethics. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Box 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.156. Responsibility to the Engineering Profession.

(a) The engineer shall not:

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

(12) maliciously injure or attempt to injure or damage the professional reputation of another by any mean whatsoever; provided and except, however, that this shall not relieve an engineer of the obligation to expose any fraud, gross negligence, incompetency, misconduct, unethical or illegal conduct to the proper authorities or preclude a frank but private appraisal of engineers or other persons or firm when requested by a client or prospective employer;

(13)-(14) (No change.)

(b) (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 28, 1994.

TRD-9439919

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: June 14, 1994

For further information, please call: (512) 440-7723

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**Part XXIV. Board of
Veterinary Medical
Examiners**

**Chapter 573. Rules of
Professional Conduct**

General Professional Ethics

• **22 TAC §573.6**

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.6, concerning ownership of practices.

Mr. Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen 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 simplify and clarify the Board's continuing education requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704, on or before June 1, 1994.

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

§573.6. Ownership of Practices Limited to Licensed Veterinarians [Restriction of Partnerships to Members of Profession]

(a) Ownership of a veterinary practice shall be in compliance with the Act, §22. Ownership arrangements existing as of September 1, 1993, in conflict with §22 shall be brought into compliance not later than September 1, 1995. After that date a veterinarian engaged in such a practice shall be in violation of these rules.

(b) Section 22 shall not apply to non-profit organizations. [In the formation of partnerships for the practice of veterinary medicine, no persons shall be admitted as a partner who is not a member of the veterinary profession, duly authorized to practice, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or nonprofessional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine.]

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 29, 1994.

TRD-9440119

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 447-1183

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Supervision of Personnel

• **22 TAC §573.12**

The Texas Board of Veterinary Medical Examiners proposes new §573.12, concerning Alternate Therapies-Chiropractic and Other

Forms of Musculoskeletal Manipulation, which specifies when licensees must be involved in this treatment modality.

Mr. Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen also has determined that the fiscal implications resulting from enforcement of this new section are not known, since this is a new section and there is no historical data from which reliable figures can be drawn.

Mr. Allen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that musculoskeletal manipulation is performed by a licensee, under the supervision of a licensee, and as a result of a diagnosis made by a licensee that the treatment is recommended. The effect on small businesses cannot be determined; since this is a new section, there is no historical data from which reliable figures can be drawn. The anticipated economic cost to individuals who are required to comply is not known since this is a new section, and there is no historical data from which reliable figures can be drawn.

Comments on the proposal should be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704 on or before May 31, 1994.

The new section is proposed under Texas Civil Statutes, Article 8890, §7(a) and (b). Section 7(a) provides the Board with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of the Act. Section 7(b) states "The Board shall adopt rules to protect the public and to ensure that the performance of alternate therapies, including...chiropractic treatment,...are performed only by a licensee or under the supervision of a licensee."

§573.12. Alternate Therapies-Chiropractic and Other Forms of Musculoskeletal Manipulation.

(a) Definition. For the purpose of this rule, animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of therapeutic application of mechanical forces applied manually through the hands or any mechanical device to diagnosis, treat, and/or alleviate impaired or altered function of related components of the musculoskeletal system of non-human animals. Chiropractic and other forms of MSM in non-human animals are considered to be alternate therapies in the practice of veterinary medicine.

(b) Treatment using Chiropractic and Other Forms of MSM. Chiropractic and other forms of MSM may only be performed by the following:

(1) A licensed veterinarian. Chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian/client/patient relationship has been established as defined in the Act;

(B) a diagnosis has been made; and

(C) the licensee obtains as a part of the patient's permanent record, a signed acknowledgement by the owner or other caretaker of the patient that the chiropractic or MSM is considered by Texas law to be an alternate (non-standard) therapy.

(2) A licensee's employee or an independent contractor. An employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the licensee if the conditions in paragraph (1) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §3, apply.

(c) Responsibility for the Animal Treated. The licensee is responsible for the animal treated whether the treatment was performed by the licensee or the licensee's employee or an independent contractor working under the direct or general supervision of the contractor.

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 29, 1994.

TRD-9440123

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 447-1183

Responsibilities to Clients

• 22 TAC §573.29

The Texas Board of Veterinary Medical Examiners proposes new §573.29, concerning complaint notices which will provide information as to how and where a complaint can be filed when a client believes a veterinarian has not provided adequate services.

Mr. Ron Allen, executive director, has determined that the fiscal implications resulting from enforcement of this new section are not known, since this is a new section and there is no historical data from which reliable figures can be drawn. However, some modest increase in complaints may result.

The effect on state government for the first five-year period the section is unknown at this time.

The effect on local government for the first five-year period the section is unknown at this time.

Mr. Allen also has determined that for the first five-year period the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be to ensure that consumers are provided with information on how and where to file a complaint concerning a veterinarian that has failed to provide the appropriate service. The cost for small or large businesses to comply with the section is dependent on the manner in which the practitioner decides to implement this provision, i.e. posters, brochures, printed statement on invoices, or other means. The anticipated economic cost to individuals who are required to comply with the section as proposed will be determined by what means the practitioner plans to comply with this mandate.

Comments on the proposal should be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704 on or before June 1, 1994.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provides the Board with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act, and §18A.

§573.29. Complaint Information.

(a) A licensee shall provide an effective way to inform his/her consumers and recipients of services about how to file complaints with the Board about his/her services. The notification must contain at least the following:

(1) a statement that contains "Complaints about veterinarians may be reported for investigation to the Texas State Board of Veterinary Medical Examiners;

(2) the following specific address: Texas State Board of Veterinary Medical Examiners, 4601 South IH-35, Suite 306, Austin, Texas 78704.

(3) the board's telephone numbers: (512) 447-1183, fax (512) 442-3443.

(b) Examples of acceptable forms of notification are: a notice form, with print size of at least 14-point, prominently displayed in each business location in the area that is most frequented by the public; a brochure available in each business location in the area that is most frequented by the public; and/or, a statement on each written bill, invoice, or receipt.

(c) Failure to have an effective means for providing the information required above, or failing to provide the information to a member of the public, is a violation of this rule and the Act.

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 29, 1994

TRD-9490120

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 447-1183

Other Provisions

• 22 TAC §573.64

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.64, concerning continuing education requirements.

Mr. Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen also has determined that for the first five-year period the rule as proposed is in effect, the public benefit anticipated as a result of the proposed changes to the section will be to simplify and clarify the Board's continuing education requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704 on or before June 1, 1994.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), and §13(g). Section 7(a) provides the Board with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§573.64. Continuing Education Requirements.

(a) Requirements.

(1) (No change.)

(2) Required continuing education hours must be obtained during the calendar year [twelve-month period] immediately preceding the submission for license renewal. Continuing education hours may be used for only one renewal period

(3) (No change.)

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

(e) Exemption from Continuing Education Requirements. A licensee who is in retired status, a veterinary intern or

resident, or who is out-of-country on charitable or special governments assignments during at least nine months of the preceding year, shall not be required to meet continuing education requirements to renew his/her license.

(f) **Disciplinary Action for Non-Compliance.** Failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

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

Issued in Austin, Texas, on April 29, 1994.

TRD-9440121

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 447-1183

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• 22 TAC §573.70

The Texas Board of Veterinary Medical Examiners proposes new §573.70, concerning the establishment of guidelines for temporary clinics.

Ron Allen, executive director, has determined that the fiscal implications resulting from enforcement of this new section is not known, since this is a new section and there is no historical data from which reliable figures can be drawn the effect on state government for the first five-year period the section is unknown at this time. The effect on local government for the first five-year period the section is unknown at this time.

Mr. Allen also has determined that for the first five-year period the rule as proposed is in effect the public benefits anticipated as a result of the proposed section will be to establish conditions under which temporary limited-service veterinary activities at a mercantile establishment may be provided. In addition the rule will ensure that consumers are provided with adequate and safe services and will have information as to where records created during the clinics will be maintained following conclusion of the clinic. The cost of small or large businesses to comply with the section is dependent on the number of temporary clinics that practitioners conduct. The anticipated economic cost to persons who are required to comply with the section as proposed is expected to be minimal.

Comments on the proposal should be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704 on or before June 1, 1994

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which pro-

vide the Board with the authority to make, after, or amend such rules as regulations as may be necessary or desirable to carry into effect the provisions of this Act, and §23(a)

§573.70. *Operation of Temporary Limited-Service Veterinary Services.*

(a) Requirements for Operation Veterinarians operating temporary limited service clinics are required to

(1) maintain sanitary conditions at the site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;

(2) inject with sterile disposable needles and syringes;

(3) utilize a non-porous table for examining and/or injecting small animals;

(4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;

(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications,

(6) maintain vaccination and treatment records for three years, indexed alphabetically by owners last name and by vaccination tag numbers, if issued; and

(7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the place where the records are to be maintained

(b) Required Notification to the Board Prior to Operation. Before any temporary limited-service clinic may be operated, the licensee is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice must include the licensee's full name, the specific location of where the clinic will be held, and times of operation. Notice may be by telephone call, facsimile electronic transmission, or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic

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 29, 1994

TRD-9440122

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption June 6, 1994

For further information, please call. (512) 447-1183

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 129. Opticians' Registry

• 25 TAC §§129.3, 129.5, 129.8, 129.9, 129.11, 129.13

The Texas Department of Health proposes amendments to §§129.8, 129.9, 129.11, and 129.13, concerning dispensing opticians.

The amendments define committee duties; delete requirements under the expired grandfather clause; lower the annual requirement for continuing education credits; add consumer information provisions; define deceptive advertising, add criminal convictions related to the profession of opticianry; and add minor changes which clarify meaning without substantial change, improve grammar and style, and clarify inconsistencies in the rules. The amendments implement the provisions of Texas Civil Statutes, Article 4512p, and update existing sections

Becky Berryhill, program director, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Berryhill also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections will be to assure the regulation of opticians continues to identify competent practitioners. There will be no effect on small businesses. There is anticipated economic savings to persons who are required to comply with the proposed sections because the number of continuing education hours required has been reduced and accrual of hours will be allowed. There will be no additional economic costs to individuals. There will be no impact on local employment.

Comments on the proposal may be submitted to Becky Berryhill, Program Director, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas, (512) 834-6661. Comments will be accepted for 30 days after the date of publication in the *Texas Register* of the proposed sections.

The amendments are proposed under the Texas Civil Statutes, Article 4551-1, which provide the Texas Department of Health with authority to adopt rules concerning the registration of opticians; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. These sections implement Texas Civil Statutes, Article 4551-1.

§129.3 The Council.

(a) Purpose. This section sets out the organization, administration, and other general procedures and policies governing the operation of the Advisory Council of the Opticians' Registry (council) [council].

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

(e) Meetings. Meetings shall be announced and conducted under the provisions of the Open Meeting Act, Government Code, Chapter 551 [Texas Civil Statutes, Article 6252-17].

(f)-(m) (No change)

(n) Duties. The council shall recommend rules to the board relating to:

(1) the minimum requirements for the registration of dispensing opticians;

(2) the probation, suspension, denial, or revocation of a registration;

(3) the setting of fees under the Opticians' Registry Act (Act); and

(4) the adoption of forms required by the Act.

(o) Statements of actions by individual council members. The council and the department shall not be bound in any way by any statement or action on the part of any council member except when a statement or action is in pursuant of specific instructions of the council or department.

§129.5 Application Procedures and Requirements for Registration

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

[(d) Application for time-limited waiver. A person who has been actively engaged in spectacle dispensing or contact lens dispensing for a period of three years prior to September 1, 1991, is entitled to a certificate of registration without examination in the area in which the person was actively engaged if the person:

[(1) applies to the department for registration on the department forms not later than August 31, 1992; and

[(2) pays the registration fee set by the department in §129.4 of this title (relating to Fees).]

(d)[(e)] Examinations

(1) Purpose. The purpose of this subsection is to establish rules governing the procedures for examination of applicants for registration as a spectacle dispensing optician or contact lens dispenser.

(2) Frequency Examinations will be administered for the department at

least once each year by a designee of the department.

(3) Requirements.

(A) The administrator shall notify an applicant when all requirements for registration have been met except the taking and passing of the required examination. The department shall forward an examination registration form to each approved applicant as soon as the application has been approved.

(B) An applicant who wishes to take a scheduled examination must complete the examination registration form which must be received by the department with the required fee at least 80 days prior to the date of the examination. All fees shall be paid to the department if the applicant is taking the examination solely for registration purposes. The fee shall be paid to the designee of the department if the applicant is taking the examination for registration purposes and to obtain private certification.

(C) The examination for registration shall be a written examination approved by the department. A designee of the department shall administer and grade examinations and report to the department if the applicant has passed or failed the examination

(D) If an applicant has already successfully completed the required examination, the applicant shall not be required to be reexamined, provided the applicant furnishes the department a copy of the test results indicating that the applicant passed the examination.

(E) An applicant who fails two successive examinations may not reapply until the applicant completes all remedial work as prescribed by the department.

(4) Required examination.

(A) The examination administered by the American Board of Opticianry, or its successor, is the examination for registered spectacle-dispensing opticians. sp>(B) The examination administered by the National Contact Lens Examiners, or its successor, is the examination for registered contact lens dispensers.

(e) [(f)] Determining eligibility. The department shall receive and approve or disapprove all applications for registration as registered spectacle-dispensing opticians or registered contact lens dispensers or both. The administrator shall be responsible for reviewing all applications.

(1) Notices of application approval, disapproval or deficiency shall be in accordance with subsection (f) [(g)] of this section.

(2) An application for a registration shall be disapproved if the applicant has:

(A) not met the requirements in this section;

(B) failed to pass the examination prescribed by the department as set out in subsection (d) [(e)] of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee or deliberately presented false information on any form or document required by the department;

(D) violated any provision of the Act or this chapter;[or]

(E) been convicted of a felony or misdemeanor as set out in §129.12 of this title (relating to Registration of Applicants With Criminal Backgrounds); or [.]

(F) violated any provision of state law relating to the practice of dispensing opticians.

(3) If after review, the department determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice shall be in accordance with §129.11 of this title (relating to Violations, Complaints, Investigation of Complaints, and Disciplinary Actions)

(f)[(g)] Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for registration and renewal.

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

(i) letter of acceptance of application for registration—20 working days;

(ii) letter of application or renewal deficiency—20 working days; and

(iii) issuance of registration renewal—10 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:

- (i) letter of approval for examination-20 working days;
- (ii) initial letter of approval for registration-30 days,
- (iii) letter of denial of registration-30 days; and
- (iv) issuance of registration renewal-10 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year, another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement is denied by the administrator, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice

of the commissioner's decision to the applicant and the administrator. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a long period of time depending on the particular circumstances of the hearing.

§129.8. Renewal of Registration.

(a) (No change.)

(b) General.

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

(6) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §129.5(f)[§129.5(g)] of this title (relating to Application Procedures and Requirements for Registration).

(c) Registration renewal.

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

(5) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the late registration fee. Failure to receive notification from the department prior to the expiration date of the registration shall not excuse failure to apply for renewal or late renewal.

§129.9. Requirements for Continuing Education.

(a) (No change.)

(b) Number of hours required. Proof of having earned five [seven] classroom hours of continuing education credit in each area for which the registrant is renewing, shall be required at the time of renewal for each registration after September 1, 1993. A classroom hour is 50 minutes.

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

(3) If applying for dual registration renewal the applicant must have five [seven] classroom hours offered or approved by the American Board of Opticianry and five [seven] classroom hours offered or approved by the National Contact Lens Examiners.

(c)-(d) (No change.)

(e) Accrual carryover. Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of five additional clock hours may be accrued during a registration period to be applied to the next consecutive renewal period provided; however, a maximum of 10 additional clock hours may be accrued for dual registrants during a registration period to be applied to the next consecutive renewal period.

§129.11. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.

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

(d) Investigation of complaints.

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

(6) The program administrator shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons.

(7) If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.

(e)-(f) (No change.)

§129.13. Professional and Ethical Standards.

(a)-(e) (No change.)

(f) A registrant shall not use advertising that is false, misleading, or deceptive [advertising] or that is not readily subject to verification.

(1) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's service with another health care professional's service unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or registration of a health care professional;

(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductible or copayments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(I) advertises or represents in the use of professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(2) A "health care professional" includes a dispensing optician or any other person licensed, certified, or registered by the state in a health-related profession.

(g) On the written request of a client, a client's guardian, or a client's parent if the client is a minor, a registrant shall provide, in plain language, a written explanation of the dispensing services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(h) A registrant may not persistently or flagrantly overcharge or overtreat a client.

(i) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a registrant;

(2) on a sign prominently displayed in the primary place of business of each registrant; or

(3) in a bill for services provided by a registrant to a client or third party.

(j) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1 the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

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 29, 1994

TRD-9439940

Susan K Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: June 3, 1994

For further information, please call (512) 834-6661

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 353. Introductory Provisions

Relationship Between the Board and Private Organizations or Donors

• 31 TAC §§353.80-353.93

The Texas Water Development Board (board) proposes §§353.80-353.93, which will enable the board to establish procedures and standards of conduct for the acceptance of private donations made to the board in the furtherance of the purposes and duties of the board

New §353.80 states that the purpose of the new rules is to provide procedures and standards for the relationship between the board and donors. New §353.81 states the board's statutory authority to accept donations. New §353.82 provides for definitions of donation, donation agreement, donor, and executive administrator

New §353.83 outlines the procedures the board will follow in accepting donations. New §353.84 addresses the ethics policy relating to donations from persons appearing before the board. New §353.85 establishes that all donations will be accepted by the executive administrator on behalf of the board

New §353.86 makes provision for transfer of donations to other entities with the written permission of the donor. New §353.87 requires that any person or entity seeking to contract with the board on a competitive basis must disclose all previous donations within the preceding two years to the board or any other state agency. New §353.88 sets out

standards of conduct for officers or employees of the board in relation to donors

New §353.89 provides for cooperation between the board and support organizations which further the purposes, duties and programs of the board.

New §353.90 states that the executive administrator may designate an officer or employee of the board to serve as liaison with support organizations. New §353.91 prohibits the designated agency liaison from receiving compensation from the support organization for services

New §353.92 provides that the executive administrator may authorize reasonable use of board personnel, equipment, or property by a support organization if stated criteria are met. New §353.93 prohibits board personnel from serving as officers or directors for a support organization or donor

New §353.94 provides that nothing in the new rules shall supersede any rule or statute regulating the conduct of an employee of a state agency or the procedures of a state agency.

Pamela Ansbury, director of finance, has determined that for the first five-year period the new sections will be in effect there will not be fiscal implications as a result of enforcing or administering the rule. There will be no effect on state or local government for the first five-year period the rule will be in effect.

Ms Ansbury also has determined that for each year of the first five years the new sections will be in effect the public benefit anticipated as a result of enforcing the rule will be increased resources to the board in carrying out the board's purposes and duties. There will be no impacts on small businesses as a result of the proposed sections. There is no economic cost to persons who are required to comply with the sections as proposed. The agency has determined the proposed new rules will not have an effect on local economies

Comments on the new rules will be accepted for 30 days following publication and may be submitted to Gail Allan, Assistant General Counsel, P O Box 13231, Austin, Texas 78711

The new rules are proposed pursuant to the Texas Water Code, §6.101, which authorizes the board to adopt rules necessary to carry out its powers and duties, and §6.192, which authorizes the executive director of the board to accept money and other assistance from any source to carry out the powers and duties of the board

There are no other statutory provisions affected by the proposed rule

§353.80 Purpose of Rules The purpose of this chapter is to establish procedures for the acceptance of private donations made to the board and to create standards of conduct to govern the relationship between the board and the donors and between the board and private organizations designed to further the purposes and duties of the board

§353.81. *Introduction.* The Texas Water Development Board is statutorily authorized to accept donations pursuant to the Texas Water Code, §6 192. It shall be the policy of the board to accept only those donations that advance the mission of the agency

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

Donation—Money and other assistance from any source other than from governmental entities and political subdivisions for the purpose of furthering the powers and duties of the board

Donation Agreement—The donative instrument executed by the executive administrator and the donor which identifies the donation and outlines any special conditions of the donation

Donor—One or more individuals or organizations that offer to give or give a donation to the board

Executive Administrator—The executive administrator of the board or his designee

Support Organization—A legally incorporated or otherwise associated nonprofit organization which is organized or designed to support or further the purposes, duties and programs of mutual interest to the organization and the board.

§353.83. *Procedures for Acceptance of Donations*

(a) Donation agreement The donor and the executive administrator shall execute a donation agreement which includes the following information

(1) a description of the donation, including a determination of the value,

(2) a statement by the donor attesting to its ownership rights in the property,

(3) the signature of the donor if the donor is an individual or its official representative if the donor is a business organization,

(4) the signature of the executive administrator;

(5) any conditions restricting the use of the donation,

(6) the mailing address of the donor and principal place of business if the donor is a business entity,

(7) a statement identifying any official relationship between the donor and the board, and

(8) a statement advising the donor to seek legal and/or tax advice from its own legal counsel

(b) Deposited funds. The board shall deposit monetary contributions from private sources in the state treasury. The money contributed shall be used to carry out the purposes of the board and, to the extent possible, the purposes specified by the donors

§353.84. *Donations from Persons Appearing Before the Board* The board will adhere to all policies relating to the acceptance of gifts from persons appearing before the board as adopted by the Texas Ethics Commission and the ethics policy of the board

§353.85 *Acceptance of Donations*

(a) All donations made to the board shall be accepted by the executive administrator

(b) All donations will be accepted on behalf of the board No officers or employees of the board can accept donations in their individual capacities or receive a personal benefit from donations

§353.86 *Transfer of Donations* A donor may stipulate that any donation made to the board be transferred to a support organization to be used in a manner which benefits the board in the support or furtherance of its purposes and duties. The donor must give written permission for such transfer. An account of all such letters of written permission shall be kept by the executive administrator and shall be available to the state auditor

§353.87 *Standard of Conduct Between the Board and Donors.* Any person or entity seeking to contract with the board on a competitive basis or otherwise shall disclose all previous donations occurring within the preceding two years to the board or any other state agency. The disclosure shall include the following information

(1) the nature and value of the donation, and

(2) the date the donation was made and the recipient If the donation is ongoing the last date that the donation was available to the agency shall be used to determine the date of the donation

§353.88 *Standard of Conduct Between Board Officers and Employees and Donors.*

(a) An officer or employee shall not accept or solicit any gift, favor, or service from a donor that might reasonably tend to influence his or her official conduct or that the officer or employee knows is being offered with the intent to influence official conduct

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a donor which the officer or employee might reasonably expect would require or induce disclosure of confidential information acquired by reason of his or her position.

§353.89 *Cooperation with Private Organizations*

(a) The board may cooperate with support organizations. Any organization wishing to establish a relationship with the board as a support organization must submit copies of its charter and bylaws or other organizational documents to the executive administrator for review.

(b) The board will maintain a list of support organizations with which it cooperates.

(c) If funds are transferred from the board to a support organization, the organization shall maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles. The board may require periodic financial reports, an annual audit prepared by a certified public accountant, and a final accounting of all funds received.

§353.90. *Designation of Agency Liaison.* The executive administrator may designate an officer or employee of the board to serve as the board's liaison with support organizations.

§353.91. *Compensation from Support Organizations.* An officer or employee who is designated by the executive administrator and serves as an agency liaison shall receive no compensation from the support organization for such service.

§353.92. *Use of Personnel, Equipment, or Property.* The executive administrator may authorize reasonable use of board personnel, equipment, or property by a support organization, provided such usage is commensurate with the benefits received or to be received by the board in furtherance of its purposes, duties, and programs.

§353.93. *Service as Officer or Director.* Board personnel may not serve in the capacity as officer or director of a support organization or donor.

§353.94. *Conflict.* Nothing herein shall supersede any rule or statute regulating the conduct of an employee of a state agency or the procedures of a state agency

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

Issued in Austin, Texas, on April 29, 1994.

TRD-9440004

Craig D. Pedersen
Executive Administrator
Texas Water Development
Board

Proposed date of adoption: June 16, 1994

For further information, please call: (512)
463-7981

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part V. Texas Board of
Pardons and Paroles**

**Chapter 141. General
Provisions**

Board of Pardons and Paroles

• 37 TAC §§141.1-141.10

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

The Texas Board of Pardons and Paroles proposes the repeal of §§141.1-141.10, concerning general provisions of the Board of Pardons and Paroles. The sections are proposed for repeal because they are obsolete under current statutory law and new updated §141.1-141.5 dealing with the same subject matter are being proposed.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by these particular repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.1. Origin and Purpose of the Board.

§141.2. Composition of the Board.

§141.3. Chairmanship.

§141.4. Quorum.

§141.5. Majority Vote.

§141.6. Regular Meetings.

§141.7. Special Meetings.

§141.8. Open Meetings.

§141.9. Parliamentary Authority

§141.10. Official 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 29, 1994.

TRD-9440066

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6,
1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.1

The Texas Board of Pardons and Paroles proposes new §141.1, concerning the Chairmanship of the Board of Pardons and Paroles.

This proposed section updates the scope of the authority of the chairman to conform to new statutory law.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.1. Chairmanship of the Board. The chairman is designated by the governor and serves in that capacity at the pleasure of the governor. The chairman acts as spokesman for the board after obtaining the views and collaboration of his colleagues if present. The chairman appoints six board members to serve on the executive committee of the board who service in that capacity at the pleasure of the chairman.

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 29, 1994.

TRD-9440035

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6,
1994

For further information, please call: (512)
406-5613

◆ ◆ ◆
• 37 TAC §141.2

The Texas Board of Pardons and Paroles proposes new §141.2, concerning defining the term "quorum" for the Board of Pardons and Paroles and its parole panels.

This proposed section is updated to delete information not specifically related to the topic of Quorum.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.2. Quorum. A majority of the board or any panel thereof shall constitute a quorum for the transaction of all business before it.

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 29, 1994.

TRD-9440036

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.3

The Texas Board of Pardons and Paroles proposes new §141.3, concerning General Provisions relating to voting requirements necessary for board and parole panel actions.

This proposed section is updated to comply with current statutory language found at Code of Criminal Conduct, Article 42.18, §7(g).

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.3. Majority Vote. Major questions of policy and procedure require consideration of all members of the board. All decisions except parole decisions involving capital offenses committed on or after September 1, 1993 shall be made by simple majority vote. Parole decisions involving capital felony offenses committed on or after September 1, 1993 shall be made by a two-thirds vote of the entire membership of the board. In all matters related to policies or procedures considered by the full board, the chairman will only vote on any decision when it is necessary to break a tie vote of the members voting on the matter.

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 29, 1994.

TRD-9440037

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.4

The Texas Board of Pardons and Paroles proposes new §141.4, concerning General Provisions of the Board relating to meetings of the Board.

This proposed section is updated to comply with statutory law, and combines language found in the current versions of §141.6 and §141.7 which are proposed for repeal by means of a separate submission.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.4. Meetings. The board meets at the call of the chairman and from time to time as otherwise may be determined by a majority of the board making written request to the board's administrative assistant for the scheduling of a meeting.

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 29, 1994.

TRD-9440038

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.5

The Texas Board of Pardons and Paroles proposes new §141.5, concerning General Provisions of the Board relating to Parliamentary Authority.

This proposed section is renumbered, and identical in text to current §141.9 which is being proposed for repeal by a separate submission.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.5. Parliamentary Authority. Robert's Rules of Order, current edition, shall govern the conduct of all meetings of the board except as may be otherwise specified in statutory law or herein.

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 29, 1994

TRD-9440039

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
Parole Panels

• 37 TAC §§141.41-141.45

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

The Texas Board of Pardons and Paroles proposes the repeal of §§141.41-141.45, concerning parole panels. The sections are proposed for repeal because the information contained in these rules duplicates statutory law.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.41. Composition

§141.42. Duties and Authority of Parole Panels.

§141.43. Meetings.

§141.44. Quorum.

§141.45. Majority Vote

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 29, 1994

TRD-9440069 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call (512) 406-5613



Rulemaking

• 37 TAC §§141.51-141.57

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

The Texas Board of Pardons and Paroles proposes the repeal of §§141.51- 141 57, regarding various facets of rulemaking.

The sections are proposed for repeal so that they may be replaced by new rules which conform more to current statutory law.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.51. Purpose of Rules.

§141.52. Incorporation by Reference.

§141.53. Use and Effect of Rules.

§141.54. Suspension of Rules.

§141.55. Amending of Rules.

§141.56. Request for Notice of Rulemaking.

§141.57. Petition for Adoption of Rules.

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 29, 1994.

TRD-9440068 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613



• 37 TAC §141.51

The Texas Board of Pardons and Paroles proposes new §141.51, concerning the Use and Effect of Rules passed by the Board of Pardons and Paroles. The proposed new section substantially retains the text of current rule §141.53 (Use and Effect of Rules) which is proposed for repeal under a separate submission, however, reference to parole commissioner is deleted in the proposed new rule since the position of parole commissioner no longer exists.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.51. Use and Effect of Rules. These rules are prescribed for the performance of the constitutional and statutory powers and functions vested in the board. In no event shall they or any of them, be construed as a limitation or restriction upon the exercise of any discretion by the board or by a parole panel.

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 29, 1994.

TRD-9440040 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption. June 6, 1994

For further information, please call (512) 406-5613



• 37 TAC §141.52

The Texas Board of Pardons and Paroles proposes new §141.52, concerning the Suspension of Rules. This proposed section is being renumbered only. The text of proposed §141.52 is currently found at §141.54 which is proposed for repeal.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.52. *Suspension of Rules.* The board may suspend the provisions of any procedure or rule when the enforcement of the rule would unduly complicate or prolong the process and the suspension would not result in significant harm to the interests of any person and would be in the best interest of justice for all interested persons.

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 29, 1994.

TRD-9440041 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.57

The Texas Board of Pardons and Paroles proposes new §141.57, concerning the Petition for the Adoption of Rules which states who may petition the Board for the adoption of rules and the procedure to be followed in the petition process.

This proposed section changes the address to which communications are to be sent.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.57. *Petition for Adoption of Rules.*

(a) Any interested person may petition the board requesting the adoption of a rule.

(b) The petition shall be submitted in writing, must be initially identified as such, and comply with the following requirements.

(1) Each rule requested must be requested by separate petition.

(2) Each petition must state the name and address of the petitioner.

(3) Each petition must be addressed to the board at its Huntsville office.

(4) Each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted in the current text, if any.

(c) Within 60 days after receipt of a petition by the board at its office in Huntsville, Texas, the board shall consider the petition at a regular meeting and thereafter shall either deny it in writing, stating its reasons for denial, or shall initiate rulemaking proceedings in accordance with the Government Code, §2001.021. A petition may be denied for failure to comply with the petition requirements of this rule.

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 29, 1994.

TRD-9440042 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
Records and Reports

• 37 TAC §§141.71-141.74

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

The Texas Board of Pardons and Paroles proposes the repeal of §§141. 71-141.74, concerning Records and Reports of the Board.

The sections are proposed for repeal to enable the board to propose new sections which are more consistent with current statutory law and procedures.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.71. *Minutes of the Board.*

§141.72. *Record of Decisions.*

§141.73. *Confidential and Privileged Information.*

§141.74. *Annual Statistical 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 29, 1994.

TRD-9440070 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.71

The Texas Board of Pardons and Paroles proposes new §141.71, concerning the minutes of the board and board records relating the decisions made by the board and its component panels, and the conditions under which such materials are available to the public.

This proposed section is being updated to conform the current statutory law.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.71. Minutes of the Board and Board Records. All minutes of the board and parole panels, final decisions relating to parole, pardons, and clemency, statistical and general information concerning the parole program and system, including the names of paroled prisoners and data recorded in connection with parole services shall be matters of public record and subject to public inspection during normal business hours except as limited by exceptions recognized under common law and the Texas Open Records Act.

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 29, 1994.

TRD-9440043 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.72

The Texas Board of Pardons and Paroles proposes new §141.72, concerning the recording of parole panel decisions

The proposed new section is updated to conform to current statutory law, and deletes references to the position of parole commissioner which no longer exists.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by this particular section. There will be no effect on

small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.72. Record of Decisions. The board and parole panels shall keep records of their acts.

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 29, 1994.

TRD-9440044 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
Registration of Visitors and
Fee Affidavits

• 37 TAC §141.81, §141.82

(Editorial note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of §141.81, and §141.82, concerning the Registration of Visitors and Fee Affidavits. These rules require advocates appearing before the board to register in a log book and to file a fee affidavit disclosing compensation for their services before the board.

The sections are proposed for repeal because they refer to obsolete statutory law, and they must be replaced by rules reflecting current law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §7(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.81. Registration of Visitors.

§141.82. Fee Affidavits.

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 29, 1994.

TRD-9440071 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.81

The Texas Board of Pardons and Paroles proposes new §141.81, concerning the registration of visitors who appear before the board, board members or employees of the board to present information or arguments for or in behalf of any person within the jurisdiction of the board.

This section is being updated to delete reference to the position of parole commissioner which no longer exists.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.81. *Registration of Visitors.* Any person who appears before the board or a parole panel, or before any board member or any board employee whether in an interview or at a hearing, except those appearing as witnesses at a violation hearing, for the purpose of submitting or presenting information or arguments for and in behalf of any person within the jurisdiction of the board, shall register in the record of the board as required by law (Government Code, §2004.002).

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 29, 1994.

TRD-9440045 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613



• 37 TAC §141.82

The Texas Board of Pardons and Paroles proposes new §141.82, concerning the requirement that persons appearing before the board or any of its members, or employees, to present information or arguments for or in behalf of a person within the board's jurisdiction must file a fee affidavit specifying the existence of, and amount of compensation to be paid to the advocate.

This section is being updated to comply with current statutory law found in Article 42.18, §11.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.82. *Fee Affidavits.* Any person who appears before the board or any of its members, before a parole panel, or any board employee for the purpose of submitting or presenting information or arguments for and in behalf of any person within the jurisdiction of the board, shall additionally submit before or at the time of such appearance a completed fee affidavit form. The completed fee affidavit form shall state whether any fee has been, or is to be paid for his participation or services in the case and all other information required by Code of Criminal Procedure, Article 42.18, §11.

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 29, 1994.

TRD-9440046 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613



Interviews

• 37 TAC §§141.91-141.94

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

The Texas Board of Pardons and Paroles proposes the repeal of §§141.91-141.94, concerning the discretionary granting of interviews by board members and their designates to persons who wish to present information and arguments for and in behalf of any person within the board's jurisdiction.

These sections are being proposed for repeal because these sections are being updated to conform to current statutory law by means of a separate submission of proposed new rules.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

ward, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.91. *Purpose.*

§141.92. *Not a Public Hearing.*

§141.93. *Record.*

§141.94. *No Decision Permitted.*

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 29, 1994.

TRD-9440072 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613



• 37 TAC §141.91

The Texas Board of Pardons and Paroles proposes new §141.91, concerning the discretionary authority of the board to grant interviews to persons who wish to submit information to the board, and the nature of such interviews.

This proposed section is being updated to reflect current statutory law, specifically that the position of parole commissioner has been abolished.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.91. Purpose. Any member of the board, or any representative of the board may interview any person who wishes to present or submit information for and in behalf of any person within the jurisdiction of the board upon proper registration and presentation of any necessary fee affidavit. Such interview shall not be deemed to be a hearing and shall not be public.

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 29, 1994

TRD-9440047 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
• 37 TAC §141.92

The Texas Board of Pardons and Paroles proposes new §141.92, mandating that a record of interviews described in §141.91 be created and maintained as part of a parole file.

This proposed section is being updated to conform to Code of Criminal Procedure, Article 42.18, §18, which makes components of a parole file confidential, subject to specific exceptions

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.92 Record. The date, place, persons involved and purpose of such an interview shall be recorded and notes may be kept thereof for purposes of entering any information received into the confidential file of the person on whose behalf the interview is conducted

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 29, 1994

TRD-9440048 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
Interviews

• 37 TAC §141.94

The Texas Board of Pardons and Paroles proposes new §141.94, concerning the prohibition against the board or any of its members from making any binding parole, revocation or executive clemency decisions during the course of interviews of persons providing information for and in behalf of any person within the board jurisdiction

This section is being proposed to reflect current law and to abolish reference to the office of parole commissioner which has been abolished

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.94. No Decision Permitted No decision to recommend or deny parole, to order revocation of parole or mandatory supervision, or to recommend any form of executive clemency or the revocation thereof shall be made by the board or any of its members during such an interview.

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 29, 1994

TRD-9440049

Michael F. Miller
General Counsel
Board of Pardons and
Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
Chapter 145. Parole

Parole Process

• 37 TAC §§145.4, 145.5, 145.7, 145.8

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

The Texas Board of Pardons and Paroles proposes the repeal of §§145.4, 145.5, 145.7, and 145.8, concerning the consideration for parole the determination of the tentative parole date.

The sections are proposed for repeal because the Board of Pardons and Paroles no longer has authority to determine the tentative parole date pursuant to statutory amendments passed by Acts 1993, 73rd Legislature.

Section 145.8 is proposed for repeal because it unnecessarily duplicates statutory law found at Code of Criminal Procedure, Article 42.18, §8(d).

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.4. Notice to Inmate and the Texas Department of Corrections of Tentative Parole Date.

§145.5. Establishment of Tentative Parole Date Deferred.

§145.7. Initial Review Date.

§145.8. Initial Eligibility on Consecutive Sentences.

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 29, 1994.

TRD-9440073 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §§145.9, 145.10,
145.12-145.16

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

The Texas Board of Pardons and Paroles proposes the repeal of §§145.9, 145.10, 145.12-145.16, concerning parole process. The sections are proposed for repeal because changes made in statutory law. By separate submission new §§145.9, 145.10, 145.12-145.16 have been proposed to comply with current statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals

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

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.9. Parole Interview.

§145.10. Eligibility Date.

§145.12. Initial Action Upon Review

§145.13. Favorable Initial Action: Notice of Trial Officials and Victims.

§145.14. Subsequent Action: Notice to Trial Officials.

§145.15. Notice to Certain Officials After Transfer to Halfway House.

§145.16. Parole Denied by the Board: Subsequent Parole Review Date.

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 29, 1994.

TRD-9440074 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
Parole Process

• 37 TAC §145.9

The Texas Board of Pardons and Paroles proposes new §145.9, concerning the discretionary authority of the Board of Pardons and Paroles to grant parole interviews.

The proposed new section deletes references to the authority of parole commissioners and institutional parole officers to grant parole interviews because the position of parole commissioner no longer exists and institutional parole officers are not employees of the Board of Pardons and Paroles

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.9 Parole Interview. Prior to consideration for parole by a parole panel, the inmate may be interviewed by a board member whether it be the initial review or a subsequent review.

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 29, 1994

TRD-9440050 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.12

The Texas Board of Pardons and Paroles proposes new §145.12, concerning the alternative actions that a parole panel may take upon initially reviewing a case for parole consideration.

The proposed new section updates agency rules to reflect the existence of new rehabilitation programs and release options created by statutory law

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

§145.12. Action Upon Review. A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review docket date (Month/Year)

may be set at any date in the three-year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed;

(3) denied a favorable action at this time and no regular subsequent reviews to be ordered (Serve-All), but in no event will this be utilized if the case's minimum expiration date is over three years from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed;

(4) determined that the total situation seems to favor the inmate's release on parole and further investigation (FI) is ordered in the following manner:

(A) FI-1-release when eligible;

(B) FI-2 (Month/Year)-release on a specified future date within the three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed.

(C) FI-3-release on Pre-Parole Transfer when eligible;

(D) FI-4 (Month/Year)-release to Pre-Parole Transfer when eligible. Release to parole supervision from Pre-Parole Transfer status on specified month and year within the three-year incarceration period following either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed;

(E) FI-5-release only after completion of the In-Patient Therapeutic Community Program.

(F) FI-6 (Month/Year)-release only after completion of the In-Patient Therapeutic Community Program and not to enter the program prior to a specified future date.

(5) ordered to remain set for further investigation, if in special review status at the time of panel decision

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 29, 1994

TRD-9440052

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.16

The Texas Board of Pardons and Paroles proposes new §145.16, concerning the alternative actions that a parole panel may take after making an initial favorable decision to parole, and subsequently receiving additional relevant information about the inmate from trial officials or crime victims.

The new section is proposed to update this section to conform to current statutory law.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.16 Action Upon Review of Additional Information. Responses received from trial officials and/or victims shall be referred to a parole panel for review and decision. A case reviewed by a parole panel may then:

(1) be continued in parole approved status with or without additional conditions of release imposed;

(2) have parole approval withdrawn and the next parole docket date set by the parole panel as follows:

(A) 12 months or less to serve from either the prior parole docket date or date of this panel decision if the prior parole docket date has passed—the case is made a serve-all;

(B) more than 12 months but three years or less to serve from either the prior parole docket date or the date of this panel decision if the prior parole docket date has passed—the case is set-off from one to two years or made a serve-all;

(C) more than three years to serve from either the prior parole docket date or the date of this panel decision if the prior parole docket date has passed—the case is set-off from one to three years.

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 29, 1994.

TRD-9440052

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §§145.17-145.21

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

The Texas Board of Pardons and Paroles proposes the repeal of §145.17-145.21, concerning the parole process.

The sections are proposed for repeal because §§145.17, 145.18, 145.19 are obsolete under current statutory law, and updated versions of §145.20 and §145.21 have been proposed as new rules under a separate submission.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals

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

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.17. Plan Investigation.

§145.18. Parole Plan, Investigation.

§145.19. Tentative Parole Release Date.

§145.20. Parole Certificate.

§145.21. Parole in Absentia (Parole for Prisoner Not in Actual Physical Custody of the Texas Department of Corrections).

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 29, 1994.

TRD-9440075

Michael F. Miller
General Counsel
Board of Pardons and
Paroles

Earliest possible date of adoption. June 6, 1994

For further information, please call. (512) 406-5613



• 37 TAC §145.20

The Texas Board of Pardons and Paroles proposes new §145.20, concerning the issuance of parole certificates. This section lists the necessary conditions for the issuance of a parole certificate, and release on parole.

This new section is proposed to reflect the fact that the position of parole commissioner has been abolished

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.20. Parole Certificate.

(a) When the parole plan has been approved a parole certificate shall be issued and signed with a facsimile signature of the Chairman or another member of the Texas Board of Pardons and Paroles

(b) The parole approval is not effective or final until a formal parole agree-

ment is executed by the inmate. The approval may be withdrawn by a parole panel at any time prior to the acceptance and execution by the inmate of the formal parole agreement(s) which is contained in the parole certificate.

(c) The parole certificate shall not become effective and in force until the conditions are agreed to, signed, and accepted by the inmate.

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 29, 1994.

TRD-9440053

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption. June 6, 1994

For further information, please call: (512) 406-5613



Terms and Conditions of Parole

• 37 TAC §145.21

The Texas Board of Pardons and Paroles proposes new §145.21, concerning Parole in Absentia which involves the parole of prisoners not in actual physical custody of the Texas Department of Criminal Justice Institutional Division prisons. The proposed new section is submitted to reflect the fact that the former Texas Department of Corrections has been renamed the Texas Department of Criminal Justice-Institutional Division.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

§145.21. Parole in Absentia (Parole Review and Mandatory Supervision for Prisoners Not in Actual Physical Custody of the

TDCJ-Institutional Division). Prisoners serving state prison sentences for Texas crimes and prisoners whose administrative release status has been revoked who are not in the actual physical custody of the Texas Department of Criminal Justice-Institutional Division are subject to the parole review process as set out in this chapter and title, generally, in accord with the following.

(1) Parole in absentia processing is initiated by the assigned Institutional Division staff upon referral from the county of conviction when all necessary pen packet documents have been compiled and presented to the Institutional Division.

(2) Prior to consideration for parole by the parole panel, the inmate may be interviewed by a representative of the Institutional Division for the purpose of obtaining a parole release plan and completion of a parole in absentia summary in order that the parole panel may make an informed decision concerning parole release suitability (§145.12 of this title (relating to Action Upon Review) and §145.16 of this title (relating to Action Upon Review of Additional Information)).

(3) A prisoner released to parole in absentia or mandatory supervision on a Texas felony sentence shall, after release, be treated the same as a prisoner released on parole or mandatory supervision directly from the TDCJ-Institutional Division. Such administrative releasees are subject to revocation for violation of the terms and conditions of their release pursuant to the provisions and procedures of this chapter and title relating to the Revocation of Administrative Release (§§145.41-145.55 of this title (relating to Parole and Mandatory Supervision and Executive Clemency)).

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 29, 1994

TRD-9440054

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption. June 6, 1994

For further information, please call. (512) 406-5613



• 37 TAC §145.22

The Texas Board of Pardons and Paroles proposes new §145.22, concerning the terms and conditions of parole. This section lists both general conditions of parole which are applicable to all parolees and special conditions of parole which are ordered on an individual basis

The proposed new section continues the terms and conditions of parole currently found at §195.61

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.22. Terms and Conditions of Parole. The following terms and conditions of parole must be agreed to and accepted by the inmate as a prerequisite to parole. Continuation on parole is conditioned upon continuing compliance with the standard terms and conditions of parole and upon compliance with any special conditions imposed by a parole panel or the board or its authorized designate:

(1) Release and reporting—upon release from the institution, report immediately, as instructed to my parole officer; thereafter, report as directed and follow all instructions from my parole officer which are authorized by the board;

(2) Legal obligation—obey all municipal, county, state and federal laws;

(3) Residence—obtain written permission of my parole officer prior to changing my place of residence;

(4) Travel—obtain written permission of my parole officer prior to leaving the State of Texas;

(5) Weapons—I shall not own, possess, use, sell, nor have under my control any firearm, prohibited weapon or illegal weapon as defined in the Texas Penal Code; nor shall I unlawfully carry any weapon nor use, attempt or threaten to use any tool, implement or object to cause or threaten to cause any bodily injury;

(6) Association—the releasee shall avoid association with persons of criminal background;

(7) Informant—the releasee shall not enter into any agreement to act as "informant" or special agent for any law enforcement agency without specific written approval of the division director;

(8) Special Conditions—I shall abide by any special condition(s) imposed by the board; any such special conditions imposed upon release will be indicated on the face of this certificate by the letter(s) corresponding to the conditions as listed in subparagraphs (A)-(M) of this paragraph:

(A) not to open checking account (special condition C);

(B) release to detainer or plan (special condition D);

(C) basic education or vocational training program directed by supervising parole officer (special condition E);

(D) halfway house placement (See Attachment) (special condition H);

(E) releasee must notify prospective employer regarding criminal history if a position of financial responsibility is involved (special condition I);

(F) assignment of the highest available level of supervision or supervision caseload until an appropriate level of supervision is further established by objective assessment instrument and supervision case classification (special condition L);

(G) other (special condition O);

(H) mental health/mental retardation treatment or counseling program as directed by the supervising parole officer (special condition P);

(I) (instate) make restitution payments as required by supervising officer in the amount to be set by the board (Out-of-State). By the 10th of each month, payments (cashier's check or money order) shall be paid to the Texas Department of Criminal Justice Pardons and Paroles Division (P.O. Box 13401, Capitol Station, Austin, Texas 78711); total amount to be set by the board (special condition R);

(J) substance (alcohol/narcotics) treatment program, which may include urinalysis monitoring, attendance at scheduled counseling sessions, driving restrictions, or related requirements as directed by the supervising parole officer (special condition S);

(K) no contact with victims (special condition V);

(L) releasee shall not enter the specified county without prior written board approval (special condition Z);

(M) Sex Offender Registration Program under Texas Civil Statutes, Article 6252-13c. Within seven days of arrival in any municipality or county, and within seven days of any change of address, register with appropriate local law enforcement officials (special condition M).

(9) General Provisions—

(A) I hereby agree to abide by all rules of parole and all laws relating to the revocation of parole including, but not limited to, appearance at any hearings or proceedings required by law of the jurisdiction in which I may be found or of the State of Texas. I further agree and consent that the receiving state, if I am under compact supervision, or any state wherein I may be found while on parole or under parole jurisdiction, may conduct such hearings as the board shall deem necessary, proper or which may be required by law.

(B) I shall pay, during the period of my supervision, any and all outstanding fines, court costs and fees adjudged against me, to the clerk of the court of conviction, and I agree to provide my supervising officer with documentation verifying the payment by me of said amounts. I will be required to pay a supervision fee for each month I am required to report to a supervising officer as instructed by my supervising officer.

(C) In the event I am granted the privilege of residing in and being under supervision of any other state or territory under the Interstate Compact for the Supervision of Parolees and Article 42.11, Code of Criminal Procedure, and in consideration of being granted parole by the Texas Board of Pardons and Paroles, or for any reason I may be outside of the State of Texas, I hereby agree to and I hereby do waive extradition to the State of Texas from any jurisdiction in or outside the United States where I may be found; I do hereby further agree that I will not in any manner contest any effort by the State of Texas, or any state of jurisdiction, to return me to the State of Texas.

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 29, 1994

TRD-9440055

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.24

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

The Texas Board of Pardons and Paroles proposes the repeal of §145.24, concerning rules of parole which are applicable to out-of-state parolees who are supervised in Texas.

This section is proposed for repeal because it cites another section which is proposed for renumbering by means of a separate submission.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

◆ ◆ ◆
§145.24. Out-of-State Parolees Supervised in Texas.

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 29, 1994

TRD-9440076 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles proposes new §145.24, concerning the rules of parole applicable to parolees from outside

of the State of Texas who are supervised in Texas.

This new section is proposed in order to specify that these parolees are to follow the terms and conditions of parole listed in proposed §145.22.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.24. Out-of-State Parolees Supervised in Texas. Parolees from outside the State of Texas accepted in Texas for supervision by the Division of Parole Supervision under the terms of the Interstate Parole Compact (Code of Criminal Procedure, Article 42.11) are required to abide by both the rules of parole for Texas parolees as set forth in §145.22 of this title (relating to Terms and Conditions of Parole) and the rules of parole of the sending state.

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

Issued in Austin, Texas, on April 29, 1994.

TRD-9440056 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §145.26

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

The Texas Board of Pardons and Paroles proposes the repeal of §145.26, concerning annual report status for parolees.

The section is proposed for repeal because the board wishes to propose, a new §145.26 (by means of a separate submission), which will increase the term that a person must be on parole before becoming eligible for consideration for annual report status.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

◆ ◆ ◆
§145.26. Annual Report Notice.

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 29, 1994.

TRD-9440077 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
The Texas Board of Pardons and Paroles proposes new §145.26, concerning various facets of annual report status. This section describes the characteristics of annual report status, including rules pertaining to eligibility for, and termination of annual report status.

This new section is proposed because the board wants to increase the eligibility requirements for annual report status.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small

businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P O Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

§145.26 Annual Report Status

(a) Annual report status is a releasee status which releases the parolee from the original terms and conditions of parole, releases the individual from the direct supervision of a parole officer, and is conditional upon the releasee's acceptance of and compliance with the annual report rules

(b) A releasee may be considered by a parole panel for annual report status upon the recommendation of his or her parole officer after having been satisfactorily under supervision for

(1) a minimum of two years if released from a sentence of less than ten years; or

(2) a minimum of three years if released from a sentence of ten years or more but less than 30 years, or

(3) a minimum of five years if released from a sentence of 30 years or more

(c) A recommendation to a parole panel for transfer to annual report status must be approved by the Supervisor of the Region of the Pardons and Paroles Division in which the releasee is under active supervision at the time of the recommendation.

(d) The releasee remains subject to the rules of the Board and subject to its orders while on an annual report status

(e) A parole panel may, at its discretion and without notice, set aside an order of transfer to annual report status and impose any additional rules or conditions of release as the parole panel may deem to be proper

(f) The rules for a releasee on annual report status are listed in the following paragraphs

(1) Each year, from the date of the acceptance of this order for annual report, the releasee will report in writing to the regional supervisor of the region of parole supervision where releasee was residing when first placed on annual reporting status, said report showing his or her current employment and residence. This annual report will be made until the term of his or

her administrative release expires. Failure to submit this report each year could result in his or her being returned to active release supervision, or the issuance of a pre-revocation warrant or summons for his or her arrest and possible return to the TDCJ-Institutional Division.

(2) The releasee will obey all federal, state, county and municipal laws and ordinances

(3) The releasee will not communicate with any inmate of a penal institution, unless approved in writing to do so by a warden or general manager of the penal institution, the original or a copy of such approval shall be immediately sent by the releasee to the Director of Parole Supervision, 8610 Shoal Creek Boulevard, Box 13401, Austin, Texas 78711

(4) The releasee shall not own, possess, use nor have under his or her control any firearms, prohibited weapons or illegal weapons as defined in the Texas Penal Code, nor shall he unlawfully carry any weapon nor use, attempt or threaten to use any tool, implement or object or to cause or to threaten to cause any bodily injury.

(5) The releasee will report, in writing, the fact of any arrest or change or residential address within five days of its occurrence, to the Supervisor of the Region of the Pardons and Paroles Division in the region where releasee was residing when first placed on annual 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 29, 1994

TRD-9440057

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call (512) 406-5613

Chapter 149. Mandatory Supervision

Rules and Conditions of Mandatory Supervision

• 37 TAC §149.1

The Texas Board of Pardons and Paroles proposes new §149.1, concerning the rules and conditions of mandatory supervision. The text of the proposed new rule is currently found at §197.21

This proposed new section will result in the renumbering of the current text of the rule found at §197.21

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P O Box 13401, Austin, Texas 78711

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

§149.1 Rules and Conditions of Mandatory Supervision The following rules and conditions of mandatory supervision must be acknowledged by the inmate being released to mandatory supervision, and the releasee must recognize that his or her release is conditional and that he or she is deemed as if on parole. Continuation on mandatory supervision is conditional upon continuing compliance with the standard terms and conditions of mandatory supervision and upon compliance with any special conditions imposed by a parole panel or the board or staff as authorized by the board

(1) Release and reporting—upon release from the institution, report immediately, as instructed, to my parole officer, thereafter, report as directed and follow all instructions from my parole officer which are authorized by the board.

(2) Legal Obligations—I shall obey all municipal, county, state and federal laws.

(3) Residence—I shall obtain the written permission of my parole officer prior to changing my place of residence.

(4) Travel—I shall obtain the written permission of my parole officer prior to leaving the State of Texas;

(5) Weapons—I shall not own, possess, use, sell, nor have under my control any firearm, prohibited weapon, or illegal weapon as defined in the Texas Penal Code, nor shall I unlawfully carry any weapon nor use, attempt, or threaten to use any tool, implement or object to cause or threaten to cause bodily injury.

(6) Association—the releasee shall avoid association with persons of criminal background.

(7) Informant—the releasee shall not enter into any agreement to act as 'informant' or special agent for any law enforcement agency without specific written approval of the division director;

(8) Special Conditions—abide by any special condition(s) imposed by the board; any special condition(s) imposed upon release will be indicated on the face of this certificate by the letter(s) corresponding to the conditions as listed in subparagraph (A)-(M) of this paragraph:

(A) not to open checking account (special condition C);

(B) release to detainer or plan (special condition D);

(C) basic education or vocational training program directed by supervising parole officer (special condition E);

(D) halfway house placement (See Attachment) (special condition H);

(E) releasee must notify prospective employer regarding criminal history if a position of financial responsibility is involved (special condition I);

(F) assignment of the highest available level of supervision or supervision case load until appropriate level of supervision is further established by objective assessment instrument and supervision case classification (special condition L);

(G) other (special condition O);

(H) mental health/mental retardation treatment or counseling program as directed by the supervising parole officer (special condition P);

(I) (instate) make restitution payments as required by supervising officer in the amount to be set by the board (Out-of-State). By the 10th of each month, payments (cashier's check or money order) shall be paid to the Texas Department of Criminal Justice Pardons and Paroles Division (P.O. Box 13401, Austin, Texas 78711; total amount to be set by the board (special condition R);

(J) substance (alcohol/narcotics) treatment program, which may include urinalysis monitoring, attendance at scheduled counseling sessions, driving restrictions, or related requirements as directed by the supervising parole officer (special condition S);

(K) no contact with victims (special condition V);

(L) releasee shall not enter the specified county without prior written board approval (special condition Z);

(M) Sex Offender Registration Program under Texas Civil Statutes, Article 6252-13c, within seven days of arrival in any municipality or county, and within seven days of any change of address, register with appropriate local law enforcement officials (special condition M).

(9) General Provisions—

(A) I hereby agree to abide by all rules of mandatory supervision and all laws relating to the revocation of mandatory supervision including, but not limited to, appearance at any hearings or proceedings required by the law of the jurisdiction in which I may be found or of the State of Texas. I further agree and consent that the receiving state, if I am under compact supervision, or any state wherein I may be found while on mandatory supervision or under mandatory supervision jurisdiction, may conduct such hearings as the board shall deem necessary, proper, or which may be required by law.

(B) I shall pay, during the period of my supervision, any and all outstanding fines, court costs and fees adjudged against me, to the clerk of the court of conviction, and agree to provide my supervising officer with documentation verifying the payment by me of said amounts. I will be required to pay a supervision fee for each month I am required to report to a supervising officer as instructed by my supervising officer.

(C) In the event I am granted the privilege of residing in and being under the supervision of any other state or territory under the Interstate Compact for the Supervision of Parolees and the Code of Criminal Procedure, Article 42.11, and in consideration of being granted mandatory supervision by the Texas Board of Pardons and Paroles, or for any reason I may be outside the State of Texas, I hereby agree to and I hereby do waive extradition to the State of Texas from any jurisdiction in or outside the United States where I may be found; I do hereby further agree that I will not in any manner contest any effort by the State of Texas, or any state of jurisdiction, to return me to the State of Texas.

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 29, 1994

TRD-9440058

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption. June 6, 1994

For further information, please call. (512) 406-5613

◆ ◆ ◆
• 37 TAC §149.6

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

The Texas Board of Pardons and Paroles proposes the repeal of §149.6, concerning non-reporting status for Mandatory Supervision Releasees. The section is proposed for repeal because the Board of Pardons and Paroles no longer has statutory authority to grant a non-reporting status to releasees under Code of Criminal Procedure, Article 42.18, §15(b)(1). The authority to grant non-reporting status is now exclusively within the jurisdiction of the Texas Department of Criminal Justice Pardons and Paroles Division.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§149.6. Non-reporting status for Mandatory Supervision Releasees.

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 29, 1994.

TRD-9440078

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
Selection for Mandatory Supervision

◆ ◆ ◆
• 37 TAC §149.11

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

The Texas Board of Pardons and Paroles proposes the repeal of §149.11, concerning mandatory supervision release orders

The section is proposed for repeal because the statutory citation found in the section is obsolete. By a separate submission a new rule with an updated statutory citation is being proposed.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

§149.11 Release Order

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 29, 1994.

TRD-9440079 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

The Texas Board of Pardons and Paroles proposes new §149.11, concerning the Release Order to be issued in granting Mandatory Supervision

This new section is proposed to update the statutory citation referred to in the current §149.11 which is proposed for repeal.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§149.11. Release Order. The board, or a parole panel designated by the board, shall order the release of any prisoner who meets the requirements as set forth in the Code of Criminal Procedure, Article 42.18, §18(c) (amended 1993), and the rules of this 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 29, 1994.

TRD-9440059 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §§149.12-149.14

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

The Texas Board of Pardons and Paroles proposes the repeal of §§149.12-149.14, concerning the mandatory supervision interview and the eligibility date for release to Mandatory Supervision

The sections are proposed for repeal because changes in statutory law have made these rules obsolete. Various components of the Texas Department of Criminal Justice now have authority to carry out the functions described in these sections, not the Board of Pardons and Paroles.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the repeals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§149.12. Mandatory Supervision Interview.

§149.13. Initial Eligibility Date.

§149.14. Date Subject to 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 29, 1994.

TRD-9440080 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §149.16

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

The Texas Board of Pardons and Paroles proposes repeal of §149.16, concerning mandatory supervision release certificates.

The section is proposed for repeal because it refers to obsolete statutory law in that the position of parole commissioner no longer exists. By means of a separate submission a

new §149.16 has been proposed which conforms to current statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§149.16. Release Certificate.

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 29, 1994.

TRD-9440081 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call (512) 406-5613

The Texas Board of Pardons and Paroles proposes new §149.16, concerning the issuance of the mandatory supervision release certificate.

This new section is proposed to replace current §149.16 which is statutorily obsolete and which by means of a separate submission is being proposed for repeal.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted

to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§149.16. *Mandatory Release Certificate.* When a mandatory release plan has been approved a mandatory release certificate shall be issued and signed with a facsimile signature of the Chairman or another member of the Board of Pardons and Paroles.

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 29, 1994

TRD-9440080 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call (512) 406-5613

Chapter 150. Board Policy Statements; Memoranda of Understanding

Board Policy Statements

• 37 TAC §150.56

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

The Texas Board of Pardons and Paroles proposes the repeal of §150.56, concerning policies pertaining to the administration of the agency.

The section is proposed for repeal because under current statutory law, parts of current §150.56 are obsolete, and the positions of parole commissioner and executive directors have been abolished. By a separate submission a new §150.56 is being proposed which will conform to current statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller 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 inapplicable as the public is relatively unaffected by the repeal. There will be no effect on small

businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§150.56. *Policies Pertaining to the Administration of the Agency*

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

Issued in Austin, Texas, on April 29, 1994.

TRD-9440084 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: June 6, 1994

For further information, please call (512) 406-5613

Chapter 150. Memorandum of Understanding and Board Policy Statements

Published Policies of the Board

• 37 TAC §150.56

The Texas Board of Pardons and Paroles proposes new §150.56, concerning Policies Pertaining to the Administration of the Agency, which continues certain policies currently found in §150.56 namely, subsections (a), (e), and (f) which vest overall managerial responsibility in the board, and designates the board chairman as the agency's legislative liaison, and agency spokesman. By means of a separate submission the current version of §150.56 is proposed for repeal so that parts of the rule made obsolete by current statutory law may be removed.

This proposed section is being updated to reflect current statutory law, specifically that the position of parole commissioner has been abolished.

Michael F. Miller, general counsel, 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. Miller 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 inapplicable as the public is relatively unaffected by the section. There will be no effect on small

businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711

The new section is proposed under Code of Criminal Procedure, Article 42.18 §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§150.56 Policies Pertaining to the Administration of the Agency

(a) The board has overall managerial responsibility for developing, promulgating and investigation policies on parole, mandatory supervision and the overall operation and administration of the agency

(b) The chairperson of the board or the chairperson's designee acts as the agency's liaison to the legislature. The board shall have final approval over all proposed legislation before being submitted to the legislature

(c) The chairperson of the board or the chairperson's designee shall serve as agency spokesperson on all matters pertaining to board policy.

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 29, 1994.

TRD-9440061 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption June 6, 1994

For further information, please call: (512) 406-5613

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 10. Family Self-support Services

Eligibility Determination

The Texas Department of Human Services (DHS) proposes the repeal of §§10.1001, 10.1003, 10.1005, 10.1006, 10.1009-10.1013, 10.3401, 10.3409, 10.3411, 10.3412, 10.3431, 10.3434, 10.3438, 10.3440, 10.3442, 10.3449, 10.3450, and 10.3460, amendments to §§10.3405, 10.3407, 10.3413, 10.3451, 10.3458, and 10.3461, and new §§10.3409, 10.3411, 10.3412,

10.3431, 10.3434, 10.3438, 10.3439, 10.3442, 10.3449, 10.3450, 10.3460 and 10.3467-10.3478, concerning eligibility determination and child care management services, in its Self-support Services chapter, formerly titled Family Self-support Services. The purpose of the repeals, amendments, and new sections is to delete obsolete language and allow the inclusion of new concepts for child care services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be that public funds will be appropriately spent for child care services by holding clients, vendors, and contractors accountable for the use or misuse of public funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal

Questions about the content of the proposal may be directed to Shelley Bjorkman at (512) 450-4174 in DHS's Child Care and Development Unit. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-049, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 60 days of publication in the *Texas Register*

DHS will hold a public hearing on the proposal at 10.00 a.m., Friday, June 3, 1994, in the public hearing room, first floor, East Tower, of the John H. Winters Building, 701 West 51st Street, Austin.

- 40 TAC §§10.1001, 10.1003, 10.1005, 10.1006, 10.1009-10.1013

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to administer public assistance and day care programs. The repeals implement the Human Resources Code §22.002(c) and 44.002(a)

§10.1001. Eligible Individuals.

§10.1003. Limitations on Services to Eligible People.

§10.1005. Rights to People Applying for Services.

§10.1006. Responsibilities of People Applying for Purchased Services.

§10.1009. Determination and Redetermination of Income Eligibility.

§10.1010. Eligibility Redetermination for Income Assistance Clients.

§10.1011. Notification of Eligibility Status.

§10.1012. Source Material for Determining Income Eligibility.

§10.1013. Adverse Actions-Denial, Reduction, Termination of Services.

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

Issued in Austin, Texas, on May 2, 1994.

TRD-9440108 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

Child Care Management Services Statewide Implementation

- 40 TAC §§10.3401, 10.3409, 10.3411, 10.3412, 10.3431, 10.3434, 10.3438-10.3440, 10.3442, 10.3449, 10.3450, 10.3460

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to administer public assistance and day care programs. The repeals implement the Human Resources Code §22.002(c) and 44.002(a).

§10.3401. Statewide Implementation of Child Care Management Services (CCMS) System.

§10.3409. Child Care Management Services (CCMS) Staff Requirements.

§10.3411. Intake and Eligibility.

§10.3412. Availability of Purchased Child Care Services.

§10.3431. *Contract Violations and Service Improvement Plans.*

§10.3434. *Billing by a Child Care Management Services (CCMS) Contractor.*

§10.3438. *Maximum Payment Rates.*

§10.3439. *Vendor Rates.*

§10.3440. *Standard Rate Method of Vendor Payments.*

§10.3442. *Vendor Billing Requirements*

§10.3449. *Vendor Agreement Violations and Service Improvement Plans.*

§10.3450. *Vendors Violating Minimum Licensing Standards.*

§10.3460. *Determination of Client Eligibility for Purchased Child Care Services.*

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

Issued in Austin, Texas, on May 2, 1994.

TRD-9440107 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
Chapter 10. [Family] Self-support Services

Child Care Services [Child Care Management Services Statewide Implementation]

- 40 TAC §§10.3405, 10.3407, 10.3409, 10.3411, 10.3412, 10.3413, 10.3431, 10.3434, 10.3438, 10.3439, 10.3442, 10.3449, 10.3450, 10.3451, 10.3458, 10.3460, 10.3461, 10.3467-10.3478

The amendments and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 44, which provides the department with the authority to administer public assistance and day care programs. The amendments and new sections implement the Human Resources Code §22.002(c) and §44.002(a).

§10.3405. *Assessing Needs and Resources.* The Child Care Management Services (CCMS) contractor must document [maintain current] information on the child care needs and resources for the geographic area served and must update the information at least annually. The CCMS contractor must collect, update, and maintain the required data according to Texas Department of Human Services' (DHS's) policies and procedures in the CCMS Contractor Manual. The data [information] must be available for DHS [the Texas Department of Human Services (DHS)] staff to review on monitoring visits to the CCMS contractor.

§10.3407. *Vendor Recruitment.*

(a) The Child Care Management Services (CCMS) contractor [recruits and] contracts with vendors to meet the child care needs for persons eligible to receive services listed in §10.3412 of this title (relating to Basic Eligibility Requirements to Obtain Services from the Child Care Management Services (CCMS) System) [of the Texas Department of Human Services (DHS) families].

(b) CCMS contractors recruit vendors, when necessary, to establish or maintain a vendor base to meet the needs of eligible families according to Texas Department of Human Services' policies and procedures in the CCMS Contractor Manual. [Vendor requirements are specified in §10.3445 of this title (relating to Selection of Vendors).]

§10.3409. *Child Care Management Services (CCMS) Staff Requirements.* The CCMS contractor must hire staff who meet the qualifications and perform the job functions as defined by the Texas Department of Human Services in the CCMS contract and the CCMS Contractor Manual.

§10.3411. *Intake.* The Child Care Management Services (CCMS) contractor provides intake according to the Texas Department of Human Services policies and procedures in the CCMS Contractor Manual for clients requesting child care services that includes:

- (1) informing parents about all types of child care available to them;
- (2) helping parents locate child care that meets the needs of both the parents and the children; and
- (3) ensuring that parents are allowed to choose child care arrangements.

§10.3412. *Basic Eligibility Requirements To Obtain Child Care Services from the Child*

Care Management Services (CCMS) System.

(a) CCMS contractors purchase child care services for:

(1) parents or caretakers who need child care for children under age 13 in order to participate in training, education, or employment activities;

(2) children under age 13 referred by the Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS) program,

(3) older children who are mentally or physically incapable of caring for themselves if they are:

(A) under age 18; or

(B) age 18, regularly attending high school or high school-level training full-time, and are expected to graduate before or during the month of their 19th birthday.

(b) Parents or caretakers who are recipients of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or Transitional Child Care (TCC) benefits or who are participating in the Title IV-A At-Risk pre-kindergarten program as stated in §10.3413(b)(4) of this title (relating to Eligibility for Title IV-A Funded Child Care Services) or who have been referred by the Food Stamp Employment and Training (FS E&T) Program or the TDPRS CPS program are served without regard to income.

(c) Families whose children are recipients of AFDC or SSI benefits must meet the income requirements listed in §10.3469 of this title (relating to Eligibility for Child Care Services Based on Income).

(d) Parents or caretakers who receive food stamps but are not participating in the FS E&T program must meet the income requirements listed in §10.3469 of this title (relating to Eligibility for Child Care Services Based on Income).

(e) All other parents or families must meet the income requirements listed in §10.3469 of this title (relating to Eligibility for Child Care Services Based on Income).

§10.3413. *Eligibility for Title IV-A Funded Child Care Services.*

(a) The Texas Department of Human Services (DHS) guarantees child care or a subsidy for care for families meeting the eligibility requirements stated in 45 Code of Federal Regulations, [§]§255.2, for the Job Opportunities and Basic Skills Training (JOBS) Program, and §256.2, for the Transitional Child Care Program.

(b) DHS also provides Title IV-A At-Risk funded child care. To be eligible for Title IV-A At-Risk [At-risk Title IV-A] funded child care, a family must meet the following eligibility requirements:

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

(c) Currently enrolled clients [Clients] whose Transitional Child Care eligibility ends may be transferred, based on the availability of funds, to Title IV-A At-Risk, Title XX, or Child Care and Development Block Grant funded child care according to DHS policies and procedures in the CCMS Contractor Manual. These former transitional clients are eligible for transferring to these funding sources even if their current family income exceeds 150% of the federal poverty income level (FPIL) and may continue to receive child care for one year, provided that the family income does not exceed 185% of the FPIL [to At-risk Title IV-A funded child care and continue to receive child care for one year, provided that the family income does not exceed 185% of the FPIL].

§10.3431 Contract Violations and Service Improvement Agreements.

(a) The Child Care Management Services (CCMS) contractor must comply with all terms of the contract, Department of Human Services (DHS) rules, and the policies and procedures in the CCMS Contractor Manual.

(b) DHS pursues resolution of contract violations in accordance with the terms of the contract and the CCMS Contractor Manual.

(c) DHS may consider a non-compliance as a breach of the contract. Sanctions DHS may take as a response to a contract breach include, but are not limited to.

(1) requiring the CCMS contractor to enter into a service improvement agreement (SIA) as set forth in subsection (e) of this section;

(2) suspension, nonrenewal, or termination of the CCMS contract;

(3) temporarily withholding payments to the CCMS contractor;

(4) nonpayment of costs incurred; and/or

(5) recoupment of funds from the CCMS contractor.

(d) The determination of which sanction or sanctions is appropriate is based upon:

- (1) the scope of the violation;
- (2) the severity of the violation;

(3) the contractor's history of compliance; or

(4) the contractor's failure to meet performance standards referenced in §10.3475 of this title (relating to Responsibility of the Texas Department of Human Services (DHS) for Establishing Procedures for Monitoring Child Care Management Services (CCMS) Contractors and Recoupment Based on Monitoring Findings).

(e) When contract violations are documented, a written SIA may be negotiated. The SIA establishes at a minimum:

(1) the basis for the agreement;

(2) the steps required to reach compliance including technical assistance to be provided by DHS;

(3) the time limits for implementing the improvements; and

(4) the consequences of not complying with the agreement.

(f) A failure to fully comply with the terms of the SIA may result in the application of one or more of the sanctions set forth in subsection (c) of this section.

§10.3434. Billing by a Child Care Management Services (CCMS) Contractor.

(a) The CCMS contractor bills the Texas Department of Human Services (DHS) after child care services are provided and the contractor has received the required documentation from the vendors.

(b) The CCMS contractor must submit bills required by DHS no more than 90 days after services have been delivered.

(c) The CCMS contractors must also submit statistical reports as required by federal or state regulations or by DHS.

(d) DHS is not liable and will not pay for bills submitted after the time limits.

§10.3438. Establishment of Maximum Reimbursement Rates.

(a) The Texas Department of Human Services (DHS) establishes maximum reimbursement rates for purchased child care in accordance with federal and state laws and regulations and program state plans. Maximum rates are based on the following:

- (1) type of child care;
- (2) age of the child;
- (3) part or full-time care; and
- (4) identified need for adult assistance.

(b) Vendors that provide additional adult assistance for a child with disabilities may be paid an inclusion assistance rate up

to 190% of their CCMS reimbursement rate for that child. Before the vendor is paid an inclusion assistance rate, the Child Care Management Services (CCMS) contractor must ensure that:

(1) a DHS-approved professional has assessed the child using DHS-approved forms; and

(2) the authorized inclusion assistance rate considers the estimated cost of the adult assistance needed by a child with disabilities. The level of adult assistance needed has been determined by a DHS-approved professional as referenced in subsection (b) (1) of this section.

(c) The maximum rates may be obtained from DHS or the CCMS contractor.

§10.3439. Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates.

(a) The CCMS contractor pays vendors, providing child care to CCMS-referred children, a reimbursement rate based on the vendor's published rates and vendor fees approved by the Texas Department of Human Services (DHS).

(b) The vendor's CCMS reimbursement rate is a daily rate. The rate is the lesser of the following:

(1) the DHS statewide limit; or

(2) the 75th percentile of the local market rate.

(c) The vendors' published rates are subject to verification by the CCMS contractor or DHS that these rates are not greater than:

(1) actual rates paid by parents who do not receive a child care subsidy; or

(2) the vendor's budgeted cost divided by the expected enrollment days.

(d) When the vendor publishes a new rate, a new CCMS reimbursement rate becomes effective the first full month after all the following steps have been completed by the vendor and the CCMS contractor:

(1) the vendor has informed the CCMS contractor of the new published rate,

(2) the CCMS contractor has determined the new CCMS reimbursement rate; and

(3) the CCMS contractor and vendor have signed a new CCMS Vendor Agreement to reflect the new CCMS reimbursement rate.

(e) The CCMS contractor must not reimburse a vendor retroactively for new rates.

§10.3442. Vendor Billing Requirements.

(a) Vendors must submit bills after the child care services are provided.

(b) Vendors must submit bills and required documentation to the Child Care Management Services (CCMS) contractor no more than 90 days after child care services have been delivered.

(c) The CCMS contractor is not liable for and is not required to pay for bills vendors submit after the time limits

§10.3449. Vendor Agreement Violations and Service Improvement Agreements.

(a) The vendor must comply with all terms of the Child Care Management Services (CCMS) Vendor Agreement, Texas Department of Human Services' rules, and the policies and procedures required in the CCMS Vendor Manual.

(b) The CCMS contractor must pursue resolution of agreement violations in accordance with the terms of the CCMS Contractor Manual, the CCMS Vendor Agreement, and the CCMS Vendor Manual.

(c) The CCMS contractor may consider noncompliances as violations of the CCMS Vendor Agreement and the CCMS Vendor Manual. Sanctions the CCMS contractor may take as a response to violations of the agreement or manual include, but are not limited to:

(1) suspension, nonrenewal, or termination of the vendor agreement;

(2) temporary withholding of payments to the vendor for child care services delivered;

(3) nonpayment of child care services delivered; and/or

(4) recoupment of funds from the vendor.

(d) The determination of which sanction or sanctions is appropriate is based upon the number of noncompliances or the severity of the noncompliance or the vendor's compliance history.

(e) When vendor agreement violations are documented, a written service improvement agreement (SIA) may be negotiated. The SIA establishes at a minimum:

(1) the basis for the agreement;

(2) the steps required to reach compliance including technical assistance to be provided by the CCMS contractor;

(3) the time limit for implementing the improvements; and

(4) the consequences of not complying with the agreement.

(f) A failure to fully comply with the terms of the SIA may result in the

application of one or more of the sanctions set forth in subsection (c) of this section.

§10.3450. Vendors Violating Minimum Licensing Standards.

(a) Vendors must comply with applicable licensing standards.

(b) The Child Care Management Services (CCMS) contractor must follow Texas Department of Human Services' policies and procedures in the CCMS Contractor Manual to determine whether to:

(1) close intake;

(2) move CCMS-referred children to another vendor facility selected by the parent;

(3) put vendor payments on hold; and/or

(4) terminate, suspend, or not renew a Vendor Agreement if the Texas Department of Protective and Regulatory Services Child Care Licensing Division has cited a vendor for serious or continued non-compliance with the minimum licensing standards or placed the vendor on some form of corrective or adverse action.

§10.3451. Amendments and Renewal of Vendor Agreements.

(a) (No change.)

(b) The Child Care Management Services (CCMS) contractor must renew vendor agreements if the vendor:

(1) continues to meet all requirements as stated in §10.3445 of this title (relating to Selection of Vendors [Vendor Selection]);

(2) has satisfied the requirements of the Vendor Agreement; [and]

(3) has no unresolved service improvement agreements with the CCMS contractor; [plans.]

(4) is willing to renew the Vendor Agreement; and

(5) has maintained a satisfactory compliance record as defined by the Texas Department of Human Services with minimum licensing standards.

(c) The vendor must inform the CCMS contractor immediately upon knowledge of and prior to:

(1) moving the facility;

(2) selling the facility;

(3) changing the governing body; or

(4) making any other changes in the child care services delivered which could modify either the license or the vendor agreement.

(d) The vendor must also inform the CCMS contractor whenever the Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing Division (CCL) has issued a new license for the facility or placed any conditions on the license.

(e) The requirement to inform the CCMS contractors of changes set forth in subsection (c) of this section does not release the vendor from liability to inform TDPRS CCL of these changes.

(f) Failure to inform the CCMS contractor of changes could result in sanctions against the vendor as set forth in §10.3449 of this title (relating to Vendor Agreement Violations and Service Improvement Agreements).

(g) The CCMS contractor must amend or complete a new vendor agreement based on the type of change reported by the vendor.

(h) Failure to amend or complete a new vendor agreement could result in sanctions against the CCMS contractor as set forth in §10.3431 of this title (relating to Contract Violations and Service Improvement Agreements).

§10.3458. Child Care Management Services (CCMS) Vendor Payments. The CCMS contractor must reimburse child care vendors for services provided [and] according to the procedures and time frames specified by the Texas Department of Human Services in the CCMS contract and the CCMS Contractor Manual.

§10.3460. Verification and Determination of Client Eligibility for Purchased Child Care Services.

(a) The Texas Department of Human Services (DHS) determines client eligibility for clients who meet the requirements stated in §10.3413(a) and §10.3457 of this title (relating to Eligibility for Title IV-A Funded Child Care Services and Eligibility for Food Stamp Employment and Training-Related Child Care).

(b) The Texas Department of Protective and Regulatory Services (TDPRS) determines client eligibility for clients who meet the requirements stated in §10.3416 and 10.3464(5) of this title (relating to Child Care for Abused and Neglected Children and Eligibility for Child Care and Development Block Grant Funded Child Care (CCDBG)), and §49.903 of this title (relating to Protective Day Care).

(c) The Child Care Management Services (CCMS) contractor determines and documents client eligibility for clients who meet the requirements stated in §§10.1007; 10.1008; 10.3413(b); 10.3464(1)-(4); and

10.3469 of this title (relating to Definition of a Family, Income Inclusions, Eligibility for Title IV-A Funded Child Care Services, Eligibility for Child Care and Development Block Grant (CCDBG) Funded Child Care, and Eligibility for Child Care Services Based on Income).

(d) The CCMS contractor must verify and document the client's eligibility status before authorizing services for clients whose eligibility was determined by DHS and TDPRS as specified in subsections (a) and (b) of this section.

(e) The CCMS contractor must determine, verify, and document client eligibility as specified in subsections (c) and (d) of this section using the forms and procedures required by DHS in the CCMS Contractor Manual.

§10.3461. Authorization of Child Care Services

(a) The Child Care Management Services (CCMS) contractor authorizes child care services according to the client's eligibility status, the need for child care, and the availability of funds based on Texas Department of Human Services (DHS) policies and procedures in the CCMS Contractor Manual.

(b) Once enrolled, children receive child care services as long as the parent remains eligible for any available source of funding used by DHS to purchase child care. [The CCMS contractor must verify the client's eligibility status before authorizing services for clients whose eligibility was determined by the Texas Department of Human Services (DHS) according to §10.3460(a) of this title (relating to Determination of Client Eligibility for Purchased Child Care Services).]

§10.3467. Rights of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System. Parents or caretakers have the right to:

(1) have persons represent them when applying for child care services;

(2) receive notification of their eligibility to receive child care services within 20 calendar days from the day the CCMS contractor receives all necessary documentation required to determine eligibility for child care services;

(3) be notified in writing by the CCMS contractor at least 12 calendar days before the denial, delay, reduction, or termination of services;

(4) request a fair hearing within 90 days of the receipt of the notice of denied, delayed, reduced, or terminated child care services. The exception is a par-

ent who has a child in a Texas Department of Protective and Regulatory Services Child Protective Services (CPS) in-home case and has not requested the child care services. The CCMS contractor must inform parents how to request a fair hearing. The parent or caretaker may have someone represent them during this process;

(5) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(6) have the CCMS contractor treat information that is used to determine eligibility for child care services as confidential;

(7) reject an offer of child care services or voluntarily withdraw their child from child care services unless the child is in a CPS in-home protective case;

(8) be informed by the CCMS contractor of the possible consequences of rejecting or ending child care that is offered;

(9) be informed of all child care options available to them and choose the arrangement they desire from these options;

(10) visit available child care facilities before making their choice of a child care option and visit the facility during the time their child is enrolled;

(11) receive assistance in choosing initial or additional child care referrals, including information about Texas Department of Human Services' policies regarding transferring children from one facility to another.

§10.3468. Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System. Parents or caretakers:

(1) are responsible for providing the CCMS contractor with all information considered necessary to establish eligibility according to the Texas Department of Human Services' (DHS's) policies and procedures;

(2) must submit required documentation to the CCMS contractor within the time limits required by DHS including, but not limited to:

(A) eligibility documentation;

(B) CCMS forms; and

(C) submission of self-arranged child care (SACC) claims for services;

(3) must meet the time limits required by DHS or:

(A) have child care services denied or terminated; or

(B) not receive payment for SACC claims;

(4) must comply with DHS and vendor enrollment requirements or have child services denied or terminated;

(5) must report changes in income, family size, loss of assistance grants, change in work or training, or any other change that might affect the parent's eligibility for services;

(6) must report a change to the CCMS contractor within 12 calendar days of the occurrence of the change. Failure to report changes may result in termination of services or recovery of payments made for services provided during a period of ineligibility caused by the changes listed in paragraph (5) of this subsection. The receipt of services for which the parent is no longer eligible may constitute fraud.

§10.3469. Eligibility for Child Care Services Based on Income.

(a) To determine eligibility for child care services based on income, the Child Care Management Services (CCMS) contractor must determine:

(1) that the family's total gross income is equal to or less than 150% of the applicable, current federal poverty income limits (FPIL); or

(2) for teen parents who need child care to complete high school that the family's total gross income is equal to or less than 200% of the applicable, current FPIL.

(b) Child care services may continue for one year after the family income exceeds 150% of the FPIL, provided the family income remains at or below 185% of the FPIL.

§10.3470. Redetermination of Eligibility for Child Care Services. All parents must reapply for child care services at least every six months or earlier if there is a change in their status that could affect their eligibility to receive child care services.

§10.3471. Provision of Child Care Services During an Appeal.

(a) Child care services continue during the appeal process until a decision is reached if the parent requests a fair hearing within the 12-day notification period, as noted in §10.3467(3) of this title (relating to Rights of People Applying for Child Care Services Through the Child Care Manage-

ment Services (CCMS) System). Child care services will not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:

- (1) excessive absences,
- (2) voluntary withdrawal from child care services as stated in §10.3429 of this title (relating to Termination of Enrollment Due to Excessive Absences),
- (3) change in federal or state laws or regulations;
- (4) lack of funding,
- (5) Job Opportunities and Basic Skills (JOBS) clients being recommended for sanctioning, or
- (6) voluntary withdrawal of a JOBS client from the JOBS program

(b) The cost of providing services during the appeal process is subject to recovery from the parent by the CCMS contractor, if the appeal decision is against the client.

§10.3472 Parent or Caretaker Fraud The Texas Department of Human Services considers a parent or caretaker may have committed fraud if the parent or caretaker presents or causes to be presented to the Child Care Management Services contractor

(1) a claim for child care under the following conditions:

(A) the client knows, or should know, that child care services were not provided as claimed,

(B) the client knows, or should know, that information is false or fraudulent;

(C) the client received child care services provided by a provider who the client knows, or should know, is not a regulated provider, is not 18 years of age, and is not an aunt, uncle, or grandparent of the child,

(D) the client received child care services during a period in which the client was not eligible for child care, or

(2) a request for reimbursement that is in excess of the amount charged by the provider for the child care services.

§10.3473 Provider or Vendor Fraud The Texas Department of Human Services considers a provider or vendor may have committed fraud if the provider or vendor presents or causes to be presented to the Child Care Management Services contractor

(1) a claim for child care under the following conditions:

(A) the provider or vendor knows, or should know, that child care services were not provided as claimed;

(B) the provider or vendor knows, or should know, that information is false or fraudulent,

(C) the provider or vendor knows, or should know, that child care services were provided by a person who is not a regulated provider, is not 18 years of age, and is not an aunt, uncle, or grandparent of the child; or

(2) a request for reimbursement that is in excess of the amount charged by the provider to other parents for the child care services.

§10.3474 Reapplication for Vendor Status After Termination or Nonrenewal of the Vendor Agreement

(a) If a Vendor Agreement has not been renewed or has been terminated for violations with the Vendor Agreement, the Child Care Management Services (CCMS) Vendor Manual or minimum licensing standards, the child care provider may have to wait for up to six months after the termination date of the Vendor Agreement before reapplying

(b) The reapplication period depends upon the reason for the termination or nonrenewal of the CCMS Vendor Agreement.

(c) The CCMS contractor must determine the reapplication period in accordance with Texas Department of Human Services' policies and procedures in the CCMS Contractor Manual

(d) The child care provider must be informed at the time of the termination or nonrenewal of the Vendor Agreement when they may reapply for vendor status.

§10.3475. Responsibility of the Texas Department of Human Services (DHS) for Establishing Procedures for Monitoring Child Care Management Services (CCMS) Contractors and Recoupment Based on Monitoring Findings

(a) Monitoring. DHS establishes procedures to monitor CCMS contractors DHS

(1) establishes monitoring procedures using sampling and extrapolation methodologies,

(2) selects a representative sample of the cases or claims for which the

CCMS contractor received payment for the time under review and examines records for those cases or claims;

(3) establishes standards of contractor performance; and

(4) establishes reasonable tolerance levels for performance standards.

(b) Recoupment based on monitoring findings. DHS establishes procedures to recoup administrative costs of CCMS contractors who fail to meet tolerance levels for selected performance standards

(1) DHS establishes procedures to recoup administrative costs of CCMS contractors based on sampling and extrapolation methodologies.

(2) The scope of the recoupment may be limited to errors in the sample or extrapolated to the entire population

(3) The determination of amounts to be recouped are based on the CCMS contractors' administrative costs associated with the staff functions related to the monitoring findings as determined by statistically valid time studies. DHS's recoupment of administrative costs related to monitoring findings is not the limit of CCMS contractor's liability. The CCMS contractor's liability may include additional costs of administration and child care. The CCMS contractor may have this further liability when:

(A) DHS is found liable for monitoring findings by other regulatory agencies; or

(B) the scope and severity of the contractor's failure to perform warrants greater liability.

§10.3476 Special Projects. The Child Care Management Services (CCMS) contractors may be required by the Texas Department of Human Services (DHS) to oversee, disperse funds for, or implement special projects that involve services to parents, children, or child care providers. The CCMS contractor must follow DHS's policies and procedures in the CCMS contract and the CCMS Contractor Manual for each project.

§10.3477. Responsibilities of the Child Care Management Services (CCMS) Contractor for Recovery of Overpayment for Child Care Services.

(a) The CCMS contractor must attempt recovery of overpayment in cases involving parents, caretakers, vendors, or providers who have received or requested child care reimbursements

(b) With Texas Department of Human Services (DHS) concurrence, the CCMS contractor will also attempt recovery of overpayment in cases involving fraud.

(c) Recovery of overpayment will be attempted when the overpayment amount equals or exceeds the costs of recovery.

(d) Recovery of overpayment must be managed in accordance with the DHS policies and procedures in the CCMS Contractor Manual.

§10.3478. *Responsibilities of the Child Care Management Services (CCMS) Contractor for Handling Suspected Fraud.* When a fraud case is suspected, the CCMS contractor must:

(1) document in writing the reason for alleging fraud;

(2) refer the information to the Texas Department of Human Services (DHS); and

(3) with DHS concurrence, put a hold on further payments to the vendor, provider, parent, or caretaker.

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 May 2, 1994.

TRD-9440106 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption. November 1, 1994

For further information, please call (512) 450-3765

Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2924

The Texas Department of Human Services (DHS) proposes an amendment to §48.2924, concerning resource exclusions, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to change the term "handicapped person" to "person with a disability."

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

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 emphasize the individual and discontinue use of the word

"handicapped." 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 Armando Delgado at (512) 450-3217 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-121, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment implements the Human Resources Code, §§22.001-22.024.

§48.2924. *Resource Exclusions.* In determining eligibility for CCAD services, the department does not consider the following to be resources. They are considered to be excluded for eligibility purposes. Any item not listed as an exclusion is considered a resource.

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

(6) Vehicles. One passenger car or other vehicle, such as a van or truck, used for transportation, or one unlicensed vehicle.

(A) A second vehicle may be excluded if it is:

(1) specially equipped to enable a person with a disability [for a handicapped person] to drive; or

(2) (No change.)

(B) (No change.)

(7)-(21) (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 May 2, 1994

TRD-9440105 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption August 1, 1994

For further information, please call (512) 450-3765

Part XVIII. Texas Department of Protective and Regulatory Services

Chapter 715. Day Care Licensing

Subchapter E. Standards for Day Care Centers

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §§715.401-715.432, and new §§715.401-715.429 in its Day Care Licensing chapter concerning the minimum standards for day care centers. The purpose of the repeals and new sections is to ensure that regulations as specified in Chapter 42 of the Human Resources Code regarding child care facilities are implemented to promote the health, safety, and welfare of children attending a facility; promote safe, comfortable, and healthy physical facilities for children; ensure adequate supervision of children by capable, qualified, and healthy personnel; ensure adequate and healthy food service where food service is offered, and prohibit racial discrimination by child care facilities.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Abel also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the sections will be that a minimum level of health, safety, and well being for children in care will be ensured. The economic effect on small businesses will vary from no cost for those centers already in compliance with the proposed minimum standards to an estimated cost of \$1,768 for those centers that will need to make changes necessary to comply with the proposed minimum standards. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Bill Carver at (512) 450-3262 in TDPRS's Licensing Division. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-106, Texas Department of Protective and Regulatory Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 60 days of publication in the *Texas Register*.

TDPRS will hold four public hearings to accept comments on the proposal. The hearings will be held from 5:00 to 8:00 p.m. on the following dates at the following locations: May 25, 1994, Houston Community Center, Central College, San Jacinto Building Auditorium, 1301 Holman, Houston, Texas, May 26, 1994, Holiday Inn Civic Center, 200 West Expressway 83, McAllen, Texas, May 31, 1994, Kripling Education Conference Center, 3615 19th Street, Lubbock, Texas; and June 1, 1994, Scottish Rite Hospital, 2222 Welborn Street, Dallas, Texas.

• 40 TAC §§715.401-715.432

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

The repeals are proposed under Texas Civil Statutes, Article 4413 (503) historical note (Vernon Supplement 1993), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (DHS) to the Texas Department of Protective and Regulatory Services; and under the Human Resources Code, Title 2, Chapter 42, which provides the department with the authority to administer general child-placing and child care licensing programs. The repeals implement the Human Resources Code, §§42.001-42.077.

§715.401. Organization

§715.402. General Administration

§715.403. Enrollment.

§715.404. Records.

§715.405. Director Qualifications.

§715.406. Director Responsibilities.

§715.407. Staff Qualifications and Responsibilities.

§715.408. Training.

§715.409. Staff-Child Ratio

§715.410. Space

§715.411. Furnishings.

§715.412. Equipment.

§715.413. Toilet Facilities

§715.414. Use of Facility.

§715.415. Fire.

§715.416. Sanitation

§715.417. Safety

§715.418. Health Requirements for Children

§715.419. Illness or Injury.

§715.420. Medications.

§715.421. Emergency Phone Numbers.

§715.422. Animals.

§715.423. Food Service.

§715.424. Nutrition.

§715.425. Operation.

§715.426. Discipline and Guidance.

§715.427. Infant and Toddler Care.

§715.428. Children with Need for Special Care.

§715.429. Night Care.

§715.430. Water Activities.

§715.431. Transportation.

§715.432. Glossary.

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 May 2, 1994.

TRD-9440109 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 1, 1994

For further information, please call: (512) 450-3765

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Subchapter E. Minimum Standards for Day Care Centers

• 40 TAC §§715.401-715.429

The new sections are proposed under Texas Civil Statutes, Article 4413 (503) historical note (Vernon Supplement 1993), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (DHS) to the Texas Department of Protective and Regulatory Services; and under the Human Resources Code, Title 2, Chapter 42, which provides the department with the authority to administer general child-placing and child care licensing programs.

The new sections implement the Human Resource Code, §§42.001-42.077.

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

Abuse (the Texas Family Code, §34.012)—The following acts or omissions by a person responsible for a child's care, custody, or welfare:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator, that does not expose the child to a substantial risk of harm;

(D) sexual contact, sexual intercourse, or sexual conduct, as defined by the Texas Penal Code, §43.01; sexual penetration with a foreign object; incest; sexual assault; or sodomy inflicted on, shown to, or intentionally practiced in the child's presence if the child is present only to arouse or gratify the sexual desires of any person;

(E) failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as defined by the Texas Penal Code, §43.01; sexual penetration with a foreign object; incest; sexual assault; or sodomy being inflicted on or shown to a child by another person, or intentionally practiced in the child's presence by another person if the child is present only to arouse or gratify the sexual desire of any person;

(F) compelling or encouraging the child to engage in sexual conduct as defined in the Texas Penal Code, §43.01.

(G) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the

child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Texas Penal Code) or pornographic See "Neglect" and "Sexual Abuse."

Activity space—Area or rooms used for children's activity including those separate from a group's classroom. See "Single Use Area"

Administrative and Clerical Functions—Functions which involve the management of a facility, such as bookkeeping, enrolling children, answering the telephone, and collecting fees

Admission—The process of entering a child in a facility. The date of admission is the first day on which the child is actually present in the facility.

Adult—A person 18 years old or older

Attendance—Children actually present in the facility at any given time. This term is not to be confused with the term "enrollment" See "Enrollment."

Certified life guard—A person who has been trained in life saving and water safety. The certificate is not required to use the term "lifeguard training" or "certified lifeguard" but the facility must be able to document that the certificate represents the type of training described This training should have been.

(A) provided through a recognized organization;

(B) provided by a qualified instructor,

(C) training for which a currently valid certificate was awarded upon successful completion, and

(D) to qualify the trainee to practice these skills at the setting and under the circumstances which the trainee will work, such as the size of the pool, the number of people who might be in the pool, and any other special circumstances

Child—A person who has not reached the 18th birthday.

Child Development Associate credential—A credential which is highly desirable for staff working directly with children, based on assessed competency in several areas of child care and child development Child development training is available in the public community and junior college systems as well as four-year colleges, either in regular child development, vocational programs, or through adult continuing education courses

Continuing Education Unit (CEU)—A certificate granted by an educational institution to a person who has completed a training course. One CEU is granted for ten clock hours of formal training.

Day care—The care, supervision, and guidance of a child or children unaccompanied by a parent, guardian, or custodian on a regular basis, for a period of less than 24 hours per day and in a place other than the child's own home

Day care area—The area specifically licensed for use by the day care program. This may include a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location

Day care center—Any facility, whether or not known or incorporated under descriptive titles or names such as "Nursery School," "Kindergarten," "Play School," "Child Development Center," or "Early Childhood Center," which receives 13 or more children for day care. This term applies to program, building, grounds, furnishings, and equipment

Day care location—The street address of the facility and the lot or lots on which the building or buildings are located.

Day care program—The services and activities provided by a facility, the daily schedule.

Designee of governing body—The individual officially designated as representative of a governing body that is not a sole proprietorship or partnership and is officially authorized by the governing body to speak for and act on its behalf.

Direct child care—The supervision, guidance, and care of children as compared to food service, janitorial functions, or administrative functions

Director—That person who has daily on-site responsibility for the operation of a facility, including maintaining compliance with Texas Department of Protective and Regulatory Services' (TDPRS's) minimum standards described in this subchapter In multiple day care facilities under a chief administrative officer, the director is the person physically present at each facility

Disinfect—The elimination of virtually all germs from surfaces through the use of chemicals, such as products registered with the United States Environmental Protection Agency identified as "disinfectants" and physical agents such as heat.

Drop-in child care center—A day care center that provides care for children under 14 years old for part of the day. This center cannot be the same facility that provides regular care for the same child

Enrollment—The list of names of children registered with the facility This term is not to be confused with the term "attendance." See "Attendance."

Entrapping equipment—A component or group of components on play equipment that forms angles or openings that could trap a child's head by being:

(A) too small to allow a child to withdraw his head easily, and

(B) placed so that a child would be unable to support his weight by means other than his head or neck.

Equipment and materials—Items that include, but are not limited to books, art materials, music materials, manipulative materials, blocks and block accessories, dramatic play materials, homemaking materials, dolls, science materials, and climbing equipment

Facility—People, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials.

Fall zone—An area extending four feet from climbing structures, five feet from the bottom of a slide (other parts of the slide are identified as climbing structures), seven feet plus the length of the chain from a swing's point of suspension, and seven feet from merry-go-rounds and other revolving devices

First aid supplies—Required supplies that include multi-size adhesive bandages; adhesive tape, waterproof, disposable gloves; gauze pads; tweezers, scissors, cotton balls, antiseptic such as hydrogen peroxide, syrup of ipecac; and a thermometer.

Food service—The preparation or serving of meals or snacks

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, or other pests.

Governing body—The entity with ultimate authority and responsibility for the overall operation of the facility, whether single-owner, partnership, or corporate body such as corporations for and not-for-profit, associations; designated committees, or religious organizations

Group—The number of children assigned to a specific caregiver or a group of caregivers, occupying an individual classroom or a well-defined physical space within a larger room.

Group child care—Care for seven or more children when at least one of the children is not related to the caregiver

Group day care home—A day care facility caring for seven to 12 children which may or may not be in a residential setting These day care facilities may use names such as those described in the definition of "Day care centers" See "Day care centers"

Hand washing—Rubbing hands together with soap under running water

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in a community

Health service—Includes, but is not limited to, any entity that performed a Head Start physical examination on the child, well-child conferences or clinics, maternity

and infant programs, and children and youth programs, or school nurses working in a recognized program.

Infant-A child younger than 18 months of age.

Janitorial functions-Those services which involve cleaning and maintenance above that which is required for the continuation of the day care program. These services may include cleaning carpets, washing cots, and total sweeping, vacuuming, or mopping of the classroom. Sweeping after an activity or mopping up spills that may be necessary for continued use of the classroom are not considered janitorial functions.

Kindergarten/nursery school-A facility offering a program for children who have passed their second birthday but who are under seven years old. No child can be in the program longer than four hours.

Kindergarten and above-A facility offering an educational program in one or more grades for children ages five through 13, that operates only during the customary public school day.

License-A document issued to the governing body of a facility authorizing the licensee to operate a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Protective and Regulatory Services.

Neglect (the Texas Family Code, §34.012)-

(A) leaving a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and demonstrating an intent not to return by a child's parent, guardian, or managing or possessory conservator; or

(B) the following acts or omissions by a person responsible for a child's care, custody, or welfare:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or an observable and material impairment to the child's growth, development, or functioning; or

(iii) failing to provide the child with food, clothing, or shelter necessary to sustain the child's life or health. This excludes failure caused primarily by financial inability unless relief services had been offered and refused.

Night care-Care given to children who are starting or continuing their night sleep or to children who spend the night at the facility.

Orientation-Making new employees and volunteers acquainted with the facility's child care policies, including discipline, guidance, and the release of children; procedures to follow in an emergency; use and location of fire extinguishers; and TDPRS's minimum standards provided in this subchapter.

Parent-The biological parent, legal guardian, or managing conservator or other person standing in parental relationship to a child.

Pre-service training-Training of new employees in specified topics before they are given responsibility for a group of children.

Sanitary sleeping furnishings-Linens which have been laundered before a different person sleeps on them and after being soiled.

Sanitize-To remove filth or soil and small amounts of certain bacteria. For an inanimate surface to be considered sanitary, the surface must be clean and the number of germs must be reduced to such a level that disease transmission by that surface is unlikely. This procedure is less rigorous than disinfection and is applicable to a wide variety of routine housekeeping procedures to clean bedding, bathrooms, kitchen countertops, floors, and walls. Soap, detergent, or abrasive cleaners may be used to sanitize.

School-age care only facility-Child care facilities who care only for children enrolled in or who will attend school on a before and after school, holidays, and summertime basis. See "School-Age Care."

School-age care-Care offered to children who will attend school in August or September of that year and who are under 14 years of age; generally, age five and above.

Sexual abuse-From Chapter 43 of the Texas Penal Code referred to in the Texas Family Code.

(A) Sexual contact-Any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(B) Sexual conduct-Deviate sexual intercourse, sexual contact, and sexual intercourse.

(C) Deviate sexual intercourse-Any contact between the genitals of one person and the mouth or anus of another person.

(D) Sexual intercourse-Any penetration of the female sex organ by the male sex organ.

Single-use area-Includes, but is not limited to, bathrooms, hallways, storage rooms, cooking areas of kitchens, and indoor swimming pools.

Special accommodations-As used in TDPRS's minimum standards any modifications, adaptations, or additions to the facility's program, staffing, staff training, physical features, or equipment in order to care for a child in a manner that is appropriate for that child and is in compliance with recommendations made for that child's care by qualified experts. Conditions necessitating such accommodations include, but are not limited to, cerebral palsy, spina bifida, juvenile arthritis, muscular dystrophy, mental retardation, vision deficiencies, hearing deficiencies, communications disorders, behavior disorders, some cardiopulmonary disorders and some digestive disorders

Staff-Any person responsible for working in contact with children whether paid or unpaid.

Supervision-Care for a group of children. Awareness of and responsibility for the ongoing activity of each child. Physical presence, knowledge of activity requirements, and children's needs, and accountability for their care is required. This includes staff intervention when needed.

Training-Time spent in workshops; conferences of child care, early childhood education, or educational associations; formal schooling; self-instructional material; or planned learning opportunities provided by a director, other staff, or consultants. In order for the training to be counted toward compliance with the TDPRS's minimum standards provided in this subchapter, it must be in areas listed in these minimum standards.

Transportation-Transferral of children provided by or for the facility, to and from the child's home or school, to and from the facility, field trips, and other outings

Trash/litter-Items such as paper products, plastic, or cloth.

Universal Precautions-an approach to infection control wherein practitioners subscribe to the concept that all human blood and certain human bodily fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other blood borne pathogens.

Water activities-The use of splashing pools, wading pools, swimming pools, or other bodies of water.

§715.402. *Governing Body Responsibilities* The governing body is responsible for:

(1) the facility's compliance with the child care licensing law, Chapter 42, Human Resources Code and the applicable minimum standards;

(2) the facility's policies; and

(3) maintaining liability insurance in the amount of at least \$300,000 for each occurrence of negligence covering injury to a child while the child is in the care of the license holder; or providing parents, or other persons in a parental relationship with the child, written notification if liability insurance is unavailable because of financial reasons, the facility is not able to find an underwriter willing to issue a policy, or the limits of the current policy are expended.

§715.403. Notifications. The facility must notify the Texas Department of Protective and Regulatory Services (TDPRS):

(1) before changes are made regarding:

(A) indoor or outdoor space additions or reductions;

(B) swimming or fixed wading pool additions;

(C) age range of children to be cared for; or

(D) hours of operation;

(2) before or as soon as possible after a change is made regarding:

(A) the governing body,

(B) the governing body designee as defined in §715.401 of this title (relating to Definitions);

(C) the board chair for a corporate facility or other chief executive officer of the governing body; or

(D) the address of the governing body;

(3) as soon as possible but no later than two work days after:

(A) any occurrence renders all or part of the facility unsafe;

(B) injury of a child at the facility occurs which requires treatment by health personnel as defined in §715.401 of this title (relating to Definitions);

(C) the death of an enrolled child;

(D) outbreak of illness of staff or a child occurs which is required to be reported to the Texas Department of Health as described in the appendix titled "Communicable Disease Chart for School and Child Care Centers" in TDPRS's Minimum Standards for Day Care Centers;

(E) an indictment or acceptance of an official complaint by a county or district attorney against a staff member alleging commission of any crime listed in the appendix titled "Criminal Offenses from the Texas Penal Code" in TDPRS's Minimum Standards for Day Care Centers or a felony violation of the Texas Controlled Substances Act occurs; and

(F) any other situation occurs which places a child at risk.

§715.404. Posting Requirements.

(a) The following items must be displayed in a prominent place where staff, parents, and others may view them:

(1) the license;

(2) the letter or compliance evaluation form that the Texas Department of Protective and Regulatory Services (TDPRS) licensing representative provided at or following the most recent inspection or investigation of the facility, if the notification includes a requirement for posting;

(3) a notice of availability for review of:

(A) the current menu, including snack menus if only snacks are served;

(B) the letter or compliance evaluation form that the TDPRS licensing representative provided at or following the most recent inspection or investigation of the facility;

(C) the most recent fire inspection report;

(D) the most recent sanitation inspection report;

(E) the most recent gas leak test report, where gas is used;

(F) TDPRS's minimum standards;

(G) the fire, sanitation, and gas leak test reports described in subparagraphs (C), (D), and (E) of this paragraph are not required for School-Age Care Only facilities if these reports are

available for review by the TDPRS licensing representative elsewhere at the site;

(4) notice of requirement to report suspected child abuse;

(5) emergency evacuation and relocation plans described in §715.425 of this title (relating to Fire, Fire Safety, and Emergency Precautions);

(6) a notice regarding any planned field trip described in §715.420(c) of this title (relating to Field Trips).

(b) The following telephone numbers must be posted next to each telephone in every part of the facility:

(1) emergency medical services;

(2) law enforcement;

(3) fire department,

(4) poison control;

(5) child abuse hotline;

(6) nearest child care licensing office; and

(7) the facility. The facility's address must also be included.

§715.405. Enrollment Information and Other Records.

(a) All records required by the minimum standards specified in this subchapter must be maintained and made available for inspection during the facility's hours of operation.

(b) There must be on file at the facility, for as long as the child is in care and for 12 months after the child's last day in care, an enrollment agreement, signed by the parents prior to the child's admission into care, containing at least the following information:

(1) the child's name, birth date, home address, and the home telephone number;

(2) for a child attending school, the telephone number of the school. This is not required for a child in an after-school care facility at the school the child attends;

(3) date of admission.

(4) name and address of parents and telephone numbers at which parents can be reached while the child is in care;

(5) names and telephone numbers of other persons designated by the parent when the parent cannot be reached;

(6) names and telephone numbers of persons to whom the child may be released;

(7) names, addresses, and telephone numbers of the child's physicians;

(8) a statement of the child's special problems or needs. This must include known allergies, existing illnesses, previous serious illnesses and injuries, disabilities, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use;

(9) permission for transportation, if provided;

(10) permission for water activities, if provided;

(11) permission for field trips, if provided;

(12) emergency medical treatment authorization.

(c) For all but drop-in centers, there must be on file within one week of admission documentation of one or more of the following evidence that each child under five years old is able to take part in the program:

(1) a written statement from a licensed health professional who has examined the child within the past year; and

(2) a signed statement from the parent:

(A) giving the address of a licensed health professional who has examined the child within the past year and states that the child is able to participate in the program. This must be followed within 12 months by a document as described in paragraph (1) of this subsection; or

(B) giving the name and address of the licensed health professional with whom an appointment for examination has been made. Following the examination, the parent must submit a document as described in paragraph (1) of this subsection; or

(C) stating medical diagnosis and treatment conflict with the tenets and practices of a recognized religious organization of which the parent is an adherent or a member.

(d) Current immunization records for each child must be obtained and maintained according to the appendix titled "Immunization Schedule" in the Texas Department of Protective and Regulatory Services' (TDPRS's) Minimum Standards for Day Care Centers, including drop-in care centers caring for any child who has been to the center three or more times. Each immunization record must include:

(1) the child's birth date,

(2) the number of doses and type;

(3) the dates (month, day, and year) the child received each immunization; and

(4) the rubber stamp or signature of the physician or health personnel on the record or a machine or handwritten copy of the record.

(e) Current immunization records for each child are not required if the center has one of the following:

(1) a signed and dated statement from a licensed physician or other authorized personnel that immunization has begun against at least one of the diseases listed in the "Immunization Schedule" described in subsection (d) of this section. The immunization cycle must be completed as soon as medically feasible;

(2) a certificate signed by a licensed physician, renewed annually, and stating that the required immunization would be injurious to the health and well-being of the child or a member of the child's family or household;

(3) an affidavit in the form of a notarized statement signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the parent is an adherent or a member; and

(4) a dated statement signed by the parent that the child's immunization record is current and is on file at a school the child attends. The parent must include the name, address, and telephone number of the school in the statement.

(f) Each child must have a record of a tuberculosis examination with negative results if such a test is recommended by local health authorities or the regional office of the Texas Department of Health. A dated statement signed by the parent that the child's tuberculosis test record is current and is on file at a school the child attends. The parent must include the name, address, and telephone number of the school in the statement.

(g) When the facility enrolls a child requiring special accommodations, as defined in §715.401 of this title (relating to Definitions), those accommodations must be made. The screening for speech, hearing, and vision disorders as provided in the appendix titled "Health and Safety Code: Chapter 36. Special Senses and Communication Disorders" in the Texas Department of Protective and Regulatory Services' (TDPRS's) Minimum Standards for Day Care Centers must also be made.

(h) The attendance of children and staff, and the hours worked by each staff, for the previous six months, must be recorded.

§715.406. Parental Communication.

(a) At the time of the child's enrollment, facility staff must give the parents a copy of the Texas Department of Protective and Regulatory Services' publication Parent's Guide to Day Care, review the guide with the parents, and obtain a signed receipt for the guide. The receipt must be kept on file as long as the child is in care.

(b) Parents must not be prevented from visiting the facility anytime during its hours of operation.

(c) The facility must immediately notify the parent or other person authorized by the parent when the child

(1) is injured; or

(2) has a sign or symptom requiring exclusion from the facility as listed in §715.426(d) of this title (relating to Illness and Injury); or

(3) has been involved in any situation which placed the child at risk.

(d) The facility must notify all parents of children in the facility when there is an outbreak of a communicable disease in the facility required to be reported to the Texas Department of Health. The facility must notify the parents of children in a group, as defined in §715.401 of this title (relating to Definitions), when there is an outbreak of lice or other infestation.

§715.407. Personnel Restrictions for Criminal History. No person may be present while children are in care who has a conviction, is under indictment for, or is the subject of an official criminal complaint alleging violation of any of the crimes listed in the appendix titled "Criminal Offenses from the Texas Penal Code" in the Texas Department of Protective and Regulatory Services' Minimum Standards for Day Care Centers or who has a felony violation of the Texas Controlled Substance Act.

§715.408. Director Qualifications and Responsibilities.

(a) The director must be at least 21 years of age and have a high school diploma or its equivalent and one of the following (a person who is a director of a center on March 31, 1995, has three years from that date to comply if that person remains in the same position):

(1) an associate in applied sciences degree in child development or a related degree with nine college credit hours in child development, six college credit hours in business management, and two years experience in a licensed child care facility; or

(2) a Child Development Associate credential with six college credit hours in business management, and two years experience in a licensed child care facility; or

(3) 60 college credit hours with at least nine credit hours in child development or early childhood education or the equivalent, six credit hours in business management, and two years experience in a licensed child care facility; or

(4) a day care administrator's credential issued by a professional organization or an educational institution and recognized by the Texas Department of Protective and Regulatory Services' (TDPRS) Licensing Division as equivalent to paragraphs (1), (2), or (3) of this subsection, and two years of experience in a licensed child care facility; or

(5) three years experience in a licensed child care facility and nine credit hours in child care, child development, or early childhood education and nine credit hours in business management from an accredited college or university. Five continuing education units may be substituted for each three credit hours; or

(6) a bachelor's degree from an accredited college or university with 12 credit hours of child development or early childhood education, six credit hours of business management, and one year of experience in a licensed child care facility.

(b) The director is responsible for knowing and understanding the minimum standards specified in this subchapter and ensuring that:

(1) all staff are aware of and know the minimum standards; and

(2) the facility's daily operation is administered in compliance with the minimum standards to ensure that children are:

(A) provided a healthy and safe environment;

(B) given the opportunity to develop stable and caring relationships; and

(C) provided an environment that fosters cognitive, social, and emotional growth;

(3) staff are provided assignments and are supervised;

(4) the required TDPRS form that provides information on the employee for processing the criminal history check is submitted to TDPRS within two weeks after hiring staff;

(5) no staff is scheduled for more than ten hours daily in direct child care except in the case of a documented emergency; and

(6) staff designated to be in charge when the director is absent from the facility is given the authority and is competent to administer the facility in compliance with the minimum standards

§715.409. Staff Qualifications and Responsibilities.

(a) Staff in day care centers must be at least 18 years of age and have a high school diploma or its equivalent

(b) Persons 16 through 18 years old must not be left alone and in charge of a group of children but may be counted in the child/staff ratio provided that person works in the same room with and is supervised by a qualified staff member and:

(1) has a high school diploma or its equivalent; or

(2) is enrolled in or has completed a career program related to child care approved by the Texas Education Agency or another state or federally-approved child care career related program.

(c) The following are staff responsibilities.

(1) Staff counted in the child/staff ratio must.

(A) be knowledgeable of the object and purpose of the minimum standards specified in this subchapter;

(B) report suspected abuse and neglect to the Texas Department of Protective and Regulatory Services and to law enforcement;

(C) provide child supervision as defined in §715.401 of this title (relating to Definitions) at all times,

(D) demonstrate physical, emotional, and intellectual competencies, self-control, and good judgment when performing assigned responsibilities;

(E) recognize and respect the uniqueness and potential of all children, their families, and their cultures;

(F) interact frequently with children, showing affection, interest, and respect;

(G) foster developmentally appropriate independence in children; and

(H) be free from other duties except those directly involving the care and supervision of children which includes

keeping the group's area clean. Administrative and clerical functions, as defined in §715.401 of this title (relating to Definitions), that take staff's attention away from the children, meal preparation, or janitorial duties must not be included in the responsibilities of staff while the staff is counted in the child/staff ratio.

(2) If one staff member leaves and another staff member is given responsibility for the children, as in a shift change, the staff member leaving must provide the incoming staff with:

(A) any significant information about a child; and

(B) a list of children present in the group.

(3) Staff must provide the care and activities qualified psychologists, physicians, or other experts recommend for a child who needs special care because of disabling or limiting conditions.

(4) All facility staff, including directors and persons not counted in the child/staff ratio, must not abuse, neglect, or sexually abuse children as defined in §715.401 of this title (relating to Definitions)

(5) One staff member per group of children must have current training in first aid with rescue breathing and choking.

(6) One staff member per facility, or group of children away from the facility, must have current training in cardiopulmonary resuscitation (CPR) for infants and children.

§715.410. Staff Records. Records must be kept on facility staff and must include:

(1) the date of employment;

(2) documentation showing how staff meet the minimum age and education qualifications;

(3) a statement from the staff member, including volunteers who are counted in the child/staff ratio, providing information about any convictions and pending charges alleging violation of any of the offenses listed in the appendix titled "Criminal Offenses from the Texas Penal Code" in Texas Department of Protective and Regulatory Services' Minimum Standards for Day Care Centers, or the Texas Controlled Substance Act;

(4) a record of a tuberculosis examination with negative results, no earlier than 12 months before beginning the position, if recommended by the local or Texas Department of Health. Staff moving to another facility with no more than one month's lapse in employment, or over the

summer if the facility is not in operation, are not required to be retested;

(5) a record of staff training hours, the instructors, dates of the training, and the subject areas of training as provided in §715.411(d) of this section (relating to Director and Staff Training);

(6) documentation that staff have been given orientation as described in §715.411(c) of this title (relating to Director and Staff Training); and

(7) documentation that staff have met the pre-service training requirement as provided in §715.411(b) of this title (relating to Director and Staff Training).

§715.411. Director and Staff Training.

(a) The director must participate yearly in at least 20 hours of training.

(1) At least six clock hours must be in management and staff supervision and at least six clock hours must be in child development or early childhood education.

(2) The director of a school-age care only facility may substitute six clock hours in recreational leadership or a related area for the six clock hours in child development or early childhood education.

(b) Before staff are given responsibility for a group of children they must complete eight clock hours of pre-service training which covers the following areas:

(1) developmental stages of children;

(2) age-appropriate activities for children;

(3) positive guidance and discipline of children;

(4) fostering children's self-esteem;

(5) health and safety practices in the care of children;

(6) positive interaction with children;

(7) supervision of children; and

(8) detection and reporting of suspected child abuse and neglect.

(c) New staff, including volunteers who are counted in the facility child/staff ratio, must be oriented in the following when they begin work:

(1) the requirements in the minimum standards for day care centers in this subchapter;

(2) the facility's child care policies, including discipline, guidance, and the release of children;

(3) the procedures to follow in handling emergencies; and

(4) the use and location of fire extinguishers.

(d) All staff must obtain at least 15 clock hours of training annually, exclusive of cardiopulmonary resuscitation (CPR) and First Aid, selected from the following areas:

(1) child development;

(2) care of children requiring special accommodations as defined in §715.401 of this title (relating to Definitions);

(3) adult and child health;

(4) nutrition;

(5) safety;

(6) curriculum-planning;

(7) risk management;

(8) identification and care of ill children;

(9) recognition and the responsibility of reporting child abuse, neglect, and sexual abuse;

(10) cultural diversity;

(11) professional development, such as communication, time management, and stress management; or

(12) for staff assigned to particular groups of children, topics from the following areas are included in the required annual training hours:

(A) care of infants;

(B) care of toddlers; and

(C) care of school-age children.

§715.412. Space Requirements.

(a) The following space requirements must be met:

(1) Thirty square feet of indoor activity space measured wall-to-wall, on the inside, for each child in the facility not including single-use areas such as restrooms and kitchens must be provided.

(A) Children under 18 months of age must be cared for in rooms and outdoor play areas separate from older children, unless there are 12 or fewer children in the center as described in §715.417(5) of this title (relating to Child/Staff Ratios and Groupings).

(B) Each child under 18 months old must have 30 square feet of indoor activity space in the areas in which care is given.

(2) There must be eighty square feet of outdoor play space for each child using the outdoor area at one time.

(b) Unless the only children using the outdoor area are five years old and older, the outdoor play area must be enclosed by a fence at least four feet high with at least two exits that can be opened immediately by staff. One exit may be an entrance to the building

§715.413. Furnishings. The following furnishings must be available:

(1) one working telephone with a listed number,

(2) storage for children's personal belongings,

(3) comfortable seating for children.

(4) comfortable arrangements for rest when school-age children are in care for more than seven hours;

(5) individual cots, beds, or mats that are comfortable and waterproof or washable for children ages 18 months through four years;

(6) an individual crib with a mattress and a waterproof cover and a clean crib sheet for each non-walking child under 18 months of age, and

(7) a low cot or mat for mobile children under 18 months, if not provided with an individual crib.

§715.414. Equipment.

(a) The facility must have.

(1) indoor and outdoor equipment and materials as defined in §715.401 of this title (relating to Definitions) appropriate to the developmental needs, individual interests, and ages of the children; and

(2) sufficient equipment and materials to avoid excessive competition among the children and long waits for materials.

(b) Restrooms must be inside and located and equipped so that children can use them independently and staff can supervise as needed.

(1) There must be one flush toilet and one sink for every 17 children aged 18 months and over.

(2) There must be at least one sink in each diaper-changing area.

(3) Urinals may be counted in the ratio of children to toilets but may not exceed 50% of the total number of toilets. Restrooms containing urinals must also have flush toilets.

(4) Potty chairs may be used, but must not be counted in the ratio of toilets to children.

(c) Doors on restrooms used by children under six years of age must not have inside locks within the children's reach.

§715.415. Discipline and Guidance.

(a) Discipline and guidance of children must be consistent and based on an understanding of individual needs and development

(b) Positive methods which encourage self-esteem, self-control, and self-direction must be used

(c) There must be no harsh, cruel, or unusual treatment

(1) Corporal punishment or threats of corporal punishment are prohibited

(2) Children must not be shaken, bitten, hit, nor have anything put in or on their mouth as punishment

(3) Children must not be humiliated, yelled at, rejected, or isolated.

(4) Children must not be subjected to abusive or profane language.

(5) Punishment must not be associated with food, naps, or toilet training

(6) Bed wetters must not be shamed or punished.

§715.416. Activities.

(a) Activities appropriate to each child's developmental needs must be provided

(b) A supervised rest period, after the noon meal and lasting not longer than three hours, must be provided.

(1) The rest area must be lighted in such a way as to allow visual supervision at all times.

(2) After two hours of rest, children who are awake must be allowed to get up and participate in quiet activities.

(c) All children must have time outdoors each day that weather permits.

(d) Indoor and outdoor time periods must include:

(1) alternating active and quiet activities; and

(2) opportunity for individual and group activities.

§715.417. Child/Staff Ratios and Groupings. In a day care center, or in centers using mixed-age groupings, the child/staff ratio is based on the age of the youngest child in the mixed-age group. The number of children per staff member and the group size must not exceed the following:

Age of Youngest Child	Supervised by One Adult	Supervised by Two or more Adults	Maximum Group Size
0-12 months	4	10	10
13-17 months	5	12	12
18-23 months	7	15	15
2 years	9	18	18
3 years	13	26	26
4 years	16	28	28
5 years	20	30	30
6-8 years	22	35	35
9-13 years	25	35	35

(1) Maximum group size may be exceeded, provided child/staff ratio is maintained for each group, under the following conditions:

(A) for children 18 months through four years of age for a maximum of 30 minutes.

(B) for children five years old and older for a maximum of 1 1/2 hours.

(C) for field trips, outdoor play, and naptimes for the length of that activity.

(2) During naptime, children 18 months and older may be under the supervision of 50% of the child/staff ratio if an additional 25% of the child/staff ratio is maintained in the building and not counted in the child/staff ratio for another group.

(3) Forty-five minutes after opening and 45 minutes before closing, the

children may be regrouped at a ratio of one staff member per group of 16 children 18 months of age and older.

(4) When a child in the group is under 18 months old, the oldest child in the group must not be more than 18 months older than the youngest child unless there are fewer than 12 children at the center.

(5) If 12 or fewer children are in care at the center, the following child/staff ratios may be used.

0-17 months	18 months through 4 years	5 to 13 years	Maximum Allowed
0	8 7 6 5 4 3 2 1 0	4 5 6 7 8 9 10 11 12	12
1	5 4 3 2 1 0	5 6 7 8 9 10	11
2	4 3 2 1 0	4 5 6 7 8	10
3	2 1 0	2 3 4	7
4	0	0	4

(A) Children under 18 months of age do not have to be cared for in separate areas.

(B) The caregiver can be involved in meal preparation but must be able to supervise the children.

(C) Supervision cannot be reduced during naptime.

§715.418. Night Care.

(a) Naptime child/staff ratios may not be used for night care.

(b) Staff in a facility providing night care must be awake at all times.

(c) Activities and routines must meet the unique needs of children in night care.

(d) There must be visible exits which may be provided by exit lights or by lighted exits.

(e) Each child in night care must be provided a cot, bed, or mattress that is comfortable and waterproof or washable.

§715.419. Additional Requirements for Children under 18 Months Old.

(a) Staff must talk to, hold, and play with the children.

(b) Children in cribs, while awake, may remain in their cribs for up to one hour as long as they stay content and responsive.

(c) Each child must be allowed to explore outside the crib or playpen each morning and afternoon.

(d) A child not yet ready for table food must be fed a formula or diet approved in writing, signed and dated by the child's physician or parent, and updated as changes are made.

(1) Bottles must be clearly marked with the child's name.

(2) Bottles must never be propped, the child or an adult must hold the bottle.

(3) Children up to six months of age must be held while being bottle-fed.

(e) Children no longer being held for feeding must be fed in a manner that ensures their safety and comfort.

(f) A staff member must always be in the room with the children.

§715.420. Field Trips.

(a) The following child/staff ratio must be met when children are on a field trip and are mixing with non-facility children and adults, such as trips to the circus, shopping centers, or amusement parks. The number of regular staff may be supplemented by parents or volunteers trained in the facility's policies and procedures for supervision on field trips.

Age of Youngest Child	Number of Staff	Number of Children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 year	1	8
5 years	1	10
6 years and older	1	12

(b) The regular child/staff ratio applies for field trips to sites where children will not be in activities with non-facility children and adults

(c) Notice of field trips must:

(1) be posted at least 48 hours before a field trip and remain posted until the groups have returned;

(2) be posted in a prominent place where parents may view it; and

(3) contain the following:

(A) the groups of children who will be on the field trip;

(B) where the groups will go, and

(C) when the groups will leave the facility and when the groups will return

(d) Emergency medical consent forms and emergency contact information for the children in the group must be carried by staff supervising the field trip.

(e) A written list of the children in the group must be available and checked frequently

(f) First aid supplies must be available on field trips.

(g) Children must have identification listing the name and phone number of the facility.

(h) Transportation or a plan for transportation at the field trip location must be available in case of an emergency.

(i) A staff member with current training in First Aid with rescue breathing and choking and a staff member with current training in cardiopulmonary resuscitation (CPR) for infants and children must be present on field trips

§715.421 Water Activities

(a) Water activities are prohibited for drop-in centers

(b) The child/staff ratio for water activities, where permitted, must be met as follows

(1) For wading/splashing activities (less than two feet of water) the child/staff ratio is as required for regular classroom activities as specified in §715.417 of this title (relating to Child/Staff Ratios and Groupings), except when the wading/splashing activity includes children under four years of age, two staff must be present.

(2) For swimming (more than two feet of water) the child/staff ratio is as required in §715.420(a) of this title (relating to Field Trips) except when four or more children are swimming, two adults must be present. The number of regular staff may be supplemented by parents or volunteers trained in the facility's procedures for supervising swimming.

(c) Adults included in the child/staff ratio for swimming must be able to swim.

(d) Children in wading/splashing and swimming pools must be constantly supervised.

(e) When children are swimming, a certified lifeguard as defined in §715.401 of this title (relating to Definitions) must be on duty at all times.

(f) The certified lifeguard may not be counted in the child/staff ratio if non-facility children and adults are also using the pool.

(g) Wading/splashing pools must be:

(1) kept out of reach of children when not in use; and

(2) drained at least daily, if designed to be drained, sanitized, and stored.

(h) Swimming pools, at or away from the facility, must:

(1) have at least one lifesaving device for each 2,000 square feet of water surface with a minimum of two lifesaving devices for each swimming pool;

(2) have drain grates that are in place, in good repair, and that cannot be removed without using tools;

(3) not have pool chemicals that are accessible to children;

(4) not have unlocked machinery rooms when the facility children are present; and

(5) be built and maintained according to the standards of the Texas Natural Resources Conservation Commission and any other applicable state or local regulations.

(i) Staff must be able to clearly see all parts of the swimming area, including the bottom.

(j) At the facility, any swimming pool must be enclosed by a fence at least six feet high and built so children cannot easily climb over the fence. The gate must be locked when the swimming pool is not in use.

(k) When children are in a pool that has a pump and filtering system, an adult who is able to turn off the system immediately must be present.

§715.422. Transporting Children.

(a) The child/staff ratio for transporting children:

(1) under two years of age is that one adult in addition to the driver must be present for each group of four children;

(2) two years old and older is the same as the child/staff ratio established by following the options in the regular classroom child/staff ratio as specified in §715.417 of this title (relating to Child/Staff Ratios and Groupings). If there are children under four years old, at least two adults must be present.

(b) Each child being transported must ride in an infant carrier, child seat or a seat belt, as appropriate to the child's age, size, condition, and developmental circumstances. This requirement applies to any vehicle used by or for the facility to provide transportation, with the exception of a school bus with a gross vehicular weight rating (GVWR) of 10,000 pounds or more. This requirement applies to all transportation, including, but not limited to, to and from the facility, to and from the child's school, and on field trips.

(1) All restraint devices must have been manufactured and dynamically crash-tested according to federal standards

and installed according to instructions provided by the manufacturer

(2) Appropriateness of infant seat, child restraint, or seat belt is determined as follows.

(A) an infant who cannot sit up must be restrained in an infant carrier designed as a child passenger device.

(B) a child under two years of age who can sit alone must be seated in a child seat, and

(C) a child age two or older must ride in either a child seat or in a seat belt

(3) Only one child may use each seat belt at a time

(4) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck

(5) The driver and all adult passengers in a vehicle transporting the children must be properly restrained by seat belts when the vehicle is in motion

(c) Children must be loaded and unloaded at the curbside of the vehicle or in a protected parking area or driveway. Children must not be allowed to cross a street unsupervised after leaving a vehicle

(d) The following must be in the vehicle when children are being transported

(1) a list of the children being transported,

(2) first aid supplies,

(3) emergency medical treatment forms for each child being transported, and

(4) a minimum of one Type 6-BC portable fire extinguisher which is operational, safely secured in the passenger compartment, and accessible to the adult occupants

§715.423 Safety

(a) The building, grounds, and equipment must be repaired and maintained to protect the safety of the children

(1) There must be child-proof covers or safety outlets for electrical outlets accessible to children younger than five years

(2) If 220-volt electric connections are within the children's reach, they must be covered with a screen or guard

(3) Air conditioners, electric fans, and heaters must be mounted out of

the children's reach or have safeguards that keep children from being injured

(4) Glass in sliding glass doors must be clearly marked with decals or other materials placed at children's eye level.

(5) Stairs, porches, and platforms more than two feet above the ground or floor must have railings the children can reach

(6) Firearms are prohibited on the premises of a non-residential facility. If firearms are kept on the premises of a residential facility, it is necessary that

(A) firearms are in locked cabinets,

(B) firearms are inaccessible to children, and

(C) ammunition is kept in separate locked cabinets and also made inaccessible to children

(b) All areas accessible to children must be free from hazards

(c) Indoor and outdoor play equipment and supplies used both at and away from the facility must be safe for the children

(1) Equipment must not have openings or angles that can entrap as defined by the term "Entrapping equipment" in §715.401 of this title (relating to Definitions)

(2) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(3) Equipment must not have on or underneath it pinch, crush, or shear points such as exposed or open gears on rotating devices.

(4) Swings or climbing equipment must not have concrete, asphalt, or other hazards in the fall zone as defined in §715.401 of this title (relating to Definitions)

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material

(6) Trampolines are prohibited. This prohibition does not include small trampolines that are no higher than 12 inches

(7) There must be no toys at the facility while children are in care that explode, such as caps, or that shoot things, such as BBs or darts

(8) Toys for children under two years old must be large enough to prevent swallowing or choking

(d) There must be first aid supplies as defined in §715.401 of this title (relating to Definitions) at the facility and during transportation which are readily available to staff and in a designated location and out of reach of the children.

(e) A guide to first aid and emergency care must be immediately accessible.

(f) The temperature of hot water available to children must be controlled by a thermostat so that the water temperature is no higher than 120 degrees Fahrenheit

(g) The facility must ensure the safety of children from other persons as follows.

(1) Children must at all times be observable by an adult.

(2) Adults who are with children must at all times be observable by another adult

(3) People must not consume alcohol or illegal controlled substances in the facility, during transportation, and on field trips, while children are present

(4) Any person to whom a child is released must be either a parent or a person designated by the parent.

(5) A plan must be followed to verify the identity of a person authorized to pick up a child but who is not known to the staff. This plan must include a reasonable means to record the identity of the individual. This information must be retained for at least 24 hours

(6) The presence of persons whose behavior and/or health status appears to endanger the health and safety of the children are not allowed when children are in care.

§715.424 Sanitation.

(a) There must be an annual sanitation inspection with a written report by a local or state sanitation official. The facility must be in compliance with any corrections, restrictions, or conditions stated in the report

(b) The buildings, grounds, and equipment must be cleaned, repaired, and maintained to protect the health of the children

(1) There must be adequate light, ventilation, and heat

(2) People must not smoke in the facility, during transportation, or on field trips

(3) All sleeping equipment must be clean

(4) Linens must be washed weekly, before a different child uses them, and when soiled

(c) There must be a supply of drinking water, supplied in a safe and sanitary manner and meeting the standards of the Texas Natural Resources Conservation Commission.

(d) Drinking water must always be available to the children.

(e) There must be a sewage system that is sanitary and meets the standards of the Texas Natural Resources Conservation Commission. When possible, the system must be connected to a public system.

(f) All garbage as defined in §715.401 of this title (relating to Definitions) must be kept in containers with tight-fitting lids

(1) Garbage must be kept away from areas used by the children.

(2) Garbage must be removed from the building daily and from the facility as often as necessary in order to maintain sanitary conditions inside and outside the facility but not less than once per week.

(g) Measures must be taken to keep the facility free of insects and rodents as provided in the appendix titled "Vernon's Annotated Civil Statutes Article 135 B-6" in the Texas Department of Protective and Regulatory Services' Minimum Standards.

(h) Children must:

(1) wash their hands with soap and running water after toileting and before eating;

(2) have clean drying material such as paper towels or their own towels.

(i) Staff must wash their hands with soap and running water:

(1) after changing a diaper;

(2) after assisting a child with toileting;

(3) before feeding a child;

(4) before and after serving and handling food;

(5) after caring for a child with symptoms of a communicable disease; and

(6) after personal toileting.

(j) Staff must use disposable waterproof gloves when handling blood or other bodily fluids which might contain blood, such as bodily tissue discharges.

(k) When diapering a child, staff must place the child on a clean, washable surface disinfected after each use or a surface with clean, disposable covering that is changed after each use

(1) Each child must be thoroughly cleansed with individual washcloths or disposable towelettes and dried with individual towels at each diaper change.

(m) Containers for used diapers must:

(1) have plastic lining;

(2) have tight-fitting lids;

(3) be washable; and

(4) be located convenient to the changing area.

(n) Potty chairs must be sanitized after each child's use.

(o) Each crib must be sanitized before a different child uses it and when soiled.

(p) Toys used by children under two years of age must be sanitized daily.

(q) All food and drink served must be of safe quality and stored, prepared, distributed, and served under sanitary and safe conditions.

(r) Food service equipment must be washed and sanitized.

(s) Staff with open wounds and injuries that inhibit hand washing, such as casts, bandages, or braces, must not be allowed to prepare food.

(t) Single-service napkins, bibs, dishes, and utensils must be discarded after use. Washable, reusable napkins, bibs, and tablecloths must be washed after each use.

(u) Cleaning supplies must be clearly marked, kept separate from food, and kept inaccessible to children.

§715.425. Fire, Fire Safety, and Emergency Precautions.

(a) The facility must have an annual fire inspection with a written report by a local or state fire marshal. The facility must be in compliance with any corrections, conditions, or restrictions specified in the report.

(b) In an emergency, the facility's first responsibility is to move the children to a designated safe area where they must be supervised.

(c) In an emergency, all staff and children must be able to safely exit the building within three minutes.

(1) The building must have at least two exits to the outside, located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits unless specifically approved in writing by the fire marshal.

(2) If any doors open into a fenced yard, the children must be able to open the doors easily from inside

(3) No doors that are blocked or locked may be counted as an exit

(4) Children must not be cared for on any level above or below the exit level unless the facility obtains written approval from the fire marshal.

(5) A flashlight or other battery-powered lighting must be available to use in case of electrical failure.

(d) An emergency evacuation and relocation plan must be posted in each room the children use.

(1) The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level;

(2) Staff and children must practice a fire drill every month. This practice must be documented.

(3) All other emergency procedures must be practiced at least once each six months. These practices must be documented.

(e) The facility must contact the fire department in case of fire or danger of fire, explosion, toxic fumes, or other chemical release.

(f) The facility must have a fire extinguishing system approved by the fire marshal. This system may be a sprinkler system and/or fire extinguishers.

(1) If fire extinguishers are used, they must be mounted on the wall by a hanger or bracket and made readily available for immediate use by the staff.

(2) Fire extinguishers must be inspected monthly and the date of the inspection recorded. Fire extinguishers must be serviced when required.

(g) The building must be equipped with working smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of state and local codes.

(1) There must be a working smoke detector in each room used by the children, including rooms where the children rest and sleep.

(2) All smoke detectors must be tested monthly and the date must be recorded.

(h) Heating devices and areas near heat sources must not present fire hazards and must not present hazards to the children

(1) Gas appliances must have metal tubing and connections

(2) Open flame heaters are prohibited

(3) Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal.

(4) Floor and wall furnace grates must be safeguarded so that children do not have access to them.

(5) Liquid or gas fuel heaters, fireplaces, and wood-burning stoves must be properly vented to the outside.

(6) Where fireplaces or wood-burning stoves are used, a rigid screen or guard must be installed to prevent children from falling into the fire or against the stove.

(i) Where gas is used, there must be a gas-pipe inspection annually. This inspection must be documented

§715.426. Illness and Injury.

(a) Parents must be notified in cases of illness and injury as specified in §715.406(c) of this title (relating to Parental Communication).

(b) A child whose illness requires that the child be sent home, must be given appropriate attention to the child's needs, including supervision, until the parent or other person authorized by the parent arrives to remove the child.

(c) A child with uncontrolled diarrhea or vomiting must be provided care apart from the other children. Extra attention must be given to hygiene and sanitation, until the parent or person authorized by the parent arrives to pick up the child

(d) An ill child must not be admitted for care if one or more of the following exists:

(1) the illness prevents the child from participating comfortably in facility activities;

(2) the illness results in a greater need for care than the staff can provide without compromising the health, safety, and supervision of the other children;

(3) the child has any of the following.

(A) oral temperature 101 degrees or greater, rectal temperature 102 degrees or greater; armpit temperature 100 degrees or greater; and accompanied by behavior changes or other signs or symptoms of illness, until medical evaluation indicates that the child can be included in the facility's activities, or

(B) symptoms and signs of possible severe illness, such as lethargy, uncontrolled breathing, uncontrolled diarrhea, vomiting illness of two or more episodes in 24 hours, rash with fever, mouth sores with drooling, wheezing, behavior change, or other unusual signs, until medical evaluation indicates that the child can be included in the facility's activities

(4) the child has been diagnosed with a communicable disease, until medical evaluation determines that the child is no longer communicable and is able to participate in the facility's activities

(e) In case of the onset of a critical illness or injury, the physician named by the parent must be called, the child must be taken to the nearest emergency room or clinic, or an emergency vehicle must be called.

(f) Children must be given first aid treatment or cardiopulmonary resuscitation when needed.

§715.427. Medications.

(a) If the facility policy includes administering medication to children

(1) a record must be made of the following and kept for at least three months.

(A) name of the child to whom the medicine was given;

(B) name of the medication,

(C) date, time, and amount of medication given; and

(D) name (not initials) of staff administering the medication;

(2) the medication must be administered to the child with written parental permission and as stated on the label directions

(b) Any medications brought by the parent for the child must:

(1) be in the original container,

(2) be labeled with the child's name;

(3) be labeled with the date if it is a prescription medicine;

(4) include directions to administer the medication; and

(5) if prescribed, include the name of the physician prescribing the medication.

(c) Medications must:

(1) be refrigerated and kept separate from food, if refrigeration is required,

(2) be kept out of reach of children or in locked storage.

(3) be disposed of or returned to the parent when the child withdraws from the facility or when the medication is out of date, and

(4) not be administered after its expiration date

§715.428 Animals.

(a) If animals are on the premises:
(1) The presence of the animals must not create unsanitary conditions.

(2) There must be documentation at the facility that animals requiring vaccinations have been vaccinated according to state and local requirements.

(3) Parents must be advised when animals are present.

(b) The facility and play yard must be kept free of stray animals.

(c) Children must not be allowed to play with stray animals or other animals that could be dangerous

§715.429 Nutrition

(a) Food served to the children must be nutritious and served in varieties and amounts adequate to ensure growth and development as described in the appendix titled "Nutritional Needs of Children" in the Texas Department of Protective and Regulatory Services' Minimum Standards for Day Care Centers.

(1) Children in care from four to seven hours must be offered one-third of their daily food needs.

(2) Children in care for more than seven hours must be offered one-half of their daily food needs.

(3) All children must have regular meals and morning and afternoon snacks.

(b) Recurring eating problems must be discussed with the child's parent.

(c) If a child must be served a therapeutic or special diet, there must be written approval from a physician or a registered or licensed dietician. This information must be given to all persons preparing and serving food

(d) Children may be encouraged but not forced to eat

(e) Daily menus for all meals and snacks prepared and served at the center must be kept for 30 days

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 May 2, 1994.

TRD-9440110 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Protective and
Regulatory Services

Proposed date of adoption: October 1, 1994

For further information, please call (512) 450-3765



110912



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 4. AGRICULTURE

Part II. Animal Health Commission

Chapter 49. Equine

- 4 TAC §49.2

The Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §49.2 which appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9811). The effective date of this withdrawal is May 19, 1994.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439931 Terry Beals, DVM
Executive Director
Animal Health Commission

Effective date: May 19, 1994

For further information, please call: (512) 719-0714

Chapter 51. Interstate, Shows, and Fairs

- 4 TAC §51.2

The Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §51.2 which appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9812). The effective date of this withdrawal is May 19, 1994.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439930 Terry Beals, DVM
Executive Director
Animal Health Commission

Effective date: May 19, 1994

For further information, please call: (512) 719-0714

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 10. Trust Companies

- 7 TAC §10.1

(Editor's Note: This section was proposed new in the April 29, 1994, issue of the Texas Register (19 TexReg 3209) This action is withdrawing the proposed new §10.1 which was proposed in the March 8, 1994, issue of the Texas Register (19 TexReg 1618))

The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed new §10.1 which appeared in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1618). The effective date of this proposed withdrawal is May 2, 1994.

Issued in Austin, Texas, on April 25, 1994.

TRD-9440154 Everette D Jobe
General Counsel
Banking Department of
Texas

Effective date: May 2, 1994

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Records and Reports

- 16 TAC §23.12

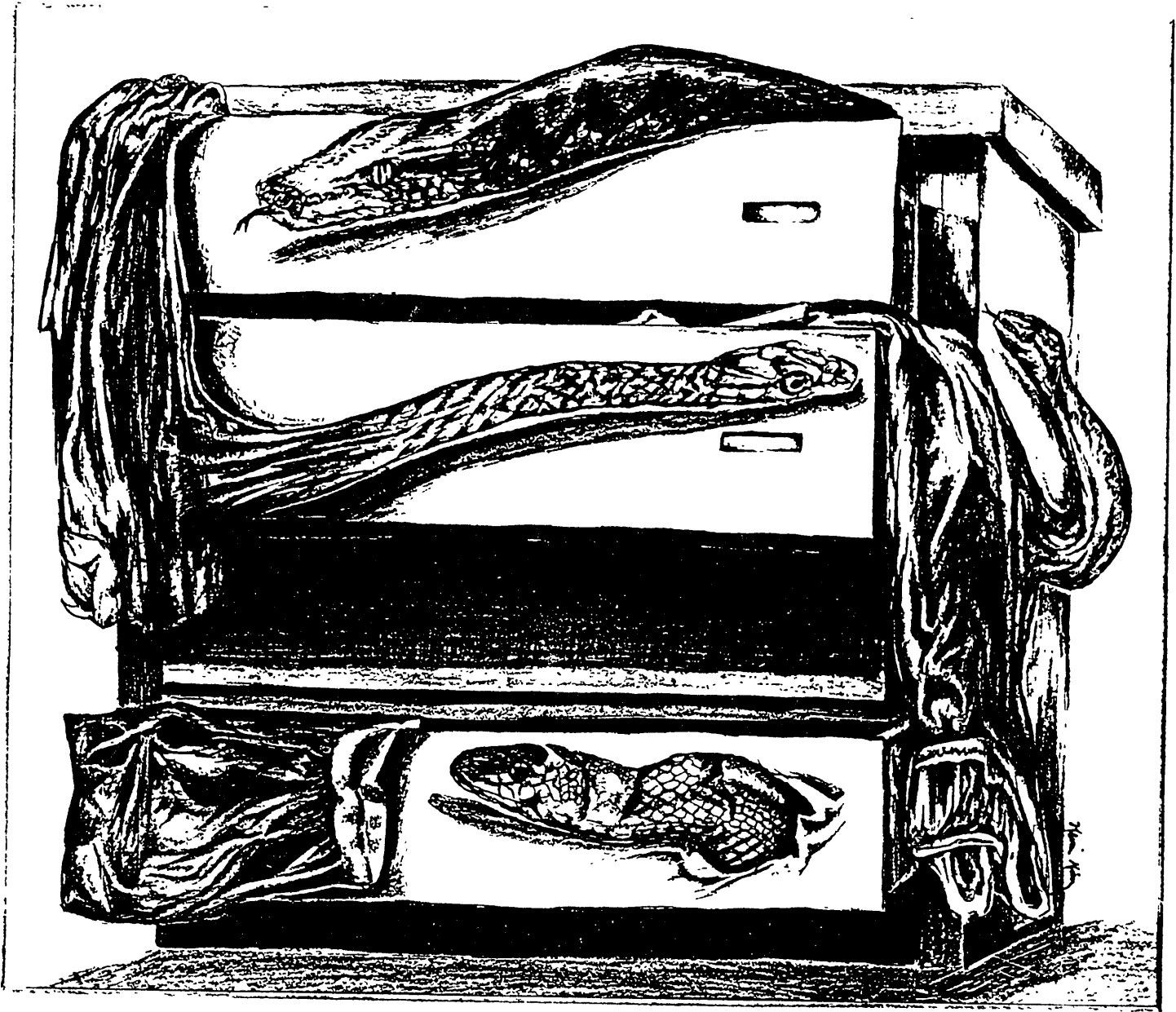
The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption a proposed amend to §23.12 which appeared in the February 4, 1994, issue of the *Texas Register* (19 TexReg 753). The effective date of this withdrawal is April 28, 1994.

Issued in Austin, Texas, on April 28, 1994.

TRD-9439964 John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: April 28, 1994

For further information, please call: (512) 458-0100



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 II. Texas Animal Health Commission

Chapter 36. Exotic Livestock and Exotic Fowl

• 4 TAC §36.2

The Texas Animal Health Commission adopts an amendment to §36.2, concerning general requirements, with changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1615).

It was necessary to amend the regulations to clarify that exotic livestock and rattes entering Texas from USDA Quarantine facilities would meet the same requirements as those entering from other locations and to assure that the ratites are negative to disease and are permanently and properly identified.

Ratites entering the state are required to be individually identified with an implanted electronic device with pertinent information entered on the health certificate accompanying the shipment. Ratites and eggs must come from flocks where no evidence of disease is known and that they were tested negative for Avian Influenza and Pullorum/Typhoid with certain exceptions. Ratites offered for sale within the state must be identified with an implanted electronic device and accompanied with a certificate of veterinary inspection with pertinent information pertaining to the implant shown on the certificate. Records of the sale will be maintained by all parties to the sale for a period of three years. Ratites entering to slaughter must be accompanied by a waybill but are exempt from these additional requirements.

Four hundred twenty individual written comments received were in favor of the entire proposed regulation.

Five hundred thirty-five individual written comments received supported microchip identification.

Five hundred thirty-seven individual written comments received were in favor of testing ratites entering Texas.

Two hundred eighty-two individual written comments received supported testing ratites for auction and private treaty within the State of Texas.

Eighty-three individual written comments received were in favor of having a veterinary certificate accompanied with every bird being offered at public sale or private treaty sale.

Eighty-three individual written comments received recognized the importance of regulations for all birds crossing state lines and believes it is imperative that all birds be permanently identified with a microchip.

Eighty-three individual written comments received state the requirement of a veterinary health certificate should be decided between the buyer and the seller.

The Commission agrees with these comments that the rules are needed to provide protection to the ratite industry in this state.

Eight hundred ninety-two individual written comments were received in opposition to the proposed regulation.

The Commission disagrees with the comments because the regulation is deemed necessary to prevent introduction of diseases into the state and to assure necessary identity and traceability in the event serious disease outbreak is encountered.

Four commenters said identification should not be restricted to micro-chip identification.

The Commission disagrees with the comments because a microchip is believed to be the most practical, unique, permanent identification technique.

Six comments were received in opposition to private treaty testing. (The Commission stated that private treaty testing is not required.)

One comment received was in opposition to mandatory testing.

The Commission disagrees with the comments because the testing is designed to assist in preventing introduction of diseased birds into the state.

Two comments were in opposition to veterinary inspection for birds entering the state.

The Commission disagrees with the comments because veterinary inspection is believed to be necessary procedure to preclude entry of birds that are showing clinical (signs) of illness.

One commenter believed that AI and Typhoid testing should be required at public sales and auctions.

The Commission disagrees with the comments because these two diseases have not

been shown to present a high risk in Texas birds.

One commenter asked the following questions:

Who supplies the money for enforcement of the regulations?

Commission response—The State of Texas.

Is the state of Texas providing the microchips, readers, inspections, record keeping and record storage required under the proposed sections?

Commission response—No.

Where are the accredited ratite veterinarians for the inspections?

Commission response—They are the veterinarians accredited by USDA.

Is the state going to require vets to acquire the skills necessary to perform these statutory inspections in a timely and professional manner?

Commission response—The veterinarians will be informed of the regulations.

Whose electronic equipment will be used to read the microchips during the inspections?

Commission response—The veterinarian's/owner's.

Will there be a charge for the veterinary inspections?

Commission response—This is up to the veterinarian.

Who sets the fees the vets charge?

Commission response—The veterinarians set the fees.

Where are the forms the vets will use in rendering this service?

Commission response—Current forms will be used.

Will the state provide the forms to the vets, or the merchants, for free?

Commission response—The veterinarians purchase the forms.

Which state approves the testing lab, Texas or the state of origin?

Commission response—The state of origin.

What happens when the local buyer or public sale facility does not have quarantine facilities?

Commission response—The facility becomes quarantined.

Where is the state quarantine facility for serologically positive raites imported into the State of Texas waiting for virus isolation re-test?

Commission response—Not applicable

What is the procedure for determining the need for these tests or inspections?

Commission response—It is the same as for other species

Who pays for these tests or inspections?

Commission response—The owner pays this fee

What are the penalties for violations of these provisions?

Commission response—It is a Criminal Class "C" misdemeanor for entry violation

The Texas Veterinary Medical Diagnostic Laboratory suggested the proposal be amended in the following manner add the word "clinical" to subsection (c) (4)(B) because the way the paragraph now reads it is too broad and should make reference to "clinical evidence rather than just evidence," additionally, the words "within the past days" which is found in the same paragraph, should be changed to "and the inspecting accredited veterinarian has no personal knowledge of exposure thereto at the time of veterinary inspection" TVMDL believes it would be impossible for a veterinarian to make the proposed statement unless the veterinarian had examined the animal/fowl every day for the past 30 days, that such statement would be factually unfounded, unethical, and probably in violation of the rules of professional conduct and a violation of the Veterinary Practice Act TVMDL suggests that these changes would more accurately reflect the capabilities of an inspecting accredited veterinarian without misleading the public and placing the veterinarian in violation of the law

The Commission agrees with these nonsubstantive comments and the changes appear in the adoption

One additional comment received asking if the commission would consider including mandatory testing of raites for Psittacosis

Commission response—This request will be taken under advisement

Fifteen people gave oral testimony on the amendments, seven were in support, seven in opposition, and one gave comments only

The amendment is adopted under the Texas Agriculture Code, §161 041, which authorizes the commission to adopt rules to eradicate or control any disease that affects exotic fowl, §161 046, which allows the commission to adopt rules necessary to control disease, and §161 081, which allows the commission to adopt rules regulating the inspection and testing of animals prior to entry into the state, and which allows the commission to adopt rules regarding health certificates and entry permits.

§36 2. General.

(a) All exotic livestock and raites entering Texas from any state, territory, foreign country or from any USDA-licensed quarantine facility shall have an entry permit issued by the Commission.

(b) All exotic livestock and raites entering the state of Texas from any state, territory, foreign country or from any USDA-licensed quarantine facility shall be accompanied by a certificate of veterinary inspection stating that they have been inspected by an accredited veterinarian and are free of external parasites and evidence of contagious and communicable disease.

(c) The following named species entering the State of Texas shall meet the specific requirements stated and this information recorded on the certificate.

(1) Exotic Cervidae—negative to a brucellosis and cervical skin test for tuberculosis within 30 days prior to entry.

(2) Water buffalo—negative to a brucellosis and tuberculosis test within 30 days prior to entry

(3) Exotic Swine—negative to a brucellosis and pseudorabies test within 30 days prior to entry.

(4) Raites—

(A) each bird will be individually identified with an implanted electronic device (microchip) The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest;

(B) all raites offered for sale at a public sale or sold at private treaty within the state must be accompanied by a certificate of veterinary inspection stating that they have been inspected by an

accredited veterinarian and are free of external parasites and clinical evidence of contagious and communicable disease and the inspecting accredited veterinarian has no personal knowledge of exposure thereto at the time of veterinary inspection, and individually identified with an implanted electronic device. That identification must be recorded on the certificate of veterinary inspection along with the location, microchip number, and microchip name brand;

(C) the microchip number and required test results must be maintained in the sale records for consignments to a public sale or the files of the buyer and seller when the animal is sold at private treaty. These records must be maintained for a period of three years;

(D) raites destined for slaughter only may enter Texas accompanied by an entry permit and either a waybill or health certificate without meeting the requirements of subparagraphs (A)-(C) of this section.

(d) The Executive Director of the Commission may require an inspection or test on any exotic livestock or exotic fowl prior to importation when the Executive Director has determined there is a risk of disease or parasite transmission. Entry may be denied based on the results of these tests or inspections.

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-9439929

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Effective date: June 10, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 719-0714

Chapter 49. Equine

• 4 TAC §49.1

The Texas Animal Health Commission adopts an amendment to §49.1, concerning Equine Infections Anemia, with changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9810). The TAHC staff recommended and the Commission agreed to the need for adoption of §49.1(a) and (b) only to better serve the Equine Industry. At the February 25, 1994, meeting of the commission, an EIA Advisory Committee was appointed to study and review the equine regulations and this proposal The Advisory Committee has met and recommends additional study.

The amendment is necessary to provide that any USDA licensed tests for Equine infectious anemia can be utilized and a more determined effort made to eliminate EIA when infection is identified from blood samples submitted. In an effort to better serve the equine industry of this state, this agency has approved the use of new tests provided they are licensed by the USDA.

Blood samples drawn by accredited veterinarians or other TAHC authorized personnel for EIA testing must be accompanied by a VS Form 10-11 before the samples can be accepted for official testing for horses, asses, mules, ponies, zebras and any other equine. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, and the Competitive Linked Immunosorbent Assay test (CELISA) are approved by this agency for testing blood for EIA and are the official tests in Texas, however, USDA has approved other tests for testing for EIA and the Commission has, by this amendment, approved the use of other EIA tests provided they have been licensed and approved by USDA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, which authorize the commission to promulgate rules regarding the testing of livestock. The amendment implements the Texas Agriculture Code, §161.041.

§491 Equine Infectious Anemia (EIA) Identification and Handling of Infected Equine

(a) Official Test. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test and other USDA licensed tests approved by the commission are the official tests for equine infectious anemia (EIA) in horses, asses, mules, ponies, zebras, and any other equine in Texas.

(b) Authorization to conduct test. Only United States Department of Agriculture (USDA) approved laboratories are allowed to run the AGID and CELISA tests and all tests will be official. Only test samples from accredited veterinarians or other TAHC authorized personnel accompanied by a completed VS Form 10-11 can be accepted for official testing.

(c) Official test document. All official blood tests must be accompanied by VS Form 10-11 (Equine Infectious Anemia Laboratory Test) listing the description of the equidae to include age, breed, color, sex, animal's name and/or registration number (when applicable), and distinctive markings when present (brands, tattoos, scars, or blemishes). It must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only.

(d) Reactor. A reactor is any equidae which discloses a positive reaction to the official test. The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results.

(e) Retest of reactors. Equidae which have been disclosed as reactors may be retested prior to branding provided:

(1) Owners or their agents initiate a request in writing to the TAHC Area Director of the area where the horse is located within 48 hours following notification of test results. A retest will not be granted unless the official results of the initial test have been received in the Texas Animal Health Commission office.

(2) All retests shall be conducted by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) at College Station or Amarillo. Retests must be conducted within 30 days after date of the original test.

(3) The individuals conducting the retest verify the retested equidae as being the same as shown on the original test document. This verification shall be in writing on the Form VS 10-11. The retest permit shall accompany the serum sample and Form VS 10-11 to the TVMDL. Laboratories conducting the EIA (Coggins) test are prohibited from conducting the retest if the verification and retest permit are not submitted with the serum sample. Upon completion of the test, the laboratory shall forward the results of the Texas Animal Health Commission.

(f) Official identification of reactors. A reactor to the official test must be permanently identified using the National Uniform Tag Code number assigned by the USDA to the state in which the reactor was tested followed by the letter "A." (The code for Texas is 74A.) The reactor identification must be permanently applied by a representative of the Texas Animal Health Commission who must use for the purpose of identification, a hot iron brand or freeze-marking brand. The brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Reactors must be branded within ten days of the date the laboratory completes the test unless the equidae is destroyed. Any equidae destroyed prior to branding must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly.

(g) Quarantine of reactors. Any equine animal found to be a reactor to the official test will be quarantined by a representative of the Texas Animal Health Commission to the premises of its home, farm,

ranch or stable until natural death, disposition by euthanasia, slaughter, or disposition to a Texas Animal Health Commission approved, diagnostic or research facility. The quarantine shall restrict the infected equine to isolation at least 200 yards away from other equine.

(h) Movement of reactors. Following official identification, a reactor must be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized personnel when moved from its home premises either:

(1) directly to a livestock market for sale directly to slaughter provided the reactor horse is quarantined at the market in isolation from other horses; or

(2) directly to a slaughter plant; or

(3) directly to an approved diagnostic or research 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 20, 1994.

TRD-9439928

Terry Beaks, DVM
Executive Director
Texas Animal Health
Commission

Effective date June 10, 1994

Proposal publication date December 21, 1993

For further information, please call. (512) 719-0714

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 1. Consumer Credit Commissioner

Subchapter B. Miscellaneous

• 7 TAC §1.305

The Finance Commission of Texas adopts new §1.305 concerning interpretations and advisory letters, without changes to proposed text as published in the January 28, 1994, issue of the *Texas Register* (19 TexReg 565).

Pursuant to Texas Civil Statutes, Article 5069-2.02A(10), the consumer credit commissioner has the authority to issue interpretations of Title 79. Before the commissioner may issue an interpretation, the Finance Commission of Texas must approve the interpretation. The commission seeks by adoption of this section to define interpretation and to establish basic procedures relative to the request for, approval of, and issuance of an interpretation. The commission also seeks by the adoption of this section to establish and define the term "advisory letter" which shall

be applied to written advice issued by the Office of Consumer Credit Commissioner which has not been expressly approved by the Commission and to provide that such advice contain a statement that it has not been approved.

A person seeking written advice from the commissioner or his staff as to provisions of Title 79 will indicate in his or her request whether the person seeks an interpretation approved by the commission. A person who requests an interpretation will submit the information and fee required for an interpretation and the commissioner will follow the procedures established in the rule concerning publication of notice of the request and responding thereto. A person seeking written advice from the commissioner or his staff who does not seek approval of such advice by the commission will be put on notice in the answer of the commissioner or his staff that such advice is not an interpretation approved by the commission.

Two persons submitted written comments on behalf of three associations. None of the groups or associations were in total opposition to the section. General Counsel of the Independent Bankers Association of Texas expressed general support for the rule but stated that "the last clause in subsection (c) which provides that such letters do not grant a safe harbor, we believe is legally incorrect." The comment further pointed out the provisions of Article 8.01(f) applied to agencies other than the Consumer Credit Commissioner and the provision "would seem to indicate that an interpretation from agencies other than the Consumer Credit Commissioner would also provide potential safe harbors. Certainly, then, advisories from the Consumer Credit Commissioner should provide a safe harbor as well, without the procedures of Chapter 2." The commenter opined that the "provisions found in Article 5069-2.02A(10), were uniquely intended to provide specific procedures for the Consumer Credit Commissioner in interpreting the usury laws, not in affecting the safe harbor provisions found in Chapter 8." A commenter speaking on behalf of the Texas Finance Association and the Texas Finance Institute renewed his continued opposition to a notation on an advisory letter to the effect that it "does not grant a 'safe harbor' as provided in Texas Civil Statutes, Article 5069-8.01(f)." The commenter urges that the "safe harbor" provisions provide for what is "safe harbor" conduct, and that "Our Legislature has not attempted to determine what is not 'safe harbor' conduct." The commenter suggests that "no administrator, administrative agency, or commission has the authority to attempt to determine by rule or regulation what is not a 'safe harbor'."

The commission agrees with the commenters that the public interest is best served by clearly indicating whether a letter is an interpretation approved by the commission. All interpretations approved by the Finance Commission pursuant to statute are identified in the *Texas Register*. The Commission believes that if a letter has not been approved by the Finance Commission the letter should so indicate and, accordingly, has directed that all letters from the Office of Consumer Credit

Commissioner which have not been presented for approval by the commission shall contain a notation that they are not interpretations approved by the Finance Commission pursuant to Texas Civil Statutes, Article 5069-2.02A(10), and invite a request for an interpretation if desired.

Adoption of this rule is not intended to inhibit either the normal queries to the commissioner and his staff or their freedom to respond. The rule in no way makes the commissioner or his staff unaccountable for the accuracy and quality of response whether delivered telephonically or in writing as an advisory letter nor does the rule attempt to change statutory language or restrict judicial remedies available to third parties. The Texas Open Records Act makes all advisory letters public records and the commission encourages dissemination of information contained in advisory letters with copies to be made available at fees established in accordance with appropriate statutory provisions.

The commission finds that there is no need to publish the name of a person requesting an interpretation and suggests that the commissioner not do so in the future. Any request for an interpretation is subject to the Texas Open Records Act and is generally not a private matter. Any requester who believes that any part of an interpretation request should not be public should communicate with the commissioner on that matter. Without adoption of additional language in the adopted rule the commission herein declares that the adoption of the rule is done with the intent that its effect is prospective only and it shall not affect any interpretation issued previously.

The new section is adopted under Texas Civil Statutes, Article 342- A, which provide the Finance Commission of Texas with the authority to promulgate rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Title 79, Revised Statutes, (Texas Civil Statutes, Article 5069-1.01 et seq).

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-9439944 Al Endsley
Consumer Credit
Commissioner
State Finance Commission

Effective date May 19, 1994

Proposal publication date January 28, 1994

For further information, please call (512) 479-1280

Part IV. Texas Savings and Loan Department

Chapter 63. Fees and Charges

• 7 TAC §63.14

The Texas Savings and Loan Department adopts an amendment to §63.14, without changes to the proposed text as published in

the March 4, 1994, issue of the *Texas Register* (19 TexReg 1511)

The language has been changed to apply to conversion into a state or national bank, or a federal savings association. This section refers specifically to applications filed pursuant to this title, Chapter 69, which was recently amended to reflect statutory amendments allowing conversion to a bank charter in addition to a federal thrift charter. This amendment is designed to accurately reflect these statutory conversion provisions.

A state chartered savings and loan association that applies to convert to a state or national bank, a federal savings bank, or a federal savings association will be charged the fee as indicated in this section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 342-114, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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

Issued in Austin, Texas, on April 22, 1994

TRD-9439911 James L. Pledger
Commissioner
Texas Savings and Loan
Department

Effective date May 19, 1994

Proposal publication date January 25, 1994

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

Chapter 67. Savings and Deposit Accounts

• 7 TAC §67.5

The Texas Savings and Loan Department adopts the repeal of §67.5, without changes to the proposed text as published in the January 25, 1994, issue of the *Texas Register* (19 TexReg 390).

Because of a resurgence in the practice of paying premiums on savings deposits by federally chartered savings associations and banks, the prohibition on such practice by state savings associations placed these institutions at a competitive disadvantage. This prohibition is being deleted to maintain competitive parity, since the prohibition does not affect safety and soundness concerns. The Department believes that such practices should be business decisions within the purview of the institution's management.

State chartered savings associations may voluntarily offer gifts or inducements to attract customers to open or add to deposit accounts with the institution.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 342-114, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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

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

TRD-9439909

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Effective date. May 19, 1994

Proposal publication date January 25, 1994

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

Chapter 77. Loans, Investments, Savings, and Deposits

Savings and Deposits

• 7 TAC §77.105

The Texas Savings and Loan Department adopts the repeal of §77.105, without changes to the proposed text as published in the January 25, 1994, issue of the *Texas Register* (19 TexReg 392)

Because of a resurgence in the practice of paying premiums on savings deposits by federally chartered savings associations and banks, the prohibition on such practice by state savings banks placed these institutions at a competitive disadvantage. This prohibition is being deleted to maintain competitive parity, since the prohibition does not affect safety and soundness concerns. The Department believes that such practices should be business decisions within the purview of the institution's management

State chartered savings banks may voluntarily offer gifts or inducements to attract customers to open or add to deposit accounts with the institution

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 342-114, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same

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

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

TRD-9439910

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Effective date. May 19, 1994

Proposal publication date January 25, 1994

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter B. Basic Rules

• 16 TAC §§9.183-9.185, 9.187, 9.188

The Railroad Commission of Texas adopts new §§9.183-9.185, 9.187, and 9.188, relating to uniform protection standards; uniform safety requirements; LP-gas storage and installation distance requirements; LP-gas storage bulkhead protection, and gauging devices and pressure gauges, with changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8490). The commission adopts the new sections to implement rules regarding public refueling of LP-gas fueled vehicles using automatic dispensers, to clarify other requirements relating to LP-gas installations, and to renumber existing safety rules to allow for future expansion.

New language in §9.183 (previously §9.63, relating to uniform protection standards) clarifies the applicability of various requirements and adds a chart relating to sign and lettering requirements. The new language also clarifies that:

all LP-gas transfer systems and storage containers, except automatic dispensers, are subject to the requirements of the section. Protection requirements for automatic dispensers are contained in proposed new §9.1571, relating to protection of dispensers (previously §9.385, relating to protection of manual dispensers). A distinction is made between American Society of Mechanical Engineers (ASME) containers and portable Department of Transportation (DOT) containers to further clarify the applicability;

ASME containers or manual dispensers originally manufactured as self-contained units are exempt from fencing requirements;

vertical supports for guardrails must be anchored a minimum of 18 inches in concrete, the top of horizontal guardrailing must be a minimum of 30 inches above the ground, and secured with welding or bolts sufficient to prevent displacement of the guardrailing;

no opening in the guardrailing may exceed 36 inches. A means of temporarily removing the guardrailing for handling of heavy equipment may be incorporated in the guardrailing;

the operating end of a container, including all material handling equipment and the entire dispensing system and any other part of the transfer system or container exposed to vehicular traffic must be protected from collision;

DOT portable containers may be stored in storage racks constructed to minimum specifications outlined in the section (e.g., must be constructed by welding, 18 gauge rolled perimeter members with 13 gauge expanded metal steel panel and 18 gauge steel roof);

guardposts may be used in place of guardrails if they meet certain minimum requirements (e.g., 3 inch Schedule 40 steel pipe, capped on top, and anchored 30 inches below ground in concrete);

DOT portable containers in storage, except those in storage racks or at private residences must be enclosed by fencing. This does not apply to containers that have been used in LP-gas service but are not awaiting use or resale;

DOT portable containers may be used but not stored inside buildings when they are required as a fuel supply container for torches being used in construction, repair or renovation. They may not have an aggregate or individual water capacity of more than 250 pounds

New §9.185 (previously §9.65, relating to LP-gas storage distance requirements) includes requirements from several rules in other subchapters which have been moved to this section in order to provide all relevant information in one rule. The new language includes:

reference to distance requirements from open flames, source of ignition and combustible materials that are contained in a table in proposed new §9.185 relating to LP-gas storage and installation distance requirements (previously §9.65, relating to LP-gas storage distance requirements);

a requirement for fire extinguishers, which was previously contained in old §9.271, relating to extinguishers required;

consolidation of requirements relating to contamination of LP-gas. The person responsible for contamination must have the test(s) specified in the rule performed by a testing laboratory or individual qualified to do testing;

clarification that transfer hoses on LP-gas transports cannot be routed through or into any building during servicing of a container,

a requirement that a pull-away device must be provided on all refueling installations;

requirements for installation and support of containers, which were previously contained in old §§9.101, 9.112, 9.122, and 9.265, relating to containers installed aboveground; mounting of containers; installation of containers; installation of LP-gas service station and cylinder filling storage containers; and supports-120 degree arc required, are contained in the new section. The rule requires that containers in excess of 1,200 water gallon capacity shall be supported through an arc of 120 degrees; containers shall not be stacked unless designed for stacking by the manufacturer; the outside bottom of the container must not be more than five feet above the ground unless designed for a greater height by the manufacturer, and if containers are designed to be installed vertically, they must be installed according to the manufacturer's instructions or specifications approved by a Registered Professional Engineer;

requirements for painting of containers which have been moved from §§ 106, 9.124, 9.294, and 9.512, relating to painting.

referral to proposed new § 9.183 for requirements for lettering, marking, or numbering of containers.

a requirement that LP-gas containers may not be covered by canopies or other coverings, moved from old § 9.133, relating to loading area;

requirements that, after completing an installation of an LP-gas container, the licensee must attach a tag to the container indicating the name of the licensee, license number, and the year installed.

additional requirements for hydrostatic relief valves that discharge from a valve shall be directed so as not to impinge upon another container, part of a vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment of a vehicle

New § 9.185 (previously § 9.65, relating to LP-gas storage distance requirements) combines all distance requirements into three tables. The tables show distance requirements for storage of DOT portable containers, installation of ASME containers or DOT portable containers, and for automatic or manual dispensers. Requirements relating to forklifts are clarified to indicate that only those containers actually in use on the forklift may be left overnight in a building

New § 9.187 (previously § 9.67, relating to LP-gas storage protection) adds requirements that any LP-gas stationary installation of 4001 gallons or more aggregate water capacity installed after November 1, 1994, have liquid and vapor return piping and vertical bulkheads. Pneumatic or cable activated emergency shutoff valves (ESVs) must also be used. New language also clarifies other requirements relating to bulkheads and related equipment

New § 9.188 (previously § 9.68, relating to approved gauging devices) contains minor wording changes which clarify its intent

The commission requested that interested parties comment specifically on language in proposed new § 9.185, relating to LP-gas storage and installation distance requirements, which requires a minimum distance of three feet between LP-gas automatic dispensers and storage containers and dispensers for other flammable fuels, particularly as those comments might offer justification for a minimum distance greater than the three foot requirement, such as 25 feet.

The Texas Propane Gas Association was the only group or association to file comments on the proposed sections

Two comments suggested making § 9.183(d)-(i) a new section to be entitled "Storage Racks," and relettering the subsections accordingly. The commission disagrees with the comment, because the rules cannot be reorganized as suggested within the current numbering scheme

Two comments offered new wording for § 9.183(a), as follows. "Stationary ASME container(s) and DOT portable container(s) that contain LP-gas or have been used in LP-gas

service where required to be in storage racks shall be stored or installed in accordance with the distance requirements specified in Tables 1 and 2 of § 9.185 of this title (relating to LP-gas storage and installation distance requirements)." The commission disagrees with the suggested change in wording because new § 9.183(a) is consistent with current industry standards and practices, and because the change is outside the scope of the notice, however, the issue of the distance requirements for storage of ASME containers will be considered in more detail in a future rulemaking proceeding

The commission changed the text in § 9.183(a)(1)(C) to clarify the requirements for uprights, braces, and cornerposts for fencing

Three comments pointed out that § 9.183(a)(1)(D) and (E) were mispublished and do not duplicate language from current § 9.63(a)(1)(D) and (E), and that (E) should be revised to read, "A minimum distance of two feet shall be maintained between the fencing and container(s) or system(s) so protected." The commission agrees that § 9.183(a)(1)(D) and (E) should contain the language from current § 9.63(a)(1)(D) and (E), but the commission disagrees that § 9.183(a)(1)(E) should be revised as suggested

Four comments suggested that the first sentence in new § 9.183(a)(2)(C) should be revised to read "The horizontal guard railing shall be a minimum of 30 inches above the ground." The commission disagrees with this comment, because the language in the rule as adopted is more specific and therefore easier for licensees or other affected persons to comply with and for the commission to enforce

Another comment about § 9.183(a)(2)(C) stated that the third sentence should be revised to read "The horizontal guardrailing shall be welded or bolted to the vertical supports so as to prevent displacement under normal conditions." The comment pointed out that, as proposed, if under any circumstances the guardrail might be displaced, the installation is in violation. Using the standard of "normal circumstances" would take into consideration the nature of the traffic to which the protected items are exposed. The commission agrees that a change in the language would clarify the intent of rule, but disagrees that the wording suggested in the comment is adequate. To clarify the intent of the rule, the commission adds "under normal conditions, taking into account the nature of the traffic to which the protected items are exposed" to the end of the third sentence

One comment correctly pointed out that the requirements in § 9.183, Table 1, items A, B, or C, which do not prohibit combining all lettering for the signs into one sign, are inconsistent with the requirements set forth in the text of § 9.183(c). The commission agrees, and has changed the language in the rule to match the chart

One comment suggested changing the wording in § 9.183(d) to read "ASME container(s) and DOT portable container(s) in storage racks that contain LP-gas or have been used in LP-gas service shall be stored or installed in accordance with the distance requirements

specified in Tables 1 and 2 of § 9.185 of this title (relating to LP-gas storage and installation distance requirements)," to clarify that the rule is intended to apply to containers in storage racks. The commission agrees that this rule needs clarification and has made some changes to that end, but the issue of the distance requirements for storage of ASME containers will be considered in more detail in a future rulemaking proceeding.

Another comment questioned whether § 9.183(d) pertains to the storage of DOT 20 pounds cylinder in storage racks for resale, that is, a 20 pounds cylinder exchange, because if this section pertains to storage of any and all ASME and DOT containers, then it is a new requirement. The comment stated that the commission's concern should be the installation of these containers, not the location of the containers when they are out of service. The commission's response is that this comment addresses the earlier publication of the incorrect chart on October 19, 1993; the correct chart was published on November 19, 1993. The correct chart shows that the requirements do apply to stationary ASME or DOT containers. The commission has reworded § 9.183(d) to clarify that Table 1 sets forth the distance requirements for installation of stationary ASME containers and DOT portable containers, and Table 2 sets forth the distance requirements for storage of DOT portable containers awaiting use or resale.

Another comment concerning § 9.183(d) stated that it does not belong under uniform protection standards, because subsection (d) is related to distances, it should be moved to § 9.185 and should be reworded to clarify its meaning. The commenter understands that this provision is intended to apply to containers that are awaiting use or that have been returned after use and are stored in storage racks, as in convenience store cylinder exchange dealerships. The comment observes that if this understanding is correct, then the language may be deleted entirely (as opposed to being sandwiched into § 9.185), because it will be covered by relabeling § 9.185, Table 2, but if not, then the section should be withdrawn, rethought, clarified, and then re-proposed at a later date. The commenter believes that, as published, this provision adds the potential for complications which do not have workable solutions. The commission disagrees with the comment because this section is intended to apply to storage racks and other types of container storage. Because the commenter did not identify the "complications" claimed to be caused by the new rule, the commission cannot respond further

One comment relating to § 9.183(e) stated that it should be reorganized and that the minimum construction requirements for storage racks be changed to include the following: 18 gauge perimeter support members with 13 gauge expanded metal or side members providing for ventilation and protection from tampering, 18 gauge metal roof; and padlock loop (welded on). The standards should further provide that storage rack which meets Occupational and Health Administration (OSHA) standards should be considered in compliance with these minimums. The commission disagrees with the suggested re-

organization, but agrees that the rule needs clarification, although not as suggested in the comment

Specifically, the commission disagrees with the proposal that meeting OSHA standards should be considered compliance with commission minimum standards, because OSHA standards could be less stringent than commission minimum standards. To clarify the rule, however, the commission has reworded §9 183(e)(1) to require 18 gauge steel perimeter members with 13 gauge expanded steel panels providing for ventilation and protection from tampering

Another comment suggested reorganizing §9 183(e), (f), (g), (h), and (i) into one paragraph labeled "(d) Storage Racks," and proposed paragraphs (e)-(i) would be numbered, (1), (2), (3), (4), and (5), so that each paragraph under §9 183 deals with a form of protection. The commission disagrees with this comment because the rule cannot be reorganized as suggested within the current numbering scheme

A comment suggested moving the text in §9 183(j) to §9 185 where it could be added as subsection (e) with paragraphs (1), (2), and (3). The commenter agreed that the language from old §9 80 should be retained. The commission disagrees with the proposed reorganization, because §9 183(j) relates to use of containers in buildings, not distances

Three comments relating to §9 183, Table 1, footnote 1, suggested rewording the footnote to delete the words "and Bulkheads" so that it reads "Applies to installation of 4,001 gallons or more aggregate water capacity protected by guardrailing required by §9 183 at commercial, bulk storage, cylinder filling or forklift installations." The commission disagrees with these comments, because §9 187 requires protection by vertical bulkheads. However, to add clarity, the commission has changed the wording in footnote 1 to read as follows: "1. Applies to installation of 4,001 gallons or more aggregate water capacity protected by guardrailing, as required by §9 183, and by bulkheads, as required by §9 187 at commercial, bulk storage, cylinder filling or forklift installations."

A comment concerning §9 183, Table 1, item E stated that the wording should be changed such that on commercially available emergency shutoff valves, the lettering may be one inch high and that the colors should not be limited to white letters on a red background as long as the lettering stands out. The commission agrees that the height requirement for the letters on the sign should be changed to one inch, but disagrees that the color requirement should be changed, due to the difficulty of enforcing the subjective standard that the lettering should stand out.

An additional three comments concerning §9 183, Table 1, item E, suggested changing the wording from "PROPANE EMERGENCY VALVE, PUSH" to "PROPANE EMERGENCY SHUTOFF." The commission agrees that the wording should be changed to make the requirement clearer, since not all valve can be activated by pushing. Item E has been reworded to require the sign to have the words "PROPANE EMERGENCY SHUTOFF

VALVE" and to specify that the sign must also indicate the means of activating the shutoff valve

A comment on §9 183, Table 1, item I, suggested replacing the abbreviation "no" for number with the symbol "#." The commission disagrees because the symbol could be misconstrued as meaning weight

Three comments correctly pointed out that in the last sentence of §9 184(a)(3), the reference to Table 4 should be to Table 3. The commission has made the change

Seven comments suggested deleting the words "excluding dispensing from an automatic dispenser" from §9 184(a)(5), based on the commenters' opinion that at least one person should be in the immediate vicinity when dispensing from an automatic dispenser. The commission agrees and has changed the wording of the section, although not as suggested in the comments, to include this requirement

A comment regarding §9 184(a)(7) suggested deleting the words, "transport, stationary, portable, mobile fuel, or motor fuel" from the first sentence so that it reads, "Any container that may have contained . . ." The commission agrees that the suggested change makes the meaning of the rule clearer, because the requirement is not restricted to particular types of containers but by contents other than LP-gas. The change is made in the adopted section

Two comments concerned the new provision in the third sentence of §9 184(a)(12)(A)(i) that structural metal supports may be employed when protected against fire. The comments stated that structural metal supports are fire resistant by nature, that horizontal container installations using structural metal supports with steel cradles as well as skid tanks have been made commonly throughout the state, and that if additional fire protection is required, it will create additional expense to provide foam or other type of fire protection. The comments requested that, unless the commission has fire or accident information on this subject, this requirement be deleted as unnecessary. The commission's response is that this comment warrants further consideration; therefore, this requirement has been deleted and will be considered in a future rulemaking

Regarding vertical containers, three comments recommended changing §9 184(a)(12)(B) to read " . . . container is mounted in accordance with the manufacturer's instructions or sound engineering practices approved by a Registered Professional Engineer." According to the comment, this change would allow industry to use the manufacturer's instructions on smaller type standard vertical containers instead of hiring a Registered Professional Engineer. The commission agrees because if there are manufacturer's instructions, they will have been written in accord with sound engineering practices, if there are no manufacturer's instructions then the installation can be made using sound engineering practices approved by a Registered Professional Engineer. The change also clarifies the commission's intent to allow vertical installations of containers originally manufactured to be so installed

One comment stated that there is no logical reason for the prohibition in §9 184(a)(15) against having a canopy or covering over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed, as long as any relief valve is extended through the canopy or cover, and that the industry needs to be consumer friendly without sacrificing safety. The commission disagrees with the comment, a canopy or covering could deflect flame back onto the container or could prevent access by fire extinguishing materials. The commission makes no change

Two comments regarding §9 184(a)(17) would add the word "valve" between "container" and "a," so that the paragraph would read "Identification of installations. Upon completing the installation of an LP-gas container, except those used for bulk storage or retail DOT container filling/service station installations, the licensee making the installation shall attach to the container valve a tag of metal or other permanent material indicating the name of the LP-gas licensee, current LP-gas license number, and the year installed. For requirements regarding identification of conversions of motor vehicles, see §9 771 of this title (relating to identification labels)." The commission disagrees with this proposed change, because the purpose of the requirement is to identify the installer of the container, and the rule as adopted allows labels to be easily affixed

One comment proposed adding the words "Excluding DOT containers," to the beginning of §9 184(b)(4), so that it would read, "Excluding DOT containers, container discharge outlets shall be provided with an excess flow valve or internal valve(s) with excess flow capabilities." The commission agrees with a portion of this comment, and the necessary revision has been made to the rule to clarify that all ASME or DOT containers, excluding portable DOT containers, shall be provided with an excess flow valve or internal valve with excess flow capabilities

A comment suggested adding the following sentence to §9 185(a) to clarify the intent and scope of the distance requirements: "Distance requirements specified for stored containers refer to containers stored at consumer locations and do not apply to new or used containers stored at Category E licensees' places of operation or tank storage yards." The commission agrees, and has changed the wording to clarify that the rule applies to installation of ASME or DOT containers only

A comment suggested clarifying the reference to Tables 1, 2, and 3 in §9 185(a) by changing the wording to read "Containers used for LP-gas storage or installations shall be located in accordance with the distance requirements specified in Tables 1, 2, or 3 of this section." The commission agrees that the language in §9 185(a) should be clarified to indicate that Table 1 applies to installation of ASME or DOT containers only. The issue of distance requirements for storage of ASME or DOT containers at places of operation or tank storage yards of all categories of licensees will be considered in a future rulemaking

Four comments asked that the commission add a footnote 9 to §9 185, Table 1, item II

Manufactured Housing The footnote would retain the requirements of §9 65(d)(1) and would provide that DOT container(s) may be located within ten feet of manufactured housing when the aggregate LP-gas capacity does not exceed 300 pounds and no single container exceeds 105 pounds LP-gas capacity. The commission agrees that Table 1 should be clarified regarding distance requirements for DOT containers installed at manufactured housing, and has added footnote 9 consistent with the comments and with current requirements.

A comment on §9 185, Table 1 proposed changing the distance requirements in the first column (relating to containers up to 25 pounds capacity) to 0 feet. The commission response is that this comment relates to the incorrect table published on October 19, 1993, the correct table was published on November 19, 1993.

Another comment on §9 185, Table 1, suggested changing the heading to read "Minimum Distance Requirements for DOT or Stationary ASME Container Installations." Again, this comment relates to the incorrect table published on October 19, 1993, the correct table was published on November 19, 1993.

Still another comment concerning §9 185, Table 1, item I General, Line A, Source of Ignition/Combustible Materials recommended that the distance in each column of Line A be changed to read "10 feet." The commission disagrees and declines to make the change, because this distance requirement is consistent with that specified in former §9 64 of this title (relating to uniform safety requirements).

Three comments suggested adding to the heading of §9 185, Table 2, the words "In Storage Racks," so that it would read "MINIMUM DISTANCE REQUIREMENTS FOR STORAGE OF PORTABLE DOT CONTAINERS IN STORAGE RACKS." Adding these words would make the requirements in Table 2 not apply to a Category E Licensee's place of operation. The commission disagrees with the comment in regard to containers in storage racks because the rule is intended to address distance requirements for DOT containers in storage not only in racks but also in other locations or stored by other means. The commission agrees, however, that the title of the chart should clearly state that these requirements apply only to DOT portable containers awaiting use or resale is necessary, and has made the change.

Another comment on §9 185, Table 2 proposed changing the heading of the second column (related to storage capacities of containers) to read 25 to 720.99 pounds. The commission disagrees with the comment, because making the change would change the intended scope of application of the rule.

One comment on §9 185, Table 2 recommended changing the subheading to read "Containers with Individual (I) or Aggregate (A) LP-Gas Capacity." The commission agrees and has made the change.

A comment on §9 185, Table 3, opposed the requirement of a 15-foot separation of manual dispensers from other fuel dispensers. The commission disagrees because automatic

dispensers have safety equipment that reduces the potential for LP-gas liquid or vapor to escape, thereby reducing the likelihood of an incident that could cause property damage or bodily injury. Manual dispensers do not have similar safety features. A 15 foot separation has been proven adequate.

Two comments on §9 185, Table 3, suggested two changes. The first would add footnote 1 to "A Automatic Dispenser," to read, "Automatic dispensers at private fueling installations not available to the general public may use Section B distances." As an alternative, this footnote could be placed on "A Automatic Dispenser" in the first and second columns only. By adding this footnote, allowance would be made for automatic dispensers in private yards which have commonly been used successfully throughout the industry and would be unaffected by the "general public use" type of installation. The second change would add footnote 1 to line A, with distances related to each of the first three columns so that they read 3 feet 1, 5 feet 1, and 10 feet 1, respectively. The footnote would then read "Automatic dispensers at private filling installations (not available to the general public) may use Section B distances." The commission agrees that the table should be modified to show that the requirements apply to automatic dispensers at public refueling facilities only, and not to automatic dispensers at private refueling installations, and has made the change.

Another comment on §9 185, Table 3, suggested that the rule exempt (for clarification purposes) private motor fuel installations from the automatic dispenser rules in Division XII. The commission points out that automatic dispensers at private motor fuel installations are already exempt from Division XII by the definition of "automatic dispenser" in §9 2 of this title (relating to definitions), which is that automatic dispensers are LP-gas dispensers which are operated by the general public and which require transaction authorization.

Two comments on §9 185, Table 3, suggested adding footnote 2 in the last column labeled "Other Flammable Fuel Dispensers" to read "Excludes LP-gas dispenser," for clarification. The commission disagrees that this column requires a footnote for clarification, because the term "other flammable fuel dispensers" clearly means dispensers of fuels other than LP gas.

The commission asked specifically for comments concerning the requirement of a minimum distance between LP-gas dispensers and other flammable fuel dispensers in §9 185, Table 3. As proposed the rule required that an LP-gas dispenser must be at least three feet from other flammable fuel dispensers. The commission received four comments opposing the proposed requirement and seven comments supporting it.

Among those comments opposing the three foot minimum distance requirement, one stated that the NFPA 58 rule of 20 feet is a good minimum distance. Other comments stated that the minimum distance requirement should be rethought with more clarification offered on automatic dispensers. Other opposing comments stated that the three foot separation would precipitate accidents result-

ing in bodily harm and property damage, which would have a disastrous effect on propane's image, that current propane refueling technology is not ready for a minimum three foot separation between propane and gasoline dispensers. Another comment pointed out that there is no similar concern about CNG dispensers because of the minimum 12 foot distance requirements between dispensers for CNG.

Comments supporting the proposed three foot minimum distance observed that a 25 foot minimum would eliminate many potential LP-gas motor fuel dispensers, because most convenience stores and service stations do not have the space to allow for 25 feet. Another stated that it is in the best interest of the public and dealers to have the freedom of choice to set the dispenser further if desired. Comments supporting found no exceptional hazard related to this distance in comparison with current requirements for liquid fuel dispensers co located on fuel islands.

The commission agrees with the comments supporting the rule as proposed, and has made no change because, with the other safety requirements already in the rules, the three foot minimum distance is the best choice. Dealers have the option of locating an LP-gas dispenser more than three feet from fuel dispensers. The rules require use of a fueling nozzle with a seat which cannot be activated unless it is connected to a filler valve. Motor/mobile fuel tanks filled by an automatic dispenser must have an 80% stop/fill device in order to prevent overfilling. Finally, dispensers in Texas are safer because they are required to have safety features not currently required in the NFPA standards.

Another comment regarding §9 185, Table 3, suggested that the first three columns of the table should be reversed, so that a manual dispenser would be "three feet" and an automatic dispenser "N/A," with the same changes in columns three and four. The commission disagrees, the rules currently do not prescribe any minimum distances between dispensers at private refueling stations, which may be configured with self-contained units, self-contained cabinets, and/or tanks with refueling hoses connected directly to them. Refueling at a private installation is less hazardous than at a public refueling facility fewer people use each private installation, and those who use private refueling installations are more experienced because they perform LP-gas refueling on a regular basis.

One comment opposed the requirement in §9 187(a) that there be only one transfer hose attached to each pipe riser. This commenter has had a vertical bulkhead with dual liquid and vapor transfer hoses for ten years, and never had a problem. The commission has previously stated that two bulkheads could be installed side by side or end to end, and this type of configuration would be acceptable for loading two trucks at the same time. Because this type of configuration could be accomplished with a minimum of 18 inch separations, the commenter fails to see any improvement in safety over the dual hoses on one pipe riser through a bulkhead. The commission disagrees with the comment, the reason for the requirement is to ensure a clean

break in the event of a pullaway. However, for convenience, bulkhead piping and risers can be configured to allow for multiple transfer hoses to be installed. For example, instead of a T-fitting being installed on top of a riser, the T-fitting could be installed below the bulkhead kickplate and two risers installed off that T-fitting. The commission has made no change in the section.

The commission has made additional changes for greater clarity in the rules. Table 1 of §9.183 has been amended to indicate that the requirements in item E apply to licensee or non-licensee ASME containers of 4,001 gallons or more, aggregate water capacity (last column). Item H of that table has been amended to include the words "or work press" as an acceptable abbreviation for "working pressure" because it is commonly used and understood in the LP-gas industry. The commission has made a change to §9.187, because the section is being adopted after the February 1, 1994, date for compliance specified in the proposed rule, the new date for compliance has been changed to November 1, 1994. Additional wording changes have been made for clarity.

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The new sections implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.183 Uniform Protection Standards

(a) All LP-gas transfer systems and storage containers, excluding automatic dispensers, shall be protected from tampering and damage and the protection shall be maintained in good condition at all times and in accordance with one of the three standards set forth in this subsection. Portable DOT containers in storage other than storage racks described in subsection (e) of this section, referred to in subsection (d) of this section, however, shall be protected in accordance with paragraph (1) of this subsection. Automatic dispensers for general public use shall be protected against collision damage in accordance with §9.1571(a) of this title (relating to protection of dispensers).

(1) Fencing

(A) Fencing material shall be chain link type with wire no smaller than 12 1/2 American wire gauge in size.

(B) Fencing shall be no less than six feet in height at all points. Fencing may be five feet in height when topped with

at least three strands of barbed wire, with the strands no more than four inches apart.

(C) All uprights, braces, and/or cornerposts of the fence shall be composed of noncombustible material if located within the minimum distances specified for sources of ignition or combustible materials set forth in Tables 1 and 2 of §9.185 of this title (relating to LP-gas storage and installation distance requirements) for the enclosed LP-gas transfer system or LP-gas container(s).

(D) All fenced enclosures shall have at least one gate suitable for entrance and egress. All gates shall be locked whenever the area enclosed is unattended.

(E) A minimum clearance of two feet shall be maintained between the fencing and the container, material handling equipment, and the entire dispensing system.

(F) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container is designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in paragraph (2) of this subsection.

(G) The operating end of the container (including all material handling equipment and the entire dispensing system) shall be completely enclosed by fencing.

(H) Any ASME container or manual dispenser originally manufactured as a completely self-contained unit is exempt from complying with the fencing requirements of this section. However, such a self-contained unit shall still comply with paragraph (2) of this subsection.

(I) Any container or manual dispenser not originally manufactured as a completely self-contained unit shall comply with the fencing requirements unless approval is received from the commission prior to installation. The request for approval shall be in writing and shall specify the manner in which the valves, fittings and other appurtenances will be protected against tampering by unauthorized persons, including specifications for materials to be used. If approval is granted, the self-contained unit shall still comply with the requirements of paragraph (2) of this subsection.

(J) The gate in the fence where a bulkhead is installed must be located directly in front of the bulkhead. The width of the gate shall be sufficient to prevent binding of the transfer hose(s) on the gate posts and to insure breaking of the bulkhead pipe riser(s) (nipple(s)) in the event of a pull-away.

(2) Guardrails

(A) Where fencing is not used to protect the installation as provided in paragraph (1) of this subsection, then valve locks, a means of locking the electric control for the pump(s) or compressor(s), or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas.

(B) Vertical supports for guardrails shall be a minimum of three-inch schedule 40 steel pipe, or material with equal or greater strength. The vertical supports shall be capped on the top and anchored below grade a minimum of 18 inches in concrete, with a minimum height of 30 inches above the ground. Vertical supports shall be spaced no more than four feet apart.

(C) The top of the horizontal guardrailing shall be secured to the vertical supports a minimum of 30 inches above the ground. The horizontal guardrailing shall be no less than three-inch schedule 40 steel pipe, or material with equal or greater strength. The horizontal guardrailing shall be welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent displacement of the horizontal guardrailing under normal conditions, taking into account the nature of the traffic to which the protected items are exposed.

(D) No opening in the horizontal guardrailing, except the opening directly in front of a bulkhead, may exceed 36 inches. A means of temporarily removing the horizontal guardrailing and/or vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall only be routed through the 45 degree opening in front of the bulkhead, or over the horizontal guardrailing.

(E) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LP-gas transfer system or container. The two posts at the ends of any railing which protects a bulk-

head shall be located at 45 degree angles to the corner of the bulkhead

(F) The operating end of the container (including all material handling equipment and the entire dispensing system) and any part of the LP-gas transfer system or container which is exposed to vehicular traffic must be protected from damage by the vehicular traffic. The protection shall extend at least 24 inches beyond any part of the LP-gas transfer system or container which is exposed to vehicular traffic.

(3) Fencing and Guardrails. A combination of the protection standards authorized by paragraphs (1) and (2) of this subsection shall not result in less protection than either standard.

(4) Exemptions. This subsection does not apply to the following:

(A) LP-gas systems and containers located at a private residence.

(B) LP-gas systems and containers which service vapor systems, where the aggregate storage capacity of the installation is less than 4,001 gallons, and where the transfer system is not subject to vehicular traffic.

(C) LP-gas piping which contains no valves and which complies with the provisions of §9.959 of this title (relating to exterior piping), and

(D) LP-gas storage containers located on a rural consumer's property from which engine or motor fuel containers are filled.

(b) The provisions of this section notwithstanding, the commission may require an installation to be protected in accordance with subsection

(a) of this section when evidence exists that because of exceptional circumstances, added safeguards are needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the determination made under this subsection, then that person may request a public hearing on the matter. However, until a decision is issued subsequent to a hearing on the matter, the installation shall either be protected in the manner prescribed by the commission, or closed with all product withdrawn from it.

(c) Table 1 of this section specifies requirements for signs at certain LP-gas installations or storage areas and lettering of certain LP-gas containers. The requirements in Table 1, items A, B, or C, do not prohibit combining all lettering for the signs onto one sign.

SIGNS/LETTERING
§9.183

Requirement	Automatic Dispenser Area	Storage Rack(s) For Portable DOT Containers	Licensee or Non-Licensee ASME 4001 + Gal. A.W.C.1	Any Licensee Installation (DOT Container Filling, or Service Station Only)
A. Sign with red letters at least 2 inches high, on white or aluminum background - NO SMOKING	●	●	●	●
B. Sign with letters at least 4 inches high, on white or aluminum background; red letters - WARNING-FLAMMABLE GAS; black letters - NO TRESPASSING			●	
C. Sign with letters at least ½ inch high - EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLES MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	●			●
D. Letters at least 2 inches high - PROPANE (on each operating side of the dispenser)	●			
E. Sign with letters at least one 1) inch high, white letters on red background - PROPANE EMERGENCY SHUTOFF VALVE; Including words that indicate means of activation.	●		●	

TABLE 1

(Continued on next page)

● = Requirement applies

SIGNS/LETTERING
§9.183

Requirement	Automatic Dispenser Area	Storage Rack(s) For Portable DOT Containers	Licensee or Non-Licensee ASME 4001 + Gal. A.W.C. ¹	Any Licensee Installation (DOT Container Filling, or Service Station Only)
F. Letters on container at least 4 inches high indicating nature of contents (e.g. LP-Gas, Butane, Propane)			● 2	● 2
G. Lettering at least 4 inches high indicating name of licensee			● 2	● 2
H. Lettering at least 2 inches high on operating end of container - WORKING PRESSURE PSIG ____; or WORK. PRESS. ____			●	●
I. Lettering at least 2 inches high on operating end of container - CONTAINER (OR TANK) NO. ____			● 3	● 3

TABLE 1

NOTES TO §9.183, TABLE 1

1. Applies to installation of 4,001 gallons or more aggregate water capacity protected by guardrailing as required by §9.183, and bulkheads as required by §9.187 at commercial, bulk storage, cylinder filling or forklift installations.
2. Lettering shall be in sharp contrast to background and shall be readily visible to the public.
3. Applies at a facility which has two or more containers.

(d) Stationary ASME container(s) and DOT portable container(s) shall be installed in accordance with the distance requirements in Table 1 of §9.185 of this title (relating to LP-gas storage and installation distance requirements), and DOT portable containers awaiting use or resale shall be stored in accordance with the distance requirements specified in Table 2 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(e) A storage rack may be used to store 20 pound DOT portable or forklift containers. Welding shall be used to construct the storage rack, and it shall be constructed of a minimum:

(1) 18 gauge perimeter members with 13 gauge expanded steel panels providing for ventilation and protection from tampering;

(2) 18 gauge steel roof; and

(3) padlock loop (welded on). The storage rack shall also meet the Occupational Safety and Health Administration (OSHA) standards.

(f) A storage rack with a solid steel back constructed of a minimum 18 gauge steel may be located against a combustible wall.

(g) A storage rack used to store 20 pound DOT portable containers that is not installed against the wall of a building shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (a)2) of this section, or;

(2) substituting guardposts in lieu of guardrails if:

(A) the guardposts are a minimum 3 inch Schedule 40 steel pipe, capped on top and anchored in concrete a minimum of 30 inches below ground with a minimum height of 30 inches above the ground; or

(B) in the event the guardposts cannot be anchored in concrete a minimum of 30 inches below ground, they are constructed of a minimum of 4 inch Schedule 40 steel pipe attached by welding to an 8 inch by 8 inch steel plate a minimum of 1/2 inch thick. The guardpost and steel plate shall be installed so that they cannot be displaced.

(h) All service valves on DOT portable containers that are in storage shall be in the closed position at all times.

(i) Any DOT portable container in storage, except those in storage racks or at single family dwellings used as private residences or DOT forklift containers, shall be enclosed by fencing meeting the require-

ments of paragraph (2) of subsection (a) of this section. This does not apply to DOT portable container(s) that have been used in LP-gas service but are not awaiting use or resale.

(j) DOT portable containers may be used but not stored inside a building when the container is required as a fuel supply container for approved torches being used in the construction, repair, or improvement of the building or structure and its fixtures and equipment, or for other industrial uses. Such installation shall comply with the following additional requirements

(1) The regulator shall be connected directly to the container valve(s)

(2) Containers shall not have an aggregate or individual water capacity in excess of 250 pounds

(3) Such containers, while being used in a building, shall not be placed so that they are subject to excessive rises in temperature, mechanical injury, or to tampering by unauthorized persons.

§9.184 Uniform Safety Requirements

(a) General.

(1) Open flames and other sources of ignition. No source of ignition may be located within the vicinity of an LP-gas container or an LP-gas transfer system except in accordance with the distances set forth in Table 1, 2, or 3 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(2) Combustible materials. The vicinity of a stationary LP-gas container and transfer or dispensing equipment shall be kept clear of all types of combustible materials as specified in Table 1, 2, or 3 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(3) Storage of LP-gas next to flammable liquids. Suitable means shall be taken by provision of a dike, diversion curbs, and grading to prevent the accumulation of flammable liquids such as gasoline, diesel, etc., under LP-gas storage containers. LP-gas containers shall not be located within a dike area. The minimum separation between LP-gas containers, automatic dispensers or manual dispensers and flammable liquid containers shall be as specified in Table 3 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(4) Extinguishers required. Each LP-gas service station or portable DOT container filling installation shall be provided with at least two hand fire extinguishers, one of a type and size not less than five pounds capacity, and one of 15 or 20 pounds capacity, suitable for extinguishing

LP-gas fires. Extinguishers shall be fully charged at all times and shall be kept in good working condition.

(5) Transfer or dispensing of LP-gas. During the transfer or dispensing of LP-gas, which includes the time period from connection to disconnection, at least one person shall remain in the immediate vicinity of the transfer or dispensing equipment in a position to monitor the flow of fuel and to control the transfer or dispensing equipment. Automatic dispensers shall be manually operated by the user at all times during the transfer operation.

(6) Lifting lugs. Lifting lugs in good repair on an ASME container filled to no more than 5.0% of its maximum water capacity may be used for lifting or lowering. Additional means of lifting or lowering shall be utilized when lifting or lowering an ASME container containing more than 5.0% of its maximum water capacity.

(7) Contamination. Any container that may have contained product other than LP-gas shall be thoroughly cleaned and purged prior to introducing LP-gas into such container. Only grades of LP-gas determined to be "non-corrosive" may be introduced into any container. "Non-corrosive" means the corrosiveness of the gas does not exceed the limitation for classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases." LP-gas may not contain anhydrous ammonia, hydrogen sulfide, or any other contaminant.

(A) If it is known or suspected that the LP-gas has been or may be contaminated, the person responsible for the contamination shall have one or more of the test(s) contained in "Liquefied Petroleum Gas Specifications for Test Methods, Gas Processors Association (GPA) 2140" performed by a testing laboratory or individual qualified to perform the test(s). The commission may request information necessary to determine the qualification of any testing laboratory or individual.

(B) The results of the test(s) shall certify whether the LP-gas is contaminated or corrosive, whether the use of the LP-gas in the container(s) will damage either the stationary or non-stationary container(s) or the container valves, fittings or appurtenances, or whether the contaminated product or container or container valves, fittings, or appurtenance will endanger the health, safety, and welfare of the general public.

(C) Based on the results of the test(s), the commission may require that the LP-gas be removed immediately from the container or that the container be removed immediately from LP-gas service

(8) Transfer hoses. LP-gas transfer hoses on LP-gas transports shall not be routed in or through any building for the purpose of servicing an LP-gas container.

(9) Lighting. If LP-gas transfer operations are routinely conducted during other than daylight hours at any LP-gas installation having an aggregate water capacity of 8,000 water gallons or greater, sufficient light shall be provided to ensure a safe transfer operation.

(10) Length of flexible connectors. Flexible connectors, other than LP-gas transfer hoses in excess of 3/4 inch in diameter shall not exceed 42 inches in length and shall not be used in lieu of pipe fittings to change direction in liquid or vapor piping.

(11) Pull-away device. Each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a pull-away device. This requirement is not applicable to the LP-gas transport transfer operation at a bulk storage installation.

(12) Support of aboveground containers. All LP-gas storage containers, except skid containers, shall be provided with substantial masonry or noncombustible structural supports on a firm masonry foundation so that the bottom of the container is not in contact with the ground. The use of tile or hollow brick is not permitted.

(A) Except as modified by the note set forth in clause (i) of this paragraph, aboveground containers shall be supported as follows.

(i) All horizontal stationary LP-gas containers in excess of 1,200 water gallon capacity shall be supported through an arc of 120 degrees (which is 60 degrees either side of vertical based on the center line at the bottom of the container) so as to prevent the concentration of excessive loads on the supporting portion of the shell. The mounting shall be in such a manner as to permit expansion and contraction of the container and mounting due to fluctuations in temperature. That portion of the container in contact with the foundation or saddles shall be protected against corrosion.

(ii) When installed for use, containers shall not be stacked one upon another except when designed by the manufacturer for stacking. The outside bottom of a container shall not be more than five feet above the ground unless a greater distance is recommended by the manufacturer. If the container is installed more than

five feet above the ground, it shall be supported to avoid displacement of the container.

(B) Containers originally manufactured to be installed in a vertical position may be installed vertically, provided that such a container is mounted in accordance with the manufacturer's instructions or sound engineering practices approved by a Registered Professional Engineer.

(13) Painting of containers. All ASME containers, except vaporizer and motor/mobile fuel containers installed in accordance with Subchapter G of this chapter (relating to Division V), shall be painted white or aluminum. LP-gas transports shall be painted in accordance with §9.512 of this title (relating to painting).

(14) Lettering, marking, and numbering of containers. All containers shall be lettered, marked, or numbered in accordance with the requirements set forth in Table 1 of §9.183 of this title (relating to uniform protection standards).

(15) Covering LP-Gas Containers. No canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container

(16) Underground containers. A container designed for underground installation only shall not contain liquid fuel at any time the container is aboveground or uncovered.

(17) Identification of installations. Upon completing the installation of an LP-gas container, except those used for bulk storage or retail DOT container filling/service station installations, the licensee making the installation shall attach to the container a tag of metal or other permanent material indicating the name of the LP-gas licensee, current LP-gas license number, and the year installed. For requirements regarding identification of conversions of motor vehicles, see §9.771 of this title (relating to identification labels).

(b) Valves.

(1) Valves in closed position. Except in vaporizers and vapor systems, all vapor and liquid container shutoff valves shall be kept in the fully closed position when the LP-gas installation is unattended.

(2) Hydrostatic relief valve. Any closed portion of liquid piping or hose designed to operate up to 350 psig shall be

equipped with a hydrostatic relief valve having a pressure setting of not less than 400 psig or more than 500 psig, or a bypass valve installed according to the manufacturer's instructions. Liquid piping or hose designed to operate above 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of not less than 110% or more than 125% of the system design pressure, or a bypass valve installed according to the manufacturer's instructions. Hydrostatic relief valve discharge shall be directed or vented so that any gas released will not directly impinge upon containers, any part of a vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment of a vehicle.

(3) Container filling and vapor return outlet requirements. Any filling and vapor return outlets provided on a container shall be provided with valves to prevent back flow.

(4) Container discharge outlet requirements. The discharge outlet of all ASME or DOT containers, excluding portable DOT containers, shall be provided with an excess flow valve or an internal valve(s) with excess flow capabilities.

(5) Other container outlet requirements. All other outlets in containers, except relief valves, filling connections, and liquid level gauging devices shall be equipped with excess flow valves.

(6) Excess flow valve design requirements. Excess flow valves, where required by these standards, shall be designed to close automatically and shut off the gas or liquid flow in case.

(A) the flow through the valve exceeds a predetermined rate, which must be less than the pipe line capacity to and from such excess flow valve; or

(B) the pressure on the inlet side of the excess flow valve exceeds by a certain designated number of pounds per square inch the pressure in pounds of the outlet of such valve.

(7) Excess flow valve bypass requirements. Excess flow valves may be designed with a bypass, not to exceed a Number 60 drill size opening, to allow equalization of pressure.

(8) Location of excess flow and back-pressure check valve. An excess flow and back-pressure check valve, where required by these standards, shall be located inside the container or at a point outside where the piping enters the container; in the latter case, installation shall be made such that any undue strain beyond the excess flow or back-pressure check valve will not cause breakage between the container and

such valve. An excess flow valve must be installed immediately upstream from the point at which the manual dispenser is connected to the supply piping. Gauging devices which do not involve the flow of liquid or which are constructed so that outward flow of container contents shall not exceed that passed by a Number 54 drill size need not be equipped with an excess flow valve.

(9) Location of shutoff valves. All connections to containers except pressure relief connections, gauging devices, filler valves and vapor return valves shall have shutoff valves located as close to the container as practicable.

(c) Pumps.

(1) Pump and Pump Accessories. Only positive displacement pumps, equipped with a proper operating pressure activated bypass valve installed in accordance with the manufacturer's instructions shall be used in LP-gas service

(2) Pump and manual dispenser mounting. Pumps and manual dispensers shall be secured against displacement and shall be mounted on a noncombustible support or base.

(3) A retail operated DOT portable container filling installation and/or service station installation shall be equipped with a pump. A remote control shall be

provided outside the dispensing device so that the source of power to the pump may be readily shut off in the event of an accident.

§9.185 LP-Gas Storage and Installation Distance Requirements

(a) LP-gas containers shall be stored or installed in accordance with the distance requirements specified in Table 1, 2 or 3 of this section. Containers used on operating industrial lift trucks may be stored inside buildings, but are limited to those containers actually in use on the industrial lift truck. The operating industrial lift truck shall be stored in an area that will reduce the likelihood of an accident.

**MINIMUM DISTANCE REQUIREMENTS FOR INSTALLATION OF
STATIONARY ASME OR DOT CONTAINERS**

§9.185

Container(s) with Individual or Aggregate Water Capacity (A.W.C.) of:

Minimum Distance From:	0-500.99 Gals.	501-2000.99 Gals.	2001- 4000.99 Gals.	4001- 8000.99 Gals.	8001- 12,000.99 Gals.	12,001 + Gals.
I. GENERAL:						
A. Source of Ignition/Combustible Materials ²	10 feet ¹	15 feet ¹	25 feet ¹	25 feet ¹	25 feet ¹	25 feet ¹
B. Flammable Liquid Container (if in Dike Area, 10 Feet from Center Line)	20 feet	20 feet	20 feet	20 feet	20 feet	20 feet
C. Building (SEE ALSO: Containers Equipped with: Below) ⁵	10 feet	15 feet	25 feet	50 feet	75 feet ³	100 feet ³
D. Adjoining property line ⁵	10 feet ⁴	15 feet	25 feet	50 feet	75 feet	100 feet
E. Roadway, Highway, Railroad, Pipeline, or Utility Right-Of-Way ⁵	10 feet	15 feet	25 feet	50 feet	50 feet	50 feet
F. Adjacent Containers in Multi-container Installation	N/A	3 feet ⁶	3 feet	3 feet	3 feet	3 feet

II. MANUFACTURING HOUSING:

A. From Manufactured Housing	10 feet ⁹	15 feet	25 feet	50 feet	75 feet	100 feet
B. When 10 Foot Distance from Manufactured Housing Cannot be Obtained	3-10 feet	N/A	N/A	N/A	N/A	N/A
C. Source of Ignition ²	10 feet ¹	15 feet ¹	25 feet ¹	25 feet ¹	25 feet ¹	25 feet ¹

N/A = Not Applicable

TABLE I
(Continues on next page)

**MINIMUM DISTANCE REQUIREMENTS FOR INSTALLATION OF
STATIONARY ASME OR DOT CONTAINERS**
§9.185

Container(s) with Individual or Aggregate Water Capacity (A.W.C.) of:

Minimum Distance From:	0-500.99 Gals.	501-2000.99 Gals.	2001- 4000.99 Gals.	4001- 8000.99 Gals.	8001- 12,000.99 Gals.	12,001 + Gals.
III. CONTAINER/INSTALLATION EQUIPPED WITH:						
A. Vertical Bulkhead and Pneumatically Activated ESV's (Buildings or Adjacent Property Lines)	10 feet	15 feet	25 feet	50 feet	60 feet	80 feet
B. Vertical Bulkhead and Cable Activated ESV's (Building or Adjacent Property Lines)	10 feet	15 feet	25 feet	25 feet	67 feet	90 feet
IV. OXYGEN CONTAINER(S):						
A. Aggregate Capacity of 0 - 400.99 CF ⁷ Including Unconnected Reserves		ASME/DOT Container(s) A.W.C. 0-1200.99 Gallons	N/A	N/A	ASME/DOT Container(s) A.W.C. 1201 + Gallons	
B. Aggregate Capacity of 401 - 20,000.99 CF ⁷ Including Unconnected Reserves		20 feet	20 feet	20 feet	20 feet	
C. Aggregate Capacity of 20,001 CF ⁷ or More Including Unconnected Reserves		25 feet	25 feet	50 feet	50 feet	
V. GASEOUS HYDROGEN CONTAINER(S)⁸						
A. Aggregate Capacity of 0 - 399.99 CF ⁷		N/A	N/A	N/A	ASME/DOT Container(s) A.W.C. 500+ Gallons	
B. Aggregate Capacity of 400 - 3,000.99 CF ⁷		10 feet	10 feet	25 feet	25 feet	
C. Aggregate Capacity of 3,001 CF ⁷ or More		25 feet	25 feet	50 feet	50 feet	

TABLE 1

NOTES TO §9.185, TABLE 1

1. *Also applies to any LP-gas transfer system while LP-gas is being transferred, including the time of connection and disconnection and for a reasonably safe period of time after transfer is complete. This does not prohibit operation of a transport engine which is required for the transfer of LP-gas. Vaporizers, tank heater burners, and pilots shall be extinguished during transfer operations unless they meet the minimum distance requirements as they relate to the filling connection of the container.*
2. *Applies to vicinity of container and transfer, handling, or dispensing equipment. Source of ignition includes but is not limited to an open flame, open knife switch, all smoking materials, pilot lights, and non-explosion proof lights. Combustible materials include, but are not limited to trash, weeds, and wood.*
3. *If the building is single story, not used for human occupancy, floor area does not exceed 40 square feet, and container is located more than 50% of the minimum distance (e.g.) 37½ feet or 50½ to 100 feet) the minimum distance does not apply. A maximum of one building at any one location may be located in accordance with this requirement.*
4. *Container(s) having an individual or aggregate water capacity of 500 gallons or less are exempt from the distance requirement to adjacent property lines if the container is used in vapor service only.*
5. *Include material handling equipment.*
6. *Applies to containers of 1,000 gallons or more.*
7. *CF = Cubic feet measured at 70 degrees fahrenheit and atmospheric pressure.*
8. *Gaseous hydrogen container is any receptacle designed for the storage of hydrogen in a gaseous state.*
9. *DOT container(s) may be located within 10 feet of manufactured housing when the aggregate LP-Gas capacity does not exceed 300 pounds, and no single container exceeds 105 pounds LP-Gas capacity.*

**MINIMUM DISTANCE REQUIREMENTS FOR STORAGE OF
PORTABLE DOT CONTAINERS
AWAITING USE OR RESALE
§9.185**

Containers with Individual (I) or Aggregate (A) Water Capacity of:					
	Maximum 2½ lbs.	Less than 720.99 lbs.	721 lbs. to 2,500.99 lbs.	2,501 lbs. to 6,000.99 lbs.	6,001 lbs. and over
I. Outdoors - Minimum Distance From:					
A. Nearest Building of Non-Combustible Material	N/A	0 feet	10 feet	15 feet	25 feet
B. Nearest Building Doorway, or Building Opening	N/A	5 feet	10 feet	15 feet	25 feet
C. Nearest source of ignition or combustible material ¹	N/A	5 feet	10 feet	15 feet	25 feet
D. Dispensing installation	N/A	5 feet	10 feet	15 feet	25 feet
E. Building constructed of combustible material	N/A	5 feet	10 feet	15 feet	25 feet
F. Adjoining property line	N/A	5 feet	10 feet	15 feet	25 feet
G. Roadway; highway; railroad; pipeline; utility right-of-way	N/A	5 feet	10 feet	15 feet	25 feet
II. Inside Building:					
A. Stored or displayed in building provided aggregate water capacity does not exceed 200 lbs.	Yes ²	N/A	N/A	N/A	N/A

TABLE 2

NOTES TO §9.185, TABLE 2

- Source of ignition includes, but is not limited to, an open flame, open knife switch, all smoking materials, pilot lights, and non-explosion proof lights. Combustible materials include, but are not limited to, trash, weeds, and wood.
- Applies to containers with a maximum water capacity of 2½ lbs. used with a completely self-container hand torch, or similar applications.

N/A = Not Applicable

**MINIMUM DISTANCE REQUIREMENTS FOR
AUTOMATIC OR MANUAL DISPENSERS
§9.185**

	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 0-2000.99 Gal.	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 2001- 8000.99 Gal.	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 8001 + Gal.	Building, Property Lines, Roadway, Highway, Railroad, Pipeline Right-of-Way	Other Flammable Fuel Dispensers
A. Automatic Dispenser at a Public Refueling Facility	3 feet	5 feet	10 feet	10 feet	3 feet
B. Manual Dispenser or Pipe Riser Associated with Manual Dispenser at a Private Refueling Facility	N/A	N/A	N/A	15 feet	15 feet

TABLE 3

A.W.C. = Aggregate Water Capacity

(b) No stationary LP-gas storage container shall be placed in any area directly beneath an electric transmission or distribution line (does not include a customer service line) and that area which is six feet to either side of the line. If this distance is not adequate to prevent the broken ends of the electric transmission line(s) and voltage from contacting the LP-gas container in the event of breakage of any conductor, then other suitable means of protection designed and constructed so as to prevent such contact with the container may be used if approval is received from the commission. The request for approval must be in writing and specify the manner in which the container will be protected from contact, including specifications for the materials to be used. If approval is not received from the commission, the container must be located a sufficient distance from the transmission line to prevent such contact.

(c) An LP-gas liquid dispensing installation other than a retail operated DOT

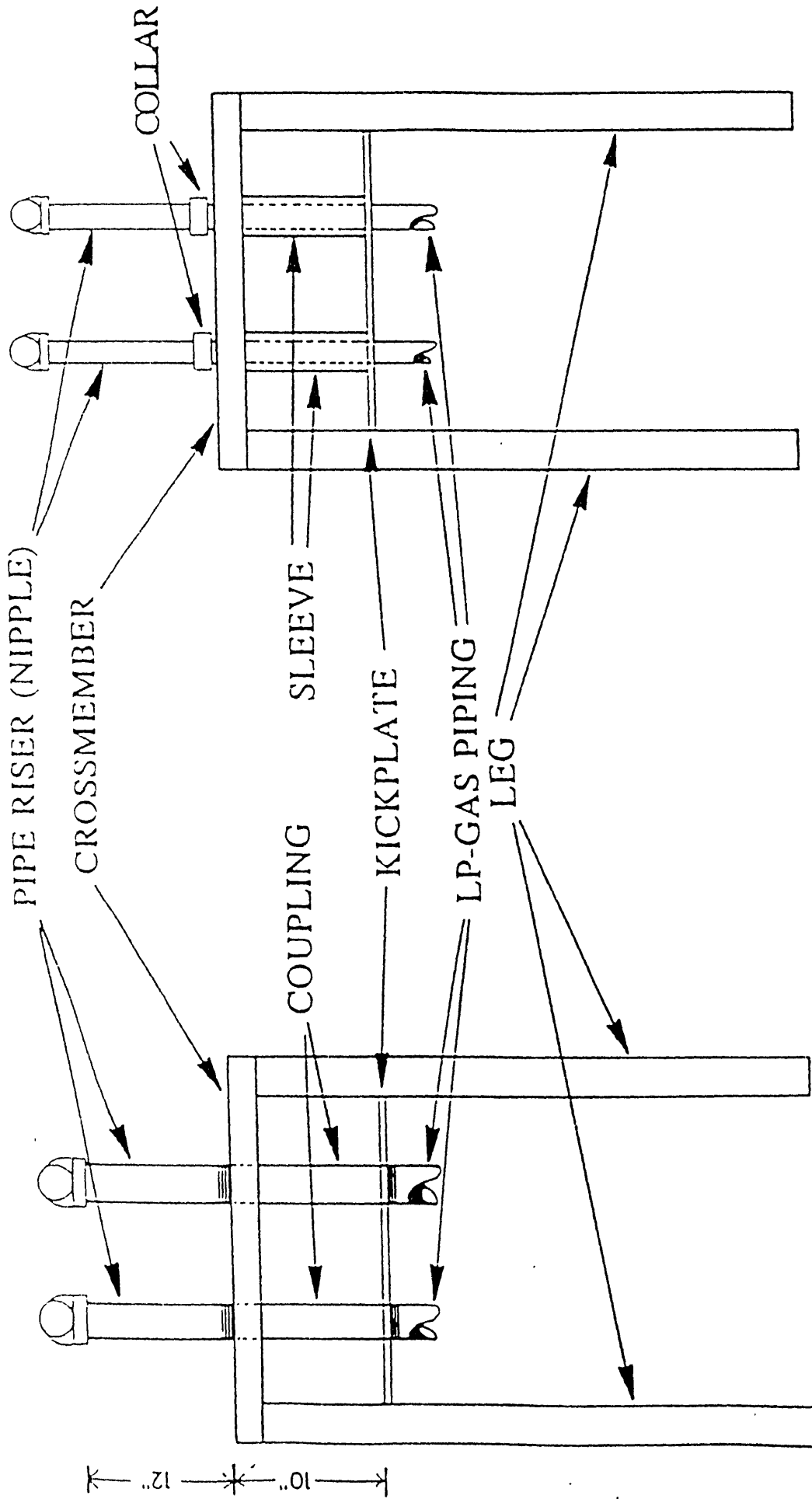
portable container filling/service station installation need not have a pump, provided that the storage container(s) are located one and one half times the required distances as shown in Table 1, 2, or 3 of subsection (a) of this section.

(d) Any LP-gas container constructed prior to 1970 which has an odd-numbered water gallon capacity (e.g., 517 water gallons instead of 500 water gallons) that is not more than 10% greater than the standard water gallon capacity may be installed utilizing the minimum distance requirement based on the standard water gallon capacity

§9.187. LP-Gas Storage Bulkhead Protection

(a) Each LP-gas stationary installation of 4,001 gallons or more aggregate water capacity installed on or after November 1, 1994, ~~the report is design and~~ ~~installed~~ installed not less than ten feet from the container for liquid and vapor return piping.

Additionally, pneumatic or cable activated emergency shutoff valves (ESVs) shall be used for liquid piping and vapor return piping. See Figure 1 of this section for design requirements. A horizontal bulkhead shall not be made into a vertical bulkhead. The top of the crossmember of a vertical bulkhead shall not be more than 28 inches above ground level. Each bulkhead at a licensee location shall include liquid and vapor transfer hose, and only one transfer hose may be attached to each pipe riser. Non-licensee installations are not required to provide liquid and vapor transfer hoses if the liquid and vapor pipe risers are equipped with a filler valve on the liquid pipe riser and a vapor return valve on the vapor pipe riser threaded directly into the elbow or other similar fitting described in subsection (b)(1) of this section. NOTE: This section shall not apply where the liquid and vapor return transfer hoses are connected directly to a 1 3/4 inch or less acme-threaded filler and vapor return valve when the valve(s) are installed directly into the container



TYPICAL
VERTICAL BULKHEAD
WITH SLEEVES

FIGURE 1
§9.187

TYPICAL
VERTICAL BULKHEAD
WITH COUPLINGS

(b) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a transport pull-away while the transfer hose is connected. Bulkheads shall be constructed by welding and the following materials or their equivalent or greater shall be used:

(1) six inch steel channel iron;
(2) legs of four inch Schedule 80 piping;

(3) top crossmember of six inch standard weight steel channel iron. If channel iron is used for the crossmember it shall be installed so the channel portion of the channel iron is pointing downward, to prevent the accumulation of water;

(4) kick plate of 1/4 inch steel plate installed a minimum of ten inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed so as to prevent torsional stress from being placed on the piping to the pipe riser(s);

(5) a Schedule 40 pipe sleeve or 3,000 pound coupling installed between the top crossmember and the kick plate by means of welding to the crossmember and kick plate. If a sleeve is used it shall have a clearance of no more than 1/4 inch for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a Schedule 80 pipe collar, a 12 inch length of Schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling. If a 3,000 pound coupling is used, no collar is required; however, the requirement for a 12 inch length of Schedule 80 threaded (not welded) pipe riser (nipple) and an elbow or other fitting between the bulkhead and hose coupling is required. The purpose of the elbow or other similar fitting is to direct the transfer hose from vertical to prevent bind-

ing or kinking of the hose. The elbow or other fitting(s) shall meet the requirements set forth in Subchapter I of this chapter (relating to high pressure pipe fittings).

(c) Emergency shutoff valves (ESVs) shall be installed in fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a flexible wire braided hose not more than 24 inches long installed between the ESVs and the bulkhead.

(1) ESVs shall be installed according to the manufacturer's instructions.

(2) ESVs shall incorporate all of the following means of closing:

(A) automatic shutoff through thermal (fire) actuation using fusible elements with a melting point not to exceed 250 degrees Fahrenheit;

(B) manual shutoff at the installed locations; and

(C) manual shutoff from a remote location. Remote controls shall be connected to each ESV. Emergency remote controls shall be conspicuously marked according to the requirements of Table 1 of §9.183 of this title (relating to uniform protection standards) and shall be located and maintained to be readily accessible in emergencies.

(3) ESVs or back-flow check valves shall be installed in the piping system in such a manner that any break resulting from a pull-away will occur on the transfer hose side of the bulkhead and the valve and piping on the container side of the bulkhead will remain intact.

(d) Where the flow of liquid LP-gas is from a transport to a container in one direction only, a back-flow check valve may be used in lieu of an ESV in the fixed liquid piping, provided the back-flow check valve has a metal-to-metal seat or a primary resilient seat with a secondary metal seat

not hinged with combustible material. Use of a back-flow check valve in liquid piping does not eliminate the need for an ESV in the vapor piping.

(e) The bulkhead(s) and ESVs shall be kept in proper working order at all times in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If the bulkhead(s) and ESVs are not in proper working order in accordance with the manufacturer's instructions and the LP-Gas Safety Rules, the installation shall be immediately removed from LP-gas service and shall not be operated until the necessary repairs have been made.

§9.188. Gauging Devices and Pressure Gauges.

(a) All American Society of Mechanical Engineers (ASME) LP-gas containers shall be equipped with a fixed or rotary tube liquid level gauging device. Refer to §9.184(c)(5) of this title (relating to uniform safety requirements) regarding container openings in which liquid level gauging devices are installed. Such devices shall be readily accessible and shall be used at the time of the filling operation to ensure the container is not filled in excess of the maximum permitted filling density as required in §9.167 of this title (relating to filling density). Refer to §9.923 of this title (relating to Appendix C) for the method of calculating the length of fixed tube. If applicable, see Figure 1 of this section for quick reference to determine the maximum permitted filling density for aboveground and truck containers over 1,200 gallons. Gauging devices of the fixed or rotary tube type may be used without the installation of an excess flow valve, provided the bleed valve opening is not larger than a Number 54 drill size. This subsection does not apply to ASME direct-gas fired vaporizer containers as noted in §9.203(a) of this title (relating to direct gas-fired vaporizers).

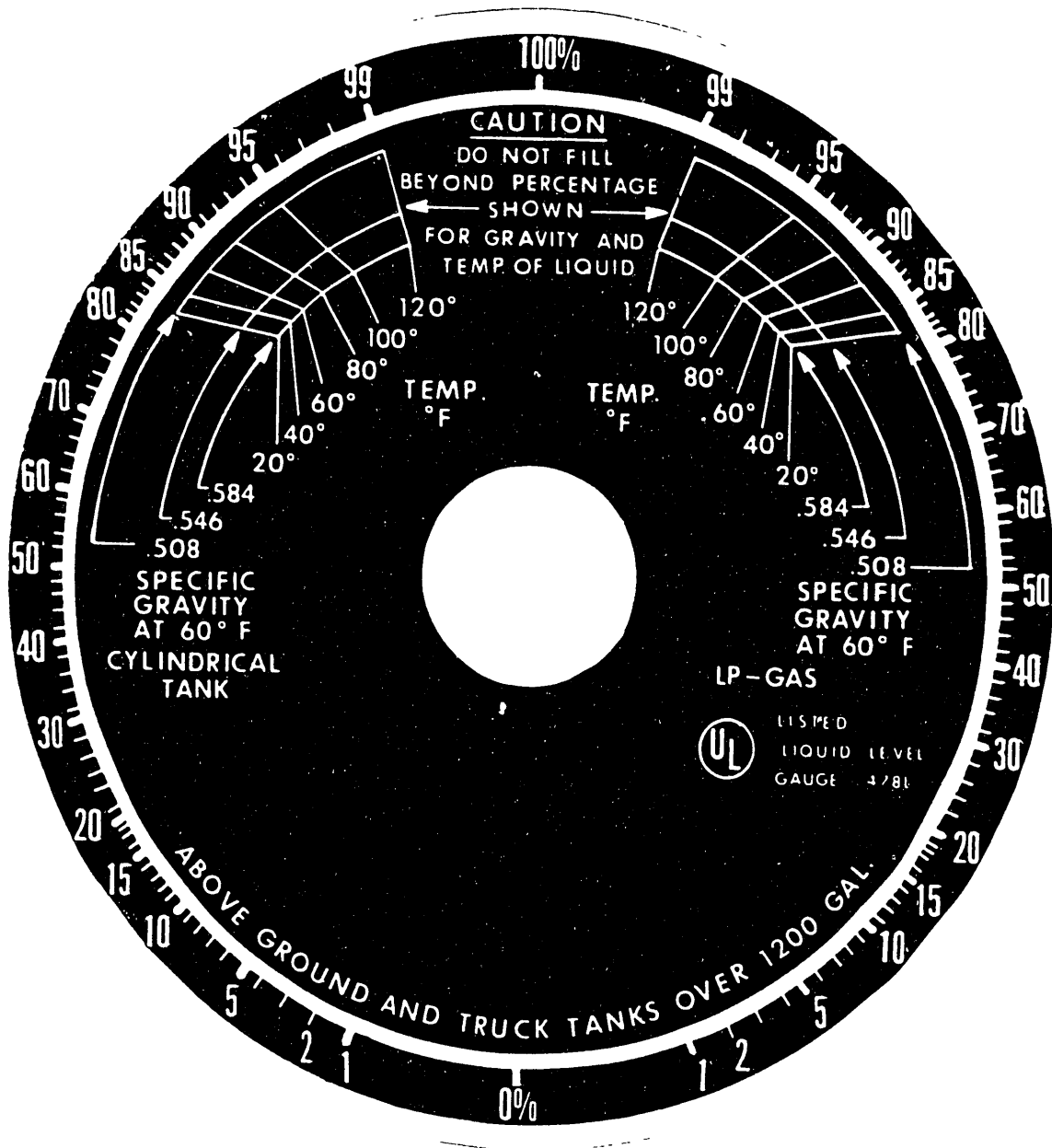


FIGURE 1
§9.188

(b) All stationary ASME constructed LP-gas containers having a water capacity of 2,000 gallons or more shall be equipped with a pressure gauge which is readable and in proper operating condition. A container opening to which a pressure gauge is attached need not be equipped with a shutoff valve or excess flow valve if the opening is no larger than a Number 54 drill size opening and is piped to the vapor space of the container.

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-9439765 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Effective date: June 1, 1994

Proposal publication date: November 19, 1994

For further information, please call: (512) 463-6949

Part IV. Texas Department of Licensing and Regulation

Chapter 68. Elimination of Architectural Barriers

- 16 TAC §§68.1, 68.10, 68.62, 68.80, 68.101-68.103, 68.105-68.112

The Texas Department of Licensing and Regulation adopts the repeal of §§68.1, 68.10, 68.62, 68.80, 68.101-68.103, and 68.105-68.112, concerning standards for the elimination of architectural barriers encountered by persons with disabilities in buildings and facilities subject to the Architectural Barriers Act, Texas Civil Statutes, Article 9102, without changes to the proposed text as published in the January 14, 1994, issue of the *Texas Register* (19 TexReg 250).

The sections are being repealed to allow for the adoption of new accessibility standards intended to be consistent with those adopted under federal law in accordance with the Act, §5(c). The repeal will provide for improved accessibility for persons with disabilities and increased compliance with state and federal laws.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 9102, which provide the Texas Department of Licensing and Regulation with the authority to adopt standards that are consistent with federal law.

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

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

Issued in Austin, Texas, on April 29, 1994.

TRD-9440013 Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: June 1, 1994

Proposal publication date: January 14, 1994

For further information, please call: (512) 463-3127

- 16 TAC §§68.1, 68.10, 68.20, 68.21, 68.30-68.33, 68.60-68.66, 68.70-68.72, 68.80, 68.90-68.93

The Texas Department of Licensing and Regulation adopts new §§68.1, 68.10, 68.20, 68.21, 68.30-68.33, 68.60-68.66, 68.70-68.72, 68.80, 68.90-68.93 concerning the Architectural Barriers Act, Article 9102. Sections 68.10, 68.80, and 68.93 are adopted with changes to the proposed text as published in the January 14, 1994, issue of the *Texas Register* (19 TexReg 250). Sections 68.1, 68.20, 68.21, 68.30-68.33, 68.60-68.66, 68.70-68.72, 68.90-68.92 are adopted without changes and will not be republished.

The sections clarify, edit, renumber, and reorganize existing rules which have been proposed for repeal. Enforcement of the rules will improve accessibility for persons with disabilities and increase compliance with state and federal laws.

The department held a public hearing on January 24, 1994, regarding adoption of the rules. One comment was received from the General Services Commission (GSC) regarding §68.80. The GSC expressed concern that the standard state lease contract does not provide legal standing for the withholding of the required fee from the monthly lease payment and the word lessee in §68.80(f) should be replaced with "occupying agency." The department appreciates the comment and has clarified paragraph (e) and added a definition of "lessee."

The new sections are adopted under Texas Civil Statutes, Article 9102, which provide the Texas Department of Licensing and Regulation with the authority to adopt standards that are consistent with federal law.

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

Act—Texas Civil Statutes, Article 9102.

Building—Any structure used and intended for supporting or sheltering any use or occupancy.

Completion of Construction—That phase of a construction project which results in occupancy or the issuance of a certificate of occupancy.

Construction Documents—Working drawings and specifications used for construction of a building or facility.

Contract Provider—The individual, company, or authority under contract with the department to perform plan reviews, inspections, or both.

Determination of Impracticability—The formal process by which the governmental department, agency or unit concerned petitions the department to rule on the impracticability of applying one or more of the standards or specifications to a building or facility referred to in the Act.

Barriers Chapter 68 Facility—All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Facility—All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Lessee—with respect to state leased or occupied space, the state agency which enters into a contract with a building owner. In instances of free space or where a written contract is non-existent, reference to the lessee shall mean the occupying state agency.

Limited Application—Any modification or alteration that would permit the inclusion of any one or more accessibility standards set forth in department rules but which would not constitute substantial renovations.

Owner—The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other unit that holds title to subject building or facility.

State Agency—A board, commission, department, office, or other agency of State government.

Substantially Renovated, Modified or Altered—Any construction activity, including demolition, involving any part or all of a building or facility. When the scope of a project is limited to cosmetic work and normal maintenance, it shall not constitute substantial renovation, modification or alteration.

§68.80. Fees.

(a) Plan review and inspection fees collected by the department shall be determined by the estimated project cost, not including site acquisition, furnishings, or equipment, and assessed according to the fee schedule. In instances involving multiple facilities with identical drawings, but site-adapted, and designed by the same individual or firm and bid as one package, the plan review fee shall be based on the total construction cost. However, separate inspection fees shall be required. The plan review fee must accompany the registration form and be submitted with the construction documents. The inspection fee must be paid

and the department notified of point of contact within 30 days of completion of construction.

(b) Fee Schedule:

<u>Construction Cost</u>	<u>Review Fee</u>	<u>Inspection Fee</u>
\$ 50,000 - \$ 200,000	\$135	\$ 65
200,001 - 500,000	185	90
500,001 - 1,000,000	235	115
1,000,001 - 5,000,000	285	140
5,000,001 - 10,000,000	385	215
10,000,001 - 15,000,000	485	290
15,000,001 - 25,000,000	635	440
25,000,001 - 50,000,000	785	665
50,000,001 - 75,000,000	985	890
>75,000,000	Contact TDLR for negotiated fee	

Inspection of State Leases,

- (no construction involved) - \$65 per lease
- Preliminary Review Fee - \$100 each
- Special Inspection Fee - \$65 per hour, two hour minimum
- Variance Application Fee - \$75 each
- Variance Appeal - \$75
- Contract Provider Project
 - Filing Fee - \$25 each
 - Project Information Request - \$25 each

(c) When the estimated construction cost is less than \$50,000 and a review, inspection or both are requested, a \$50 plan

review fee and a \$50 inspection fee shall be paid.

(d) All fees must be paid prior to service being performed. If payment is not

received within 30 days of receipt of construction documents they will be destroyed. Texas Department of Licensing and Regulation Page 21 of 23 Architectural Barriers

(e) When inspection fees are not received for purposes of inspecting state lease facilities covered by §68.21 of this title (relating to Subject Buildings and Facilities), notification will be given to the lessee with the request that the required fee be paid to the department.

(f) In instances of state occupied space and facilities provided at no cost and covered by §68.21 of this title, the obligation for payment of the inspection fee lies with the lessee.

§68.93 *Complaints and Investigations.* Any person who suspects that any building or facility is not in compliance may submit a complaint in accordance with Texas Civil Statutes, Article 9100.

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 29, 1994.

TRD-9440014 Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

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Proposal publication date: January 14, 1994

For further information, please call: (512) 463-3127

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TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 29. Purchased Health Services

Subchapter L. General Administration
• 25 TAC §29.1112

On behalf of the State Medicaid Director, the Texas Department of Health submits an adopted amendment to §29.1112, concerning exclusions and limitations on mental health services provided outside of hospitals. This section is adopted without changes to the proposed text as published in the February 15, 1994, issue of the *Texas Register* (19 TexReg 1083) and will not be republished.

This amendment removes program limitations which will allow Medicaid clients to receive outpatient mental health services in a less restrictive environment.

This amendment removes the 62.5% reimbursement rate limitation and the \$312.50 annual cap on outpatient mental health services and provides a 30-visit per year cap on outpatient mental health services, which may be exceeded through prior authorization.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and purchased health services programs and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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 28, 1994.

TRD-9439939 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 19, 1994

Proposal publication date: February 15, 1994

For further information, please call: (512) 338-6509

◆ ◆ ◆
Chapter 33. Early and Periodic Screening, Diagnosis and Treatment

Subchapter J. Medical Phase
• 25 TAC §33.140

On behalf of the State Medicaid Director, the Health Care Delivery Associateship of the Texas Department of Health submits an adopted amendment to §33.140, without changes to the proposed text as published in the February 15, 1994, issue of the *Texas Register* (19 TexReg 1084).

The amendments concern the Early, Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program (EPSDT-CCP). Specifically, the section concerns approved providers and reimbursement methodology.

The Omnibus Reconciliation Act of 1989 mandated the States to provide all federally allowable, medically necessary treatment that Medicaid eligible clients under 21 years of age needed for conditions discovered in the course of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screen, whether or not such treatment was a benefit of the state's Medicaid plan. This was broadened to include conditions uncovered in health care encounters other than just the EPSDT screen. This became the basis for the EPSDT-CCP in Texas.

In 1991, under the EPSDT-CCP, inpatient mental health care was covered for Texas Medicaid clients under 21 years of age in freestanding psychiatric hospitals for the first time. Usage of this benefit skyrocketed over the next two years, in a period when mental

health care for children and adolescents in the private sector was moving towards treatment in a less restrictive environment.

In early 1993, an interdisciplinary, interagency workgroup was convened to study mental health issues for children and adolescents under Medicaid. This workgroup grew to include representatives from the Texas Health and Human Services Commission, the Texas Department of Health (department) (including Texas Department of Human Services personnel who became part of TDH on September 1, 1993 under House Bill 7), the Texas Department of Mental Health and Mental Retardation (MHMR), the Texas Legislative Budget Office, the Mental Health Association in Texas, the Children's Mental Health Plan, private psychiatry (an individual who is also a member of the Committee on Child and Adolescent Psychiatry of the Texas Society of Psychiatric Physicians), and the Texas Department of Protective and Regulatory Services. The workgroup looked at children's mental health needs and resources in Texas, at experiences in other states, and at the usage of mental health services under CCP.

The group found that some children and adolescents admitted for inpatient psychiatric care under EPSDT-CCP might have been treated in a less-restrictive environment if resources had been available. Another important finding was that outpatient mental health services are very limited for children and adolescents with Medicaid. For many, inpatient care may have been the only viable option.

Criteria for prior authorization of inpatient psychiatric admissions for children and adolescents were developed with input from the Committee on Child and Adolescent Psychiatry of the Texas Society of Psychiatric Physicians, the Texas Medical Association, and members of the workgroup and were approved by the Texas Department of Health. These criteria have been implemented and are expected to result in shorter lengths of stay and fewer admissions. Resources for treatment of children and adolescents who do not meet the criteria for inpatient treatment and yet need treatment in a less restrictive environment must be increased.

Two important barriers were identified to access to mental health services in a less-restrictive environment. They are limitations placed by Medicare (and then adopted by Medicaid) many years ago on outpatient mental health services: a cap of \$312.50 on the annual total allowed to be paid for those services, and a limitation of 62.5% on fees paid for mental health services outside of the hospital setting. The \$312.50 cap can be removed through prior authorization by Medicaid, but the paperwork can be burdensome. A mental health provider is paid only 62.5% of the usual Medicaid fees in the office for procedures for which 100% of the same fees for the same procedures are paid in the hospital. Many providers indicated that these limitations were important factors in their choosing not to treat many Medicaid patients in their offices as it was not cost effective for the provider. Thus many private mental health providers are inaccessible and unavailable to those children and adolescents with Medicaid

who need mental health care, except for expensive and restrictive hospital care. There frequently is little or no aftercare available for these clients after an admission, and aftercare is vital to success in mental health care.

The adopted amendment removes the 62.5% limitation from the mental health reimbursement so that providers may be paid the same in less restrictive environments (for example, the office) as they would be paid in the hospital environment. The adopted amendment to §33.140 removes the 62.5% limitation on payment to Licensed Professional Counselors and Licensed Social Workers-Advanced Clinical Practitioners, who are providers only under the EPSDT-CCP program, and reflects the licensure requirements in current statutory law.

In addition the amendment adds private duty nursing through home health agencies as an approved provider type with specified reimbursement methodology. Private duty nursing is a service that enables a client to receive medically necessary nursing care in the home environment rather than in the more expensive hospital setting.

The Texas Department of Health held a public hearing on March 7, 1994. No commenters were present.

Two written comments were received concerning the proposed rules as follows:

Comment: A representative of the Mental Health Association in Texas stated full support for the rules as proposed.

Comment: A representative of the Texas Association for Home Care had three comments on the private-duty nursing amendment, as follows. The first comment stated that the reimbursement methodology should be specified in the rules and that providers be given adequate notice when the fee schedule is changed. The second comment stated that the review of the fee schedule should be every year, as opposed to every two years. The third comment requested clarification on whether the home health agency must provide services through a Class A (Medicare) or through a Class B license.

Response: In response to the first comment, fee schedule development and review is performed in accordance with standard department policy. It is the department's responsibility to develop sampling criteria. Providers are informed according to department administrative procedures, which address notification and formal publication to providers. In response to the second comment on review of the fee schedule, the two year period comports with the biennial budget process. Although the proposed rule requires updates at least every two years, review on a more frequent basis is not precluded, should the need arise. In response to the third comment on licensure, the home health agency must be enrolled and participating in Medicare (Class A license).

The commenters represented the Mental Health Association in Texas and the Texas Association for Home Care.

The amendments are adopted under the Human Resources Code, §32.021 and Texas

Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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 28, 1994.

TRD-9439938 Susan K Steeg
General Counsel
Texas Department of
Health

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Proposal publication date: February 15, 1994

For further information, please call: (512) 458-7111, X-3019

Chapter 229. Food and Drug Permitting Retail Food Establishments

• 25 TAC §§229.370-229.374

The Texas Department of Health (department) adopts §§229.370-229.374, concerning permitting retail food establishments. Sections 229.371-229.373 are adopted with changes to the proposed text as published in the February 8, 1994, issue of the Texas Register (19 TexReg 881). Section 229.370 and §229.374 are adopted without changes and will not be republished.

The sections establish a permitting system for inspecting retail food service establishments for the public health by establishing uniform requirements for retail food operations. The sections establish an inventory of food service establishments; implement an inspection program; monitor the violative facilities; take corrective action; and assure the consumer that food safety principles are being applied within the permitted operations, which will ultimately help to reduce the potential for foodborne illness. The rules will provide funds for the department to expand its retail inspection activities in areas that have been minimally regulated.

The sections will ensure that retail food establishments pay only their fair share for the services provided by the department. The costs of monitoring food safety procedures will be distributed through a fee structure based on the gross annual volume of food sales.

A summary of comments received and the department's responses are as follows:

COMMENT: Concerning the proposed rules in general, a total of nine commenters requested to varying degrees that the depart-

ment refrain from permitting, collecting fees, and/or inspecting churches and nonprofit organizations involved in serving or selling food. One commenter suggested language that would exclude these entities from the definition of "temporary food service establishment." One of the nine commenters also suggested that the department exempt civic and fraternal organizations. This comment suggested that these entities "...do not sell at the volume or regularity which would pose a threat to the general public." Five of the same commenters suggested that the department exempt "bake sales" operated by churches and other nonprofit organizations.

RESPONSE: The department agrees in that Health and Safety Code, §437.007, specifically exempts nonprofit organizations from obtaining a permit. The department has redefined "nonprofit organization" to include churches as defined in the Internal Revenue Code, §170(b)(1)(A)(i). Consequently, all nonprofit organizations, including churches will be exempt from obtaining a permit and paying a fee. However, it is the department's opinion that "for-profit" food establishments operated by churches, such as barbecue stands, which operate in competition with other food establishments, are not covered by this exemption. Therefore, similar food establishments operated by nonprofit organizations would be required to obtain a permit and pay a fee. The exemption for nonprofit organizations is meant to cover bake sales, covered dish and potluck suppers, and foods donated directly to the needy. No permit would be required for these types of operations.

COMMENT: Concerning the rules in general, one commenter suggested that the department "...give consideration to a jurisdiction that may want to develop a permitting and inspection system at a later date..." before determining to permit and inspect facilities in that jurisdiction.

RESPONSE: The department disagrees. Health and Safety Code, Chapter 437, is specific as to which food establishments shall be permitted by the State. Consequently, the department does not have the prerogative to grant a local jurisdiction a waiver from the requirement for the permitting and inspection of those establishments, pending some future action by a commissioner's court or city council to establish a permitting and inspection system. The department believes that the intent of the statute is to ensure that retail food establishments are permitted and inspected by competent authorities. Therefore, the department has written these regulations so as to focus our activities on those establishments not currently being permitted or inspected.

COMMENT: Concerning the rules in general, one commenter suggested that the department require all individuals charged with the inspection of retail food establishments be "registered sanitarians." A second comment suggested that such individuals be trained by education and experience to the same level as a "registered sanitarian."

RESPONSE: The department disagrees with the comment. The department's Office of General Counsel has advised that the scope of Health and Safety Code, Chapter 437, is

limited to permitting and inspection authority only, and therefore the department cannot exceed the scope of the statute. The department believes that there is merit to the suggestion that all personnel engaged in the inspection of food facilities should meet certain educational and/or knowledge requirements

COMMENT Concerning the rules in general, several commenters suggested a need to clarify that a permit issued by the State is good only where no other jurisdiction permits and inspects, and that local jurisdictions can prohibit certain types of operations (temporary food service establishments and mobile food units)

RESPONSE The department disagrees with both comments, but for different reasons. First, temporary food service establishments cannot move to new locations without another permit, therefore, they could not move from a state-regulated area to an area regulated by a local health department without first obtaining a permit from the local health authority. On the other hand, "mobile food units" could move from State jurisdiction into an area of local jurisdiction. The department's Office of General Counsel has determined that local ordinances may not conflict with State regulations. Such a prohibition of a State-permitted mobile food unit would be inconsistent with State rules, in violation of Texas Local Government Code, §51.012. In effect, stricter requirements for food establishments may be established by local health authorities, but are only enforceable within the confines of that authority. The department does see a need to maintain consistency between State and local requirements. Consequently, we are revising the proposed rules to require a pre-licensing inspection of all mobile food units to determine if the units are in compliance before issuing a permit to operate. In addition, we shall work with public health organizations and interested local health authorities in the development of construction and design standards for mobile food units to promote uniformity.

COMMENT Concerning the rules in general, a commenter suggested the department should clarify that the State will not permit and inspect a certain category of food establishment, which a local health department does not permit and inspect, within the boundaries of that jurisdiction. Suggested language for amending the proposed rule was offered.

RESPONSE The department disagrees with this comment. The department's Office of General Counsel has determined that the scope of Health and Safety Code, Chapter 437, is to permit and inspect certain defined food establishments which are not permitted and inspected by local health authorities. Consequently, if a local authority were to forego permitting and inspection of a particular defined type of food establishment, such as roadside food vendors, then the State would be required by statute to permit and inspect these facilities.

COMMENT Concerning §229.371, one commenter suggested that the department refrain from permitting "Bed and Breakfast" facilities.

RESPONSE: The department disagrees. The department is charged with protecting the public from the threat of foodborne illness. If "bed and breakfast" facilities choose to serve potentially hazardous foods to guests, they become "food service establishments" which pose no less risk to public health as any other regulated food service establishment. Consequently, we believe that "bed and breakfast" facilities, as defined in the proposed rules, should be permitted and inspected.

COMMENT Concerning §229.371, a commenter suggested that food service facilities operated by the Department of Mental Health and Mental Retardation, under inspection of registered sanitarians utilizing the department's Rules on Food Service Sanitation, should receive an exemption from permitting and fees.

RESPONSE. The department agrees with the comment and has revised the proposed rules to reflect that food service facilities operated by the Department of Mental Health-Mental Retardation are not defined as food service establishments for the purposes of obtaining a permit and paying a fee.

COMMENT Concerning §229.371, one commenter suggested that the department develop a new definition for "food establishment", thereby excluding the seven listed exemptions from the definition.

RESPONSE: The department agrees that revisions to the proposed rules are needed to ensure that Type A General-Law Municipalities and Home-Rule Municipalities are able to continue their current permitting and inspection activities. However, the department disagrees that the best method of accomplishing this under Health and Safety Code, Chapter 437 is to add a definition for "food establishment". "Food establishment" is already defined in 25 TAC §229.161, the Rules on Food Service Sanitation. Consequently, giving the term a conflicting definition would create confusion.

COMMENT: Concerning §229.371, a commenter suggested that, with respect to "roadside food vendors," the department permit the operation, rather than the person.

RESPONSE: The department disagrees with the comment, since "person" is already defined by statute in Health and Safety Code, Chapter 431, as an "individual, corporation, partnership, or association."

COMMENT. Concerning §229.371, several commenters suggested that the department should be very restrictive in defining "mobile food vendors", including stricter standards on construction and design. Similar comments were received from the same individuals or organizations, suggesting stricter standards on construction and design for "roadside food vendors" and "pushcarts."

RESPONSE: The department agrees that separate construction and design standards may need to be developed for mobile food vendors, roadside food vendors, and pushcarts. However, such standards should not be established in Health and Safety Code, Chapter 437, which deals only with permitting and authority to inspect. These standards should be included in 25 TAC §229.161 (Rules on

Food Service Sanitation) and §229.231 (Rules on Retail Food Store Sanitation). The department will work directly with the local health entities in Texas in developing such standards through rule amendments, at a later date.

COMMENT: Concerning §229.371, several commenters requested that the department modify the definition of "potentially hazardous food" as found in 25 TAC §229.162, to eliminate the exclusion for shell eggs from the definition of "potentially hazardous food".

RESPONSE: The department agrees with the comments that the definition for "potentially hazardous food" (PHF) should be updated to include shell eggs. However, since the definition for "PHF" is included in 25 TAC §229.161 and §229.231, the revision must be proposed to those rules prior to revising §229.371.

COMMENT: Concerning §229.371, a commenter suggested that the department develop a better definition for "Bed and Breakfast". The comment suggested that the proposed definition is contradictory since bed and breakfast facilities are private residences. This comment appears to be in reference to the exclusion of regulating "private homes" as found in 25 TAC §229.162, under the definition of "Food Service Establishment".

RESPONSE: The department disagrees with the comment, since "private residence" has been defined in the rules as a "food service establishment" if potentially hazardous food is served. This therefore differentiates "private residence" from "private home."

COMMENT: Concerning §229.371, §229.372 and the rules in general, five commenters suggested that the department needs to modify the language in the proposed rules to ensure that "Type A General-Law Municipalities" and/or "Home-Rule Municipalities" which permit, charge a fee, and inspect retail establishments are exempted from permitting and inspection by the State under Health and Safety Code, Chapter 437. Several commenters also questioned whether or not subcontracted food service facilities on state campuses, or nursing homes, hospitals, or state college/university food service facilities, currently permitted and inspected by local health departments, would be excluded in the future from regulating these entities. One of these commenters suggested that the department change the definition of "municipal health authority" to "Type A Home-Rule Municipality" to track Health and Safety Code, Chapter 122.

RESPONSE: The department agrees that, while the statute (Chapter 437) requires the department to permit establishments not permitted by county or local health districts, it is the department's intent to initially concentrate permitting and inspection activities in those areas where no regulatory oversight currently exists. Consequently, the department has changed the proposed rules to reflect that facilities permitted and inspected by other local health authorities will not be subject to permitting requirements under this Chapter. Regarding the comment concerning "municipal health authorities," the department disagrees. Since "municipal health authority" is defined by law in Health and Safety Code,

§121.021, Chapter 437 does not permit the department to amend the definition.

COMMENT: Concerning §229.371 and §229.372(b), one commenter suggested that the department should not exempt any type of food facility from permitting, fees, or inspection; while another comment suggested that the department not exempt nonprofit facilities from the same.

RESPONSE: The department disagrees with the comment, since Health and Safety Code, §437.007, specifically exempts nonprofit organizations. However, the department agrees that "for-profit" food establishments, such as a barbecue stand operated by a nonprofit organization, should be permitted.

COMMENT: Concerning §229.372(a)(2) and (3), one commenter suggested that the proposed permitting fees are too low, and that this would "...create an issue between the State's low fee and the higher local fees."

RESPONSE: The department disagrees. The maximum fee which may be charged by counties and public health districts under Health and Safety Code, Chapter 437 is \$150. In setting the proposed fee schedule, the department attempted to arrive at a corresponding average fee (\$150). In addition, §437.0125(c) and (d) state that the fees shall be set in amounts that will allow the department to recover at least 50% of the annual expenditures for enforcement and related permitting activities. Consequently, the fees were also established based upon the department's estimate of the costs to implement the permitting and inspection system.

COMMENT: Concerning §229.372(a)(7), one commenter suggested that rather than giving a discount to an establishment under the supervision of a manager certified in proper food safety and handling, the department require all establishments be under the supervision of such a person.

RESPONSE: The department disagrees with the comment. The department's Office of General Counsel has determined that the scope of Health and Safety Code, Chapter 437, is limited to permitting only, and therefore the department cannot exceed the scope of the law. However, the department sees merit in requiring mandatory manager certification to increase food protection in Texas. Therefore, we would encourage public health-related organizations and local health units to continue to pursue legislatively mandatory manager certification.

Minor editorial changes were made for clarification purposes.

The following provided comments on the proposed rules. State Senator Jane Nelson; State Representative John R Cook; Lisa Snyder, representing Senator Jane Nelson; Palo Pinto Baptist Association; Texas Environmental Health Association; San Antonio Metropolitan Health District, City of Richardson Health Department; City of Grand Prairie Environmental Services Department; Galveston County Health District; Smith County Public Health District, and City of Dallas Health Department.

Several other individuals also provided written and/or oral comments, and while none of the commenters were against the rules in their entirety, they expressed concerns, questions, and made recommendations.

The rules are adopted under the Health and Safety Code, Chapter 437.0056, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health, and the Commissioner of Health.

§229.370 Purpose. The purpose of these sections is to implement Health and Safety Code, Chapter 437 which required the Texas Department of Health to establish a permitting system for inspecting retail food service establishments for the public health by establishing uniform requirements for retail food operations.

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

Bed and breakfast—A private residence where temporary lodging is provided and potentially hazardous food is prepared for overnight customers only. A bed and breakfast is classified as a food service establishment.

Day care center—Any facility licensed to receive 13 or more children for day care. A day care center is classified as a food service establishment.

Food—Any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food service establishment—Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether the consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles. All definitions found in §229.162 of this title (relating to Definitions) under the rules on food service sanitation; and all definitions found in §229.231 of this title (relating to General Provisions) under the rules on retail food store sanitation are applicable to these sections except that, for purposes of obtaining a permit and payment of fees only, the term "food service establishment" does not include:

(A) establishments permitted and inspected under authority granted to Home-Rule or Type A General-Law Municipalities;

(B) federally-inspected establishments on federal property;

(C) correction facilities under the inspection of the Texas Department of Criminal Justice;

(D) nursing homes under the inspection of Long-Term Care Regulatory in the Texas Department of Human Services;

(E) hospitals under the inspection of the Division of Health Facility Licensure and Certification in the department and which do not serve food to the general public;

(F) food service facilities on state campuses inspected by state college or university personnel in accordance with the requirements of §229.373 of this title (relating to Minimum Standards for Permitting and Operation);

(G) establishments licensed under the Health and Safety Code, Chapter 431, as manufacturers of food, provided the fee for licensure exceeds the permit fee required under §229.372 of this title (relating to Permitting Fees and Procedures);

(H) food service facilities under inspection by personnel employed by the Department of Mental Health and Mental Retardation; and

(I) food service facilities, operated on a part-time basis by nonprofit organizations, which do not directly compete on a continuous basis with the food service industry. Nonprofit organizations which meet the definition of "manufacturers of food" under Health and Safety Code, Chapter 431, or the definition of "food salvage establishments" under Health and Safety Code, Chapter 432, are not exempt from licensure in these categories. This exemption includes "bake sales" and donation of wholesome food to the needy, if the donating facilities are in substantial compliance with applicable state and federal laws.

Mobile food unit—A vehicle-mounted food service establishment designed to be readily moveable. For the purpose of obtaining a permit and payment of fees only, the term "mobile food unit" does not include establishments permitted and

inspected under the authority granted to Home-Rule or Type A General-Law Municipalities and which operate only within their respective boundaries.

Nonprofit organization—A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing an Internal Revenue Code, §501(C)(3), exemption or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(i).

Potentially hazardous food—Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.5 or below or a water activity (Aw) value of 0.85 or less.

Pushcart—A non self-propelled mobile food unit limited to serving nonpotentially hazardous foods or prepackaged foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters. A pushcart is classified as a mobile food unit.

Retail food store—Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; farmers markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication Number (FDA) 78-2091, except that, for the purposes of obtaining a permit and payment of fees only, the term "retail food store" does not include establishments permitted and inspected under authority granted to Home-Rule and Type A General-Law Municipalities.

Roadside food vendor—A person who operates a mobile retail food store from a temporary location adjacent to a public roadway or highway. Potentially hazardous foods shall not be prepared or processed by roadside food vendors. A roadside food vendor is classified as a retail food store.

School food service facility—A food service establishment where food is prepared and intended for service primarily to students in institutions of learning including, but not limited to, public and private kindergarten, preschool and elementary schools, junior high schools, high schools,

colleges, and universities. A school food service facility is classified as a food service establishment.

§229.372. *Permitting Fees and Procedures.*

(a) Permitting fees.

(1) A person who operates a food service establishment, mobile food unit, day care center, bed and breakfast establishment, school food service facility, retail food store, or a mobile retail food store shall obtain a permit annually from the Texas Department of Health (department) and pay a permit fee for each establishment unless specifically exempted under subsection (b) of this section. An organizer of an event at which a temporary food service establishment is operated shall obtain a permit from the department for each temporary food service establishment. The temporary permit application must be submitted to the department ten days prior to the event. Mobile food units are subject to inspection for compliance with applicable rules prior to the issuance of a permit.

(2) The permit fee for a food service establishment, retail food store, or bed and breakfast establishment shall be based on the gross annual volume of food sales as follows.

(A) \$75 per establishment having a gross annual volume of \$0 to \$49,999.99;

(B) \$150 per establishment having a gross annual volume of \$50,000 to \$149,999.99, and

(C) \$250 per establishment having a gross annual volume of \$150,000 or more.

(3) The permit fee for a school food service facility, day care center, mobile food unit, or roadside food vendor, shall be \$75 annually for each location.

(4) The permit fee for a temporary food service establishment is \$25. The permit shall be valid for the duration of a single event not to exceed 14 consecutive days from the initial effective date specified in the permit application.

(5) An establishment required to be licensed as a food manufacturer under the Health and Safety Code, Chapter 431, and also required to be permitted under this Chapter, will be issued only one license or permit. The license or permit fee to be paid will be the higher fee of the two applicable fees.

(6) Gross annual volume of food sales may be verified by data from the State Comptroller of Public Accounts.

(7) Food manager certification credit shall meet the following criteria.

(A) With the exception of temporary food service establishments, the permit fee may be reduced by 10% for each establishment under the full-time supervision of an on-site manager who has successfully completed a food manager's certification course accredited by the department. A list of accredited courses may be obtained from the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas 78756-3182.

(B) A photocopy of the food manager's certificate of completion must be submitted with the permit application or renewal. Manager certification will be verified through department records.

(b) Exemptions from permit and fees. Establishments permitted and inspected by a county or public health district under the Health and Safety Code, Chapter 437, provided the inspections are based on the requirements of §229.373 of this title (relating to Minimum Standards of Permitting and Operation) are exempted from obtaining a permit and from paying a fee.

(c) Nonprofit fee exemption. Nonprofit organizations shall comply with the requirements of §229.373 of this title. The department shall provide guidelines for the safe handling of foods prepared by nonprofit organizations. Nonprofit organizations are exempt from the permit and fee as described in §229.371 of this title (relating to Definitions). Any civic or fraternal organization, charity, lodge, association, proprietorship, corporation or church not meeting the definition of "non-profit organization" must obtain a permit, pay the required fee, and comply with the requirements.

(d) Application for permit. The permit application shall be signed and verified, be made on a form furnished by the department, and contain the following information:

(1) the name under which the business is operated;

(2) the mailing address and street address of each place of business;

(3) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and the name and address of its registered agent in the State; or if any other type of association, the names of the principals of such association; and

(4) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship,

shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity.

(e) Nonprofit organizations. A nonprofit organization shall submit documentation from the Internal Revenue Service to qualify the establishment for the exemption from the permit fee. Churches need only supply documentation upon request by the department

(f) Temporary food service establishments. A permit application for a temporary food service establishment shall specify the name and physical location of the event for which the permit is requested, the initial effective date of the permit, and the foods to be prepared

(g) Two or more establishments. If a person owns or operates two or more establishments, each establishment shall be permitted separately by listing the name and address of each establishment on separate application forms.

(h) Pre-permit inspection. The applicant shall cooperate with any pre-permit inspection which may be conducted by the department

(i) Issuance of a permit. The department may issue a permit for an establishment based on compliance specified in §§229.161-229.173 of this title (relating to Food Service Sanitation), or §§229.231-229.239 of this title (relating to Retail Food Store Sanitation). Copies may be obtained from the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182.

(1) The permit shall be valid for one year from the date of issue, which becomes the anniversary date, with the exception of temporary permits.

(2) The renewal permit shall be valid for one year from the anniversary date, with the exception of temporary permits as stated under paragraph (1) of this subsection.

(3) Permit application forms may be obtained from the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas 78756-3182

(4) The permit shall be posted conspicuously in the establishment.

(5) Permits for mobile food units, including pushcarts and roadside food vendors shall be displayed on the unit at all times.

(j) Renewal of a permit.

(1) Each year the permit holder shall renew their permit based on compliance specified in §§229.161-229.173 of this title, or §§229.231-229.239 of this title.

Copies may be obtained from the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182.

(2) A person holding a permit issued by the department, and whose operation is in compliance with paragraph (1) of this subsection, shall be billed by the department and shall have their permit renewed by the department upon payment of the appropriate fee.

(3) The holder of the permit must submit the annual permit fee for renewal prior to the expiration date of the current permit. A person who files a renewal application after the expiration date must pay an additional \$75 as a delinquency fee

(4) Failure to submit the renewal fee annually may subject the permit holder to the offense provisions under the Health and Safety Code, Chapter 437, and also to the provisions of §229.374 of this title (relating to Refusal, Revocation, or Suspension of a Permit; Administrative Penalties).

(k) Amendment of permit

(1) Fee. A permit that is amended, including a change of name, ownership, or a notification of a change in location of a permitted place of business required under Health and Safety Code, §437.0125, will require submission of fees as outlined in subsection (a) of this section.

(2) Change of location. A permit is not transferrable upon change of location with the exception of a permit issued to an operator of a mobile food unit or roadside food vendor

§229.373 Minimum Standards for Permitting and Operation. All food service establishments, mobile food units, retail food stores, and mobile retail food stores shall be operated in accordance with the requirements specified in §§229.161-229.173 of this title (relating to Food Service Sanitation), or §§229.231-229.239 of this title (relating to Retail Food Store Sanitation). Copies may be obtained from the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182

§229.374 Refusal, Revocation, or Suspension of a Permit; Administrative Penalties

(a) Basis. The Texas Department of Health (department) may, after providing opportunity for a hearing, refuse an application for a permit or may revoke or suspend a permit for violations of the requirements of §229.372 of this title (relating to Permitting Fees and Procedures) and §229.373 of this title (relating to Minimum Standards for Permitting and Operation), or for interfer-

ence with department personnel in the performance of their duties under these sections.

(b) Hearings. Any hearings for the refusal, revocation, or suspension of a permit shall be governed by the department's formal hearing procedures under Chapter 1 of this title (relating to Board of Health).

(c) Reinstatement. A former permit holder may apply for reinstatement of a suspended permit by demonstrating that corrections and controls have been implemented to prevent recurrence of objectionable conditions. The department may, after a formal hearing as provided in subsection (b) of this section, require employees of an establishment to successfully complete a department accredited training course on food safety principles prior to the reinstatement of the permit.

(d) Administrative penalties. Administrative penalties, as provided in the Health and Safety Code, §431.054 and §431.056, and in §229.261 of this title (relating to Administrative or Civil Penalties), may be assessed for violation of these sections.

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

Issued in Austin, Texas, on April 29, 1994

TRD-9440093

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 20, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 719-0200

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

• 30 TAC §114.25

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §114.25, concerning a Memorandum of Understanding (MOU) with the Texas Department of Transportation (TxDOT), without changes to the proposed text as published in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9891). The purpose of the adopted new section is to enable the TNRCC to review TxDOT projects which may affect air quality in order to assist TxDOT in making environmentally sound decisions, and the de-

velopment of a system by which information developed by TxDOT and the TNRCC may be exchanged to the mutual benefit of both agencies.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required TxDOT to adopt a MOU with teach state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archaeological resources. Article 6673g also requires TxDOT and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing TxDOT's activities, this new section is adopted.

The comment period closed on January 24, 1994, 1993, and no testimony was received

The new rule is adopted under the Texas Health and Safety Code (Vernon 1990) , the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 26, 1994

TRD-9440006 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource
Conservation
Commission

Effective date: May 20, 1994

Proposal publication date: December 20, 1994

For further information, please call: (512) 239-0615

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 57. Fisheries

Marking of Vehicles

• 31 TAC §57.500

The Texas parks and Wildlife Commission adopts an amendment to §57.500, concerning the marking of vehicles that transport fish for commercial purposes, without change to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1022)

Parks and Wildlife Code, §66 014, directs the Parks and Wildlife Commission to establish, by proclamation, the identification requirements for a motor vehicle, trailer or semitrailer transporting aquatic products.

The rule allows flexibility in identification of motor vehicles, trailers or semitrailers trans-

porting aquatic products. Vehicle operators have the option of using written identification or use of a symbol. Law Enforcement personnel will maintain the ability to identify vehicles transporting aquatic products while operators may use the identifier of their choice.

There were no public comments concerning adoption of the rule

The amendment is adopted under Texas Parks and Wildlife Code, §66 014, which provides the Texas Parks and Wildlife Commission with the authority to regulate the identification of vehicles transporting aquatic products.

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 28, 1994

TRD-9440016 Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: May 20, 1994

Proposal publication date February 11, 1994

For further information, please call (800) 792-1112, Ext 4433 or (512) 389-4433

Shrimp

• 31 TAC §57.661, §57.662

The Texas Parks and Wildlife Commission adopts amendments to §57.661, and §57.662, concerning management of shrimp in Texas Section 57.661 is adopted with changes to the proposed text as published in the February 18, 1994, *Texas Register* (19 TexReg 1169) Section 57 662 is adopted without change and will not be republished. Changes to proposed text in §57 661 are itemized as follows:

These rules contain measures which will reduce overfishing while assisting in achieving, on a continuing basis, the optimum yield for the fishery, manage shrimp throughout their range, promote efficiency in utilizing shrimp resources, minimize costs, avoid unnecessary duplications in administration, and enhance enforcement. The foregoing constitute findings by the commission which support the need for the proposed proclamation. The rules also are consistent with the guidelines established in the Parks and Wildlife Department's Shrimp Fishery Management Plan and the Gulf of Mexico Fishery Management Council's Fishery Management Plan for the Shrimp Fishery in the Gulf of Mexico. The Texas Shrimp Fishery Management Plan and the Texas Shrimp Fishery Management Plan Economic Impact Statement were approved and adopted by the Texas Parks and Wildlife Commission in November 1989.

These rules serve to decrease waste and prevent depletion by reducing growth overfishing of the shrimp resource. Economic efficiency in the industry will be enhanced by allowing the harvest of more valuable shrimp. Distribution of the available resource among shrimpers will become more equitable. Stan-

dardization and simplification of the rules will increase the ability of law enforcement to assure compliance. Environmental impacts on the marine habitat and non-target species by the shrimping industry will be further minimized

There will be costs associated with these rules. The impacts will largely be determined by the abundance of shrimp available to the bay and gulf fisheries, which varies from year to year. Small businesses that must comply will incur costs with as a result of compliance. Those businesses currently using mesh sizes smaller than the proposed minimum will incur increased production costs resulting from escapement of smaller juvenile shrimp. In addition, those individuals required to comply with the 2:00 p.m. closure will experience reduced fishing opportunities which may result in a reduction of landings. Those individuals required to comply with the off-loading restrictions may incur losses associated with the limitation on opportunities to sell shrimp on public waters and with potential decrease between water sale value and dock-side value.

Economic benefits associated with the proposed amendments include: increased efficiency in the enforcement of the proposed regulations and added clarity of regulations to the public which will reduce confusion to those who must comply with the regulations. Insofar as these amendments are based on sound management and enforcement tenets, it is anticipated the value of the amendments will be positive to the state.

Comments made by the public concerning the proposed rules were presented to the Texas Parks and Wildlife Commission. During February 22-March 3, 1994, 68 public hearings were held throughout the state, including one hearing in each of 12 coastal counties. Approximately 1,954 people attended the public hearings with 511 people offering comments. Notice of the hearings was published in local newspapers in each county. In addition, a news release concerning the hearings and proposed changes was distributed to the city-state editors and the outdoor writers in 156 newspapers through a special mail-out from the Department and the weekly news release packet. Individuals contacting the Department were also sent copies of the proposals and meeting schedule as requested. In addition to public hearings, staff conducted a series of commercial outreach meetings and met with representatives of several commercial shrimping organizations.

On March 24, 1994, the Commission held a public hearing in Austin to receive additional public comments on the proposed regulations. During the period of public comment, approximately 1,142 form letters, 36 letters and telephone calls, and 3 petitions were received by the Department Staff for review by the Commission. At the March 24 public hearing, approximately 18 people made public comments.

Comments ranged from support for all the proposals to total objection to the proposals. Specific comments in opposition to the proposals included: there is no problem with the shrimp fishery; the industry was given no advance warning and no opportunity for input; the Shrimp Advisory Committee is not repre-

sentative of the industry; the 2:00 p.m. closure is discriminatory toward the Vietnamese; there are no data supporting the proposed regulations; these regulations will put the bay and bait shrimpers out of business; (there will not be any bait available); Department staff should not be studying limited entry; there should not be a 75-day closure because shrimp migrate south and will be lost to harvest; nature, pollution and other man-made changes in the environment are the major factors impacting the shrimp resources, larger mesh sizes will kill more shrimp; and the lower Laguna Madre should have separate regulations from the rest of the coast.

Commenting in favor of the proposed rules were Lone Star Chapter of the Sierra Club, Lower Laguna Madre Foundation, Texas Shrimp Association.

Commenting in opposition to the proposed rules were the Commissioner's Courts of Galveston County, Matagorda County, Chambers County and Calhoun County; Palacios Shrimpers Association, Bay Shrimpers Conservation Association, and Coastal Bend Guides Association

The agency disagrees with the comments as follows, in order. Serious problems in the shrimp fishery are real and continue to worsen. The historical balance in the shrimp fishery has shifted dramatically with the previous emphasis of the bay fleet on white shrimp being redirected to brown shrimp. The continuing increase in the harvest of small shrimp (greater than 67-count, heads off) is an ecologically unsustainable trend. Shrimp stocks will collapse if this trend is not reversed. Numerous examples exist in fisheries literature which document this phenomenon. The overall economic value of the shrimp industry continues to decline, even though shrimp landings are stable. This is because more and more of these landings consist of smaller, less-valuable shrimp. Maximum economic benefits are not being achieved. There is a high level of non-compliance and abuse of current regulations as acknowledged by the industry in numerous outreach meetings. Marketing shrimp for food that were caught under the bait license is virtually uncontrollable and is a major reason for the need for more restrictive regulations. Increasing shrimp trawl effort is negatively affecting bycatch species such as Atlantic croaker and sand seatrout, as illustrated by a 20mm decrease in mean length of Atlantic croaker caught in trawls. Impacts on bottom habitat and estuarine food chains are also a concern.

In August 1993, Department staff began commercial outreach meetings to develop lines of communication with the industry. Fifteen outreach meetings were held prior to development of the current regulatory proposals. Over 450 commercial fishermen were in attendance at these meetings. Their comments were in turn presented to the Shrimp Advisory Committee. At its November, 1993, meeting, the Shrimp Advisory Committee recommended that Coastal Fisheries "develop regulatory recommendations directed towards legitimizing bait shrimping and management of growth overfishing in the shrimping industry." On January 5, 1994, Department staff presented regulatory proposals to the Shrimp

Advisory Committee. These proposals are designed to address the concerns of the industry. The Committee voted in favor of sending the original regulatory proposals to public hearings. These regulations were presented to the industry at seven pre-regulatory hearing workshops held between January 27 and February 14. Fliers were mailed out to previous workshop attendees identifying the issues that would be discussed at the workshop. In attendance at these meetings were in excess of 500 people.

The Shrimp Advisory Committee consists of ten members representing a wide range of interests. In general the representation is broken down as follows: Gulf-4 members, Bay-3 members, Bait-2 members, Recreational-1 member. In 1990, at the adoption of the Shrimp Management Plan, this same complaint was heard. In response to complaints received at that time, two additional members were added to the committee.

The 2:00 p.m. closure would be applied on a coastwide basis across both bait and bay fisheries. Indo-Chinese fishermen and fishermen from other ethnic backgrounds are present in all three components of the shrimp fishery (bay, bait and gulf). This proposal should help all components of the fishery by allowing opportunity for small shrimp to grow and/or escape to the spawning stock for production of future populations.

Extensive data sets and analyses relating to shrimp management in Texas have been compiled by the Department, the National Marine Fisheries Service, and university researchers. For the Department alone, analyses were compiled using over 3.4 million observations. Numerous scientific research articles worldwide document the need for conservation measures when excessive fishing effort is applied to shrimp stocks. The Texas Shrimp Management Plan, adopted by the Commission in 1989, calls for measures based on the best scientific information available to prevent overfishing. By protecting smaller shrimp to allow for greater escapement and survival in the Gulf, where spawning occurs, numbers and size of shrimp available to the industry will be greater and stocks will be more stable, thus providing more economic benefits. Fishing effort on shrimp stocks since 1961 has been steadily increasing, with a 400% increase in the Bay and a 95% increase in the Gulf. Pounds of shrimp landed have increased 135% in the bays and decreased 18% in the Gulf since 1972. Shrimp in bays are generally small juveniles whereas shrimp in the Gulf are larger juveniles and adults. Numbers of bay shrimp landed have increased significantly compared to Gulf shrimp, documenting a growth overfishing problem. Growth overfishing occurs when there is a decrease in the number of large shrimp landed and at the same time an increase in the number of small shrimp landed. This reduction in average size is a direct result of more fishing effort. This is a danger signal that requires attention because growth overfishing contributes to recruitment overfishing by reducing the number of shrimp escaping to spawn as adults. Concerns for a recruitment overfishing problem are substantiated by the decreasing catch per effort on adult shrimp stocks in the Gulf,

which has fallen by 15% since 1972. Recruitment overfishing occurs when there are too few adults to produce the maximum number of individuals for the next generation. This is dangerous because unchecked recruitment overfishing can lead to so few adult spawners that the stock collapses. Dr. Edward Klima, former Director of the National Marine Fisheries Service Galveston Laboratory and well-known shrimp expert, has noted "the unprecedented high levels of fishing effort and over-capitalization of both the inshore and offshore fisheries." He points out the need to manage for growth overfishing and suggests that "some form of controlled access may be a solution."

If conservation measures are not implemented, shrimp fishery-related businesses will be adversely impacted in the future due to increased catch of small shrimp (called growth overfishing) and concerns for decreased natural production due to recruitment overfishing. Growth overfishing contributes to recruitment overfishing by reducing the number of shrimp that escape to spawn. Generally, when effort is reduced in a fishery that is operating with an ability to catch more shrimp than exists in the natural population, such as is the case in the current Texas shrimp fishery, the catch per unit of effort will increase, thus creating more value and landings for the amount of time shrimped. The proposed regulations will, in general, serve to delay the harvest of shrimp until they reach a larger size. At the size shrimp first became available to the bay fishery, they can double their weight in two weeks. Because shrimp will stay in the bays for up to several months, they remain available to be caught. As the weight, and thus count size, of shrimp increases, the price per pound also increases, providing greater value to the shrimper and shrimp-related businesses. Bait shrimp are sometimes not available now in the fishery because of natural cycles in availability and because of high fishing mortality on the shrimp stocks. The proposed regulations will serve to reduce the fishing mortality on shrimp stocks, thus increasing their availability for bait over longer periods. In addition, few shrimp of the size sought by many bait shrimpers (3-4 inches) are excluded by the proposed larger mesh size. The very smallest shrimp would be allowed to escape and grow to a size more preferred for bait and food.

The Texas Shrimp Fishery Management Plan directs the Department "to assess the feasibility of implementing a limited entry program into the Texas shrimp fishery to achieve optimum yield." Unlimited entry into the Texas shrimp fishery has led to overcapitalization and excess harvest effort which means too many boats are putting too much pressure on available shrimp stocks. A limited entry program could reduce harvest effort without greatly restricting the ability of individuals in the fishery to capture shrimp. Most other state natural resources such as oil, gas, and timber, are managed with some form of limited entry or limited harvest quota assigned to individuals or single corporations. License limitation and catch rights are two of the most common types of limited entry systems. Both have the advantage that they can be made transferable, thus allowing fishermen to buy

and sell fishery rights for added profit. Limited entry in Texas will require cooperation of the affected industry and action by the State Legislature. Statutory action by the Texas Legislature is required to establish a moratorium on additional license sales and to provide the Commission with the authority to implement limited entry systems to better manage state natural resources.

Shrimp-tagging studies in the Gulf have indicated short-term movement of shrimp in all directions. While some shrimp do move to the south, many shrimp also move to the north, so the overall result for shrimp off Texas is relatively neutral.

While natural events and pollution may well have major impacts on the health of the shrimp population, the Department must manage shrimp stocks based on current environmental conditions. Shrimp studies have indicated that during average environmental years, the size of the shrimp spawning stock is the critical factor in determining the number of new shrimp recruits;

Studies have shown that a larger mesh net results in fewer numbers of small shrimp being retained. While it is not well-known what proportion of the small shrimp which escape the net will be killed, it is clear that their survival rate is greater than the survival rate of those shrimp retained in the net;

The lower Laguna Madre has been historically separated as a bait-only bay due to its predominance of shallow water.

Changes to proposed §57.661(f) were made as a result of public comment. The original proposal for 2:00 p.m. closure in the bay and bait fishery from April 1-December 15 was amended to run from April 1-August 14. This rule will go into affect September 1, 1994. The Commission also changed §57.661(k), making the effective date of this subsection September 1, 1994.

Proposed §57.661(l) was not adopted and proposed §57.661(m)-(n) were redesignated accordingly. The requirement of 50 heads-on shrimp per pound from August 15 to October 31 remains in effect.

The Commission changed §57.661(m). The original proposal for requiring a 1-3/4 inch mesh for shrimp trawls used in bay and bait fishing was changed to a 1-1/2 inch mesh requirement for all bay, bait, and Gulf seabob trawls, except during August 15-October 31, when the 1-3/4 inch mesh is required by bay shrimpers. This rule will go into affect September 1, 1995.

Proposed §57.661(n)(1)(2) was amended to include an effective date of May 1, 1994 for this subsection.

The amendments are adopted under Parks and Wildlife Code, Chapter 77, Subchapter A, §77.004 and §77.007, which provides the Texas Parks and Wildlife Commission with authority to regulate the catching, possession, purchase, and sale of shrimp after approval and adoption of a shrimp management plan and an economic impact analysis prepared by the department. In those areas under which the Commission was not granted authority to promulgate regulations such as

licenses and penalties and in those sections of the Parks and Wildlife Code over which the Commission is granted authority to promulgate regulations but chose not to do so within this proclamation, the applicable provisions of Parks and Wildlife Code, Chapter 77 will apply.

Under Parks and Wildlife Code, §77.007(d) proclamations issued under authority granted to the Commission in §77.007 supercede any conflicting provision of Chapter 77 of the Parks and Wildlife Code and any proclamation of the Commission issued under the Wildlife Conservation Act of 1983 (Chapter 61, Parks and Wildlife Code) to the extent of the conflict.

§57.661. General Rules.

(a) Notwithstanding Parks and Wildlife Code, §§77.061(a)(1), 77.065, and 77.067, it is unlawful for any person to take or attempt to take shrimp in the outside water during the period from 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15 or during the period as altered under the authority of Parks and Wildlife Code, §77.062

(b) Notwithstanding any other provisions of the Parks and Wildlife Code, §77.061(e) applies to commercial shrimp boats operating in the outside or inside water at all times of the year.

(c) Notwithstanding Parks and Wildlife Code, §77.068(a)(1) and (3), it is unlawful for any person to take or attempt to take shrimp for noncommercial use in outside water by any means except an individual bait shrimp trawl, cast net, or minnow seine not larger than 20 feet in length that is manually operated without the use of any mechanical means or devices.

(d) Notwithstanding Parks and Wildlife Code, §77.089(a) and §77.090, it is unlawful for any person to take or attempt to take non-commercial shrimp in inside water by any means except an individual bait shrimp trawl, cast net, or minnow seine not larger than 20 feet in length that is manually operated without the use of any mechanical means or devices.

(e) Notwithstanding Parks and Wildlife Code, §§77.081, 77.088 and 77.091, a licensed commercial bay shrimp boat operator may catch an unlimited amount of shrimp with a legal trawl as described in Parks and Wildlife Code, §77.093, in the major bays south of the Colorado River at any time during the period 30 minutes after sunset to 30 minutes before sunrise from February 1-April 15.

(f) From and after September 1, 1994 and notwithstanding the Parks and Wildlife Code, §§77.088, 77.089, 77.090, 77.091, 77.094, and 77.097, during the period April 1-August 14, it is unlawful for any person to take or attempt to take shrimp

from the inside water except between the hours of 30 minutes before sunrise to 2:00 p.m. or fail to have the otter trawl doors or other spreading device on the deck of the vessel and the trawl bag untied from 2:00 p.m. one day until 30 minutes before sunrise on the next day.

(g) Notwithstanding any provision of the Parks and Wildlife Code, Chapter 77, Subchapter E, it is unlawful to take or attempt to take shrimp from inside water from 30 minutes after sunset to 30 minutes before sunrise except as provided in subsections (e), (f) and (h) of this section.

(h) Notwithstanding subsections (f) and (g) of this section.

(1) Boats licensed as commercial bait shrimp boats may take shrimp only with a beam trawl and only between the hours of 1:00 a.m. and 30 minutes before sunrise in that portion of the Gulf Intracoastal Waterway, exclusive of its tributaries, between the locations of the current Channel Marker 17 and Channel Marker 57 (as indicated on the most current United States Coastal Survey Charts on the effective date of these rules) in the Laguna Madre in Nueces County; and

(2) It is unlawful for any person to take or attempt to take shrimp with a trawl at any other time or in any other place in the Laguna Madre north of a line starting on the mainland at the most northeasterly point on the north side of the entrance to Whiteley Channel then proceeding in a straight line to the north end of Pita Island; then continuing on a line to the southern most point on the westerly most spoil island bordering the north side of the New Humble Channel (commonly referred to as Hap's Channel); then continuing on a line along the north edge of the New Humble Channel (commonly referred to as Hap's Channel) to its junction with the Gulf Intracoastal Waterway; then continuing on a straight line to the Nueces/Kleberg county-line marker on Padre Island.

(i) Notwithstanding Parks and Wildlife Code, §§77.092(a), 77.094, and 77.095(a), during the period May 15-July 15, the operator of a boat licensed as a commercial bay shrimp boat or as both a commercial bay shrimp boat and a commercial bait shrimp boat may catch not more than 600 pounds of shrimp per boat per calendar day in major bays and may possess or have on board a boat in the inside water or unload or attempt to unload at any point in this state not more than 600 pounds of shrimp. During the period May 15 through July 15, it is unlawful for any boat licensed as both a commercial bay shrimp boat and a commercial bait shrimp boat to take or attempt to take shrimp in both a major bay and any other water within the same calendar day or take more than 600 pounds of shrimp in a calendar day.

(j) Notwithstanding Parks and Wildlife Code, Chapter 77, a person who displays or has on board a boat a bait-shrimp boat license-plate commits an offense if the person:

(1) possesses, on board, shrimp exceeding the daily limit of 200 pounds;

(2) fails to maintain at least one-half of the shrimp on board in a live condition except as authorized in Parks and Wildlife Code, §77.095(b);

(3) uses any trawl other than a bait shrimp trawl as defined in Parks and Wildlife Code, §77.096;

(4) operates a trawl or fails to have the spreading devices on deck and the trawl bag untied at a time other than authorized by these rules, or

(5) unloads at a place other than authorized in Parks and Wildlife Code, §77.098.

(k) From and after September 1, 1994, and notwithstanding Parks and Wildlife Code §77.062, the commission may change the opening and closing dates of the May 15 to July 15 closed season to provide an earlier, later, or longer season not to exceed 75 days

(l) From and after September 1, 1995, and notwithstanding Parks and Wildlife Code, Chapter 77, it is a violation for any person to take or attempt to take shrimp with a trawl having meshes, including meshes of the bag or liner, less than 8-3/4 inches in length between the two most widely separated knots in any consecutive series of five stretched meshes; except that a trawl having meshes, including meshes of the bag or liner, not less than 7-1/2 inches in length between the two most widely separated knots in any consecutive series of five stretched meshes may be used to take shrimp:

(1) on licensed commercial bait-shrimp boats on inside waters:

(2) on licensed commercial bay shrimp boats on inside waters, during the annual periods;

(A) 1 February-15 April;

(B) 15 May-15 July; and

(C) 1 November-15 December.

(3) on licensed commercial gulf shrimp boats on outside waters when taking seabobs under provisions of Parks and Wildlife Code, §77.066.

(m) From and after May 1, 1994, and notwithstanding Parks and Wildlife

Code, Chapter 77, it is unlawful for any person:

(1) aboard a vessel licensed as a commercial bay shrimp boat to off-load, transfer, sell, or barter any amount of live or dead shrimp to a person aboard another vessel;

(2) aboard a vessel to off-load, transfer, purchase, or barter from a person aboard a vessel licensed as a commercial bay shrimp boat any amount of live or dead shrimp;

(3) aboard a vessel licensed as a commercial bait shrimp boat to off-load, transfer, sell, or barter an amount of live or dead shrimp, except an amount of live or dead shrimp not to exceed two quarts per sport fisherman or one gallon (by volume) for two or more sportfishermen may be off-loaded, transferred, sold or bartered to a person aboard a sport fishing vessel;

(4) aboard a vessel to off-load, transfer, purchase, or barter from a person aboard a vessel licensed as a commercial bait-shrimp boat any amount of live or dead shrimp, except a person aboard a sport fishing vessel may off-load, transfer, purchase, or barter an amount of live or dead shrimp not to exceed two quarts per sport fisherman or one gallon (by volume) for two or more sportfishermen.

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 28, 1994.

TRD-9440015

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: May 20, 1994

Proposal publication date: February 18, 1994

For further information, please call: 1 (800) 792-1112, Extension 4433 or (512) 389-4433

◆ ◆ ◆
**Part XVII. Texas Soil and
Water Conservation
Board**

**Chapter 523. Agricultural and
Silvicultural Water Quality**

• 31 TAC §523.6

The Texas State Soil and Water Conservation Board adopts new §523.6 with changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1768).

The purpose of this new section is to provide specific details and requirements for implementation of provisions in Senate Bill 503, Acts of the 73rd Legislature regarding a cost-share assistance program to provide incentive for the installation of soil and water con-

servation land improvement measures consistent with the purposes of controlling erosion, conserving water and/or protecting water quality. Reasons for changes to the text as proposed are covered under discussion of comments received. The section describes the responsibilities of involved entities; the process for administering funds; program eligibility requirements; grant processing procedures; and maintenance requirements for cost-shared practices.

A general change was made, use of the term "cost-share grant" was changed to "cost-share assistance"

In subsection (b)(17), the definition of resource management plan was revised to clarify

In subsection (b)(20), changed "Tracts of land" to "Operating Unit" as ASCS uses the term "tracts" in a different sense.

Subsection (b)(21), definition of "Site" was questioned. In revised rules no reference is made to site. This definition was deleted

Subsection (b)(2)(M), this item requiring maintenance of a list of approved contractors was deleted.

In subsection (d)(2), it was felt districts that could submit allocation requests should be made more clear. Section rewritten

Subsection (e)(2), commentor wanted eligible land to include leased land. A new section (e)(2)(B) was added and old section (e)(2)(B) renumbered to (e)(2)(C)

In subsection (f)(10)(C), 30 days was deemed too short a time for the SWCD to respond to an appeal as they meet only monthly. Thirty days was increased to 60 days.

In subsection (e)(3)(C), limitation of ten acres minimum was questioned. SWCD is to determine eligibility, therefore, this paragraph was deleted.

Subsection (g)(5), requirement for a refund if property title transferred and new owners did not agree to maintain. Refund is necessary, State Board has waiver authority. Section was rewritten for clarity.

One commentor asked that serious consideration be given to the issue of Chinese Tallow control in our cost-share program.

One commentor, in reference to (f)(3)(C), and (f)(6)(A), suggested adding "or postpone completion of a treatment measure(s) until additional funds are available" and "or if funds use needed to complete the installation of the treatment measure(s), that portion that has been completed shall be determined eligible for payment" respectively.

One commentor listed eight concerns. On (c)(1)(C) questioned the establishment of a cost-share rate on a state-wide basis due to varying costs involved. On (c)(2)(B) concerned about the heavy workload created by SWCDs administering the cost-share program. On (c)(2)(E), they asked about sign-up-is it a designated period or year round? On (c)(2)(H) questioned establishment of case files for each application. On (c)(2)(J) questioned "provide or arrange for technical assistance" in view current of SCS workload.

Subsection (d)(1), concerned with responsibility for any administration funds received and spent in administering the cost-share program if all of the cost-share money is not obligated. Subsection (f)(1)(B) asked if applicant did not have a plan would the plan have to be on the entire operating unit or just the field in which it is located.

One commentor offered general comment that program "should not be restricted to just those areas of the state, such as HUA areas, where heavy concentrations of funds are already being spent."

The Rules Task Force expressed concerns for which no changes were recommended. Requiring a resource management plan in lieu of field by field application will limit cost-share program. Cost-share is to provide an incentive for resource protection. Without a total plan the credibility of resource protection achieving the desired level is questionable.

SCS and SWCD Staff not capable of carrying out the program. Resources to implement the program are an operational concern but not an item to be covered in the rules.

Need for applicant to certify that without cost-share the practice would not have been installed. This would make the rules more restrictive than the law.

No one opposed the rules as published but the following entities submitted suggestions for changes: Texas Department of Agriculture, Texas Farm Bureau, Lamar Soil and Water Conservation District, and the Rules Task Force

The new section is proposed under the Agriculture Code, Title 7, Chapter 201, §201.020 which authorizes the Soil and Water Conservation Board to adopt rules as necessary for the performance of its function and §201.026 which provides authorization for the Board to establish nonpoint source pollution abatement programs.

§523.6. Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures.

(a) Purpose—The purpose of this program is to provide the needed incentive to landowners or operators for the installation of soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality.

(b) Definitions—For the purposes of these rules the following definitions shall apply.

(1) Allocated funds—Funds budgeted through the State Board to a SWCD for cost-share assistance.

(2) Applicant—A person(s) who applies for a cost-share assistance from the SWCD.

(3) Available funds—Monies budgeted, unobligated and approved by the State Board for cost-share assistance.

(4) Conservation land treatment measure(s)—The measure(s) approved by the

State Board and applied to the land to control soil erosion or improve the quality and/or quantity of water.

(5) Cost-share assistance—An award of money made to an eligible person for conservation land improvement measures pursuant to the terms of Senate Bill 503, 73rd Texas Legislature.

(6) District director—A member of the governing board of a SWCD.

(7) Eligible land—Those lands that are eligible for application of conservation land improvement measures using cost-share assistance.

(8) Eligible person—Any of the land holders eligible to apply for cost-share assistance.

(9) Eligible practices—Those conservation land improvement measures that have been approved by the State Board

(10) Landowner—Any person, firm, or corporation holding title to land lying within a SWCD.

(11) Maintenance agreement—A written agreement between the eligible person and the SWCD wherein the eligible person agrees to maintain the applied conservation land improvement measure(s) for a period of time as established by the State Board and outlined in the applicable resource management plan.

(12) Obligated funds—Monies from a SWCD's allocated funds which have been committed to an applicant after final approval of the application.

(13) Performance agreement—A written agreement between the eligible person and the SWCD wherein the eligible person agrees to perform conservation land improvement measures for which allocated funds are being paid.

(14) Priority system—The system devised by the SWCD, under guidelines of the State Board, for ranking approved conservation land treatment measures and for facilitating the disbursement of allocated funds in line with the SWCD's priorities

(15) Program year—The period from September 1 to August 31.

(16) Resource management plan—A blueprint for implementation of soil and water conservation land improvement measures. It also includes a record of decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(17) Soil and water conservation district, herein referred to as SWCD—A government subdivision of this state and a public body corporate and politic, organized

pursuant to Chapter 201 of the Agriculture Code of Texas.

(18) State Board—The Texas State Soil and Water Conservation Board organized pursuant to the provisions of Chapter 201 of the Agriculture Code of Texas.

(19) Operating Unit—All the lands owned and/or operated by the applicant as an independent unit within a SWCD.

(c) Responsibilities.

(1) The State Board shall:

(A) establish a procedure to allocate funds to designated SWCDs for their use in cost-share assistance;

(B) establish conservation land treatment measures eligible for cost-share and their standards, specifications, maintenance and expected life;

(C) establish maximum cost-share rate for each conservation land treatment measure approved for cost-share;

(D) establish the minimum cost-share assistance prior to September 1 each year that may be made under the program and the maximum cost-share assistance that an eligible person may receive under the program in any one year;

(E) perform clerical, administrative and record-keeping responsibilities required for carrying out the cost-share program;

(F) receive and maintain monthly reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month;

(G) receive requests for reallocated funds and funds reverted from participating SWCDs,

(H) act on appeals filed by applicants;

(I) process vouchers and issue warrants for cost-share to eligible recipients.

(2) The SWCDs shall:

(A) designate, from State Board approved list, those conservation land treatment measures that will be eligible for cost-share in their SWCD;

(B) administer the cost-share program within the funds allocated by the State Board;

(C) establish, under guidelines of the State Board, the priority system to be used for evaluation of applications;

(D) establish the period(s) of time for accepting applications and announce the cost-share program locally;

(E) accept and process cost-share applications;

(F) determine eligibility of lands and persons for cost-share assistance under guidelines established by the State Board;

(G) notify applicants of the district's decisions on approval of applications;

(H) approved applications will be filed in the Districts copy of the applicant's Resource Management Plan;

(I) obligate allocated funds for applications receiving final approval;

(J) provide or arrange for technical assistance to applicants, or approve applicant and provide for an alternate source of technical assistance;

(K) certify completed conservation land treatment measures to the State Board prior to payment;

(L) submit required reports on the unobligated balance of allocated funds and on accomplishments to the State Board.

(d) Administration of Funds.

(1) Allocation of Funds. The State Board may allocate funds appropriated from general revenue fund and other sources for cost-share assistance among particular soil and water conservation land improvement measures or among areas of the state and may adjust such allocations throughout the year as available funds and SWCD needs and priorities change in order to achieve the most efficient use of state funds. The State Board may designate a portion of the funds allocated to a SWCD to reimburse the SWCD for obligations incurred in administering the cost-share program.

(2) Requests for Allocations. SWCDs within areas designated for cost-share program must submit requests for a cost-share fund allocation to the State Board

on forms provided by the State Board, and shall include all information required by such forms.

(3) Approval of Allocations. The State Board shall consider and approve, reject or adjust SWCD requests for allocations giving consideration to relative need for funding, SWCD workload and fund balances, as well as other information deemed necessary by the State Board. Only districts for which the State Board has established an allocation are eligible to claim cost-share funds.

(e) Eligibility for Cost-Share Assistance.

(1) Eligible person. Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper, participates in an agricultural or silvicultural operation within a SWCD shall be eligible for cost-share assistance.

(2) Eligible land. Any of the following categories of land shall be eligible for cost-share assistance:

(A) land within the State that is privately owned by an eligible person;

(B) land leased by an eligible person over which he has adequate control and which land is utilized as a part of his operating unit;

(C) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.

(3) Ineligible lands. Allocated funds shall not be used:

(A) to reimburse other units of government for implementing conservation land treatment measures;

(B) on privately owned land not used for agricultural or silvicultural production.

(4) Eligible purposes. Cost-share assistance shall be available only for those conservation land treatment measures included in an approved resource management plan and determined to be needed by the SWCD to:

(A) reduce erosion; and/or

(B) improve water quality and/or quantity.

(5) Eligible practices. Conservation land treatment measures which the State Board has approved and which are included in the applicant's approved resource management plan shall be eligible

for cost-share assistance. The list of eligible practices will be approved by the State Board at the beginning of each fiscal year. The SWCDs shall designate their list of eligible practices from those practices approved by the State Board. SWCDs may request the State Board's approval to offer conservation land treatment measures not included in the State Board's list of approved practices. The use of special conservation land treatment measures is limited to those measures that can solve unique problems in a SWCD and which conforms with one or more of the purposes of the cost-share program. Requests for special conservation land treatment measures will be filed in writing with the State Board in time to obtain action and notification in writing from the State Board of its decision(s) prior to announcing the cost-share program locally for the program year. Conservation land treatment measures may be included in a SWCD's list of eligible practices offered for cost-share assistance only as approved by the State Board.

(6) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person shall file an application with the local soil and water conservation district.

(7) Persons authorized to sign applications and agreements. All applications and agreements shall be signed by:

(A) the eligible person;

(B) any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or

(C) the responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.

(f) Cost-Share Assistance Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share assistance for conservation land treatment measures shall:

(A) complete and submit an application to the SWCD;

(B) where an applicant does not have an approved resource management plan and has not determined the anticipated total cost of the requested measure(s), he/she, as part of the application, may request assistance from the SWCD in developing such plan and determining costs;

(C) after being notified of approval and obligation of funds by the

district, request technical assistance through the district to design and layout the approved practices or request approval of alternate sources of technical assistance;

(D) secure any approved contractor(s) needed and all contractual or other agreements necessary to construct or perform the approved practice(s). Cost-share will not be allowed for work begun before the application is approved;

(E) complete and sign performance and maintenance agreements and any amendments to those agreements;

(F) supply the documents necessary to verify completion of the approved practice(s) along with a completed and signed certification of cost.

(2) Responsibilities of SWCDs. SWCDs shall:

(A) establish the period(s) of time for accepting applications and announce the cost-share program locally;

(B) accept cost-share applications at the SWCD's office;

(C) determine eligibility of lands and persons for cost-share assistance. If an applicant's land is in more than one SWCD, the respective SWCD boards of directors will review the application and agree to oversee all works, administrate all contracts and obligate all funds from one SWCD or prorate the funding between SWCDs;

(D) give initial approval to those applications that meet the eligibility requirements;

(E) evaluate the initially approved applications under the SWCD's priority system and give final approval to the high priority applications that can be funded by the SWCD's allocated funds;

(F) obligate funds for the approved conservation land treatment measures that can be funded and notify the applicants that his/her conservation land treatment measure(s) has/have been approved for cost-share and to proceed with installation;

(G) determine compliance with standards and specifications and certify completed conservation land treatment measure(s) that meet standards.

(3) Amended Applications for Allocated Funds.

(A) In the event that an adjustment to the estimated cost of conservation land treatment measure(s) is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her application for allocated funds to the SWCD for approval or denial by the SWCD.

(B) The SWCD may elect to adjust the amount of funds obligated for the conservation land treatment measures, provided funds are available, or to request additional funds from the State Board.

(C) In the event additional funds are not available, the conservation land treatment measure(s) may be redesigned, if possible, to a level commensurate with available funds, provided the redesign still meets standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of conservation land treatment measure(s) in excess of the amount authorized.

(4) Performance agreement. As a condition for receipt of cost-share assistance for conservation land treatment measures, the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by Texas State Soil and Water Conservation Board. Completion of the performance agreement and the signature of the eligible person is required prior to payment.

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person receiving the assistance shall agree to maintain approved measures for the expected life of each measure as established by the State Board and outlined in the applicable resource management plan. Completion of the maintenance agreement and signature of the eligible person is required prior to payment.

(6) Payment to Recipients.

(A) The SWCD shall determine eligibility of the applicant to receive payment of cost-share assistance, and provide certification to the State Board that measure(s) have been installed consistent with established standards.

(B) The State Board shall issue warrants for payment of cost share assistance.

(7) Applications Held in Abeyance Because of Lack of Funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. When additional funds are received, the SWCD will

obligate those funds. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications as it deems appropriate.

(8) Applications Denied for Reasons Other Than Lack of Funds. Applications for funds which are denied by the SWCD directors for other than lack of funds shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.

(9) Applications Withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share assistance by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district in accordance with the SWCD's established record retention policy.

(10) Appeals.

(A) An applicant may appeal the SWCD decisions relative to his/her application for allocated funds.

(B) The applicant shall make any appeal in writing to the SWCD which received his/her application for allocated funds and shall set forth the basis for the appeal.

(C) The SWCD shall have 60 days in which to make a decision and notify the applicant in writing.

(D) The decision of the SWCD may be appealed by the applicant to the State Board.

(E) All appeals made to the State Board shall be made in writing and shall set forth the basis for the appeal.

(F) All State Board decisions shall be final.

(g) Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share funds will be outlined in the eligible persons resource management plan and reviewed with the eligible person at the time of application for cost-share.

(2) A properly executed maintenance agreement shall be signed by the successful applicant prior to receipt of pay-

ment of cost-share assistance from the SWCD for a conservation land treatment measure(s) installed.

(3) The SWCD may require refund of any or all of the cost-share paid to an eligible person when the applied conservation land treatment measure(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person.

(4) Conservation land treatment measures that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, may apply for additional cost-share funds to restore them to their original design standards and specifications.

(5) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where a conservation land treatment measure(s) has been applied using cost-share assistance and the expected life assigned the practice has not expired, the participant, heir(s), or buyer(s) respectively, must agree to maintain the practice(s) or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board on a case by case basis may grant a waiver to this requirement

(h) Determining Status of Practices During Transfer of Land Ownership.

(1) A seller of agricultural land with respect to which a maintenance agreement is in effect may request the SWCD to inspect the practices. If the practices have not been removed, altered, or modified, the SWCD shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

(2) The buyer of lands covered by a maintenance agreement may also request that the SWCD inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

(3) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

(i) Reporting and Accounting. The State Board shall receive and maintain required reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

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 Temple, Texas, on May 1, 1994.

TRD-9440118

Robert G Buckley
Executive Director
Texas State Soil and
Water Conservation
Board

Effective date: May 23, 1994

Proposal publication date: March 15, 1994

For further information, please call: (817) 773-2250

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part V. Texas Board of
Pardons and Paroles**

**Chapter 141. General
Provisions**

Parole Commissioners

• 37 TAC §§141.21-141.26, 141.29

The Texas Board of Pardons and Paroles adopts the repeal of §§141.21-141.26 and 141.29, concerning Parole Commissioners, without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 57).

These sections are being repealed because legislative action has abolished the office of parole commissioner.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 29, 1994.

TRD-9440067

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: May 20, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
**Chapter 150. Board Policy
Statements; Memoranda of
Understanding**

Memoranda of Understanding

• 37 TAC §§150.1-150.9

The Texas Board of Pardons and Paroles adopts the repeal of §§150.1-150.9, concerning Board Policy Statements; Memoranda of Understanding, without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 60).

These sections are being repealed because they are based upon obsolete statutory law.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary

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 29, 1994

TRD-9440082

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: May 20, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

◆ ◆ ◆
• 37 TAC §150.53, §150.57

The Texas Board of Pardons and Paroles adopts the repeal of §150.53 and §150.57, concerning Mace Policy (§150.53) and Stun Gun Policy (§150.57), without changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 61).

These sections are being repealed because these policies related to obsolete statutory law and parole officers are no longer employees of the Board of Pardons and Paroles.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

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 29, 1994.

TRD-9440083

Michael F Miller
General Counsel
Texas Board of Pardons
and Paroles

Effective date: May 20, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 406-5613

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 on Aging

Friday, April 29, 1994, 9:30 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

Emergency Revised Agenda

According to the complete agenda, the Area Agency on Aging (AAA) Operations Committee (Public Hearing) added the following to previously published agenda: develop recommendation/position on Administration on Aging Notice of Proposed Rulemaking on the Intrastate Funding Formula.

Reason for Emergency: deadline for receipt of comments by Administration on Aging and Board on Aging meeting schedule necessitate that action be taken at this meeting.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78701, (512) 444-2727.

Filed: April 28, 1994, 4:10 p.m.

TRD-9439976

Texas Department of Agriculture

Thursday, May 12, 1994, 7:30 p.m.

Board Room, Snyder Chamber of Commerce

Snyder

According to the complete agenda, the Scurry County Cotton Producers Board will review and approve: minutes from previous

meeting, financial statements; discuss and appoint replacement for Robbie Sterling; discuss, set, and approve budget for upcoming fiscal year, discussion: disbursements of assessment funds, other business; and adjourn

Contact: Delores Hibbs, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7583

Filed: May 2, 1994, 9:47 a.m.

TRD-9440116

Thursday, June 23, 1994, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Rescheduled from April 28, 1994, 10:00 a.m.

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §76.116(a)(1) and 4 Texas Administrative Code, §7.22 by Marvin Beyer doing business as Coastal Bend Agriculture, Inc.

Contact: Barbara Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: April 29, 1994, 9:10 a.m.

TRD-9439994

Texas Bond Review Board

Tuesday, May 10, 1994, 10:00 a.m.

Committee Room #5, Clements Building, Fifth Floor, 300 West 15th Street

Austin

According to the agenda summary, the Staff Planning will call to order; approval of minutes; discussion of proposed issues; other business; and adjourn.

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: May 2, 1994, 3:10 p.m.

TRD-9440158

Thursday, May 12, 1994, 9:00 a.m.

Committee Room #1, Clements Building, Fifth Floor, 300 West 15th Street

Austin

According to the complete agenda, the Staff Planning will call to order; working session: discussion of guidelines for lease purchase acquisition of real estate; and adjourn.

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: May 2, 1994, 3:10 p.m.

TRD-9440157

Texas Cancer Council

Wednesday, May 18, 1994, 9:00 a.m.

Texas Medical Association, 401 West 15th Street, May Owens Conference Room

Austin

Rescheduled from April 27, 1994

According to the complete agenda, the Board of Directors will call to order; adoption of minutes; announcements; human dimensions of cancer care: principles and guidelines for action-final document; fiscal year 1994 fiscal and program issues; fiscal year 1995-1999 strategic plan; fiscal year 1995 initiatives; fiscal year 1996-1997 priorities; other business; and adjourn.

Contact: Debra Perkins, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: May 2, 1994, 9:46 a.m.

TRD-9440114

Texas Commission on Children and Youth

Monday, May 9, 1994, 9:30 a.m.

209 West 14th Street, Price Daniels Building, Room G-04

Austin

Emergency Meeting

According to the agenda summary, the Accountability Work Group will meet for work session; lunch; and work session.

Reason for emergency: Unexpected need to discuss accountability issues prior to Attorney General's Gang Task Force meeting on May 10.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: May 2, 1994, 4:00 p.m.

TRD-9440161

Friday, May 13, 1994, 10:00 a.m.

4601 North 19th Street, McLennan Community College, Community Services Building

Waco

According to the agenda summary, the Texas Commission on Children and Youth will consider organizational matters; guest speakers; public testimony; lunch; public testimony continues; and adjournment.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: May 2, 1994, 2:15 p.m.

TRD-9440153

Texas State Board of Examiners of Professional Counselors

Tuesday, May 10, 1994, 11:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Testing and Continuing Education Committee will discuss and possibly act on a contract with the State of Ohio Counselor and Social Worker Board to utilize the Texas licensed professional counselor examination.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. 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 28, 1994, 4:09 p.m.

TRD-9439973

Advisory Commission on State Emergency Communications

Tuesday, May 3, 1994, 9:00 a.m.

John H. Reagan Building, Room 106, 15th Street and North Congress Avenue

Austin

Emergency Revised Agenda

According to the complete agenda, the Administration Committee called the meeting to order and recognized guests; heard public comment; discussed and acted on strategic plan implementation issues; ACSEC staff reports on audit operations, annual 9-1-1 administrative budget process, legislative issues, ACSEC financial report; discussed and acted on transfer of poison surcharge funds to the 9-1-1 fund account to reimbursement of 9-1-1 funded poison control program expenses; discussion and commission action on proposed agency public education activities; 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; and adjourned.

Reason for emergency: Addition of an agenda item and rescheduling in order of presentation of an agenda item at the Chairman's request.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78748, (512) 327-1911.

Filed: May 2, 1994, 11:12 a.m.

TRD-9440131

State Employee Charitable Campaign

Tuesday, May 3, 1994, 1:30 p.m.

1300 East 40th Street

Houston

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Mamie Ewing, P.O. Box 16017, Houston, Texas 77722, (713) 696-7100.

Filed: April 28, 1994, 3:08 p.m.

TRD-9439952

Tuesday, May 3, 1994, 4:00 p.m.

128 East Second, Martin Luther King Boulevard (United Way of Odessa)

Odessa

According to the complete agenda, the Local Employee Committee (Odessa-Ector County) held an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Jill Martin, P.O. Box 632, Odessa, Texas 79760, (915) 332-0941.

Filed: April 28, 1994, 3:07 p.m.

TRD-9439951

Wednesday, May 4, 1994, 3:00 p.m.

1111 South Taylor

Amarillo

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Jeanette Taylor, 1111 South Taylor, Amarillo, Texas 78101, (806) 374-8787.

Filed: April 29, 1994, 5:02 p.m.

TRD-9440097

Wednesday, May 4, 1994, 4:00 p.m.

4000 South Park Drive

Tyler

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State

Employee Charitable Campaign and select Local Campaign Manager.

Contact: John Anderson, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7734.

Filed: April 28, 1994, 3:07 p.m.

TRD-9439950

Wednesday, May 4, 1994, 4:00 p.m.

3410 Taft, Boline Science Hall, Room 309
Wichita Falls

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Judy Burks, P.O. Box 300, Wichita Falls, Texas 76307, (817) 692-1220.

Filed: April 28, 1994, 12:39 p.m.

TRD-9439914

Wednesday, May 4, 1994, 4:00 p.m.

815 Market Street

Galveston

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select local campaign manager.

Contact: Dr. Robert McCauley, 815 Market Street, Galveston, Texas 77550, (409) 770-6736

Filed: April 29, 1994, 5:02 p.m.

TRD-9440096

Thursday, May 5, 1994, Noon.

24th and Maple, Abilene State School, Administration Building, Conference Room

Abilene

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Bill Waddill, P.O. Box 451, Abilene, Texas 79604, (915) 692-4053.

Filed: May 2, 1994, 1:30 p.m.

TRD-9440140

Thursday, May 5, 1994, 3:00 p.m.

3601 Fourth Street, Texas Tech University Health Sciences Center, Room 2AB101

Lubbock

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Jim Bob Jones, Texas Tech Health Science Center, 2B140, Lubbock, Texas 79430, (806) 743-2907.

Filed: May 2, 1994, 1:29 p.m.

TRD-9440138

Thursday, May 5, 1994, 3:00 p.m.

Texas Woman's University, Classroom Faculty, Office Building, (CFO) 13th Floor Conference Room

Denton

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager

Contact: Dr. Derrell W Bulls, P.O. Box 23805M, Denton, Texas 76204, (817) 898-2102.

Filed: May 2, 1994, 1:29 p.m.

TRD-9440139

Thursday, May 5, 1994, 3:30 p.m.

700 North Street

Beaumont

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Dr. Charles Turco, 113 Briggs Street, Beaumont, Texas 77707, (409) 880-8439.

Filed: May 2, 1994, 1:30 p.m.

TRD-9440141

Thursday, May 5, 1994, 4:00 p.m.

301 Tarrow, TAMU System Office-Room 318

College Station

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and select Local Campaign Manager.

Contact: Linda Johnson, TAMU Comptrollers Office, Mail Stop 1118, College Station, Texas 77843, (409) 845-2536

Filed: May 2, 1994, 1:30 p.m.

TRD-9440142

Texas Employment Commission

Tuesday, May 10, 1994, 9:00 a.m.

TEC Building, Room 644, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes; executive session to consider Texas Commission on Human Rights v. Texas Employment Commission, et al; actions, if any, resulting from executive session, staff reports; consideration and possible approval of architect selection to provide professional services for new roof at the Tyler agency-owned building; consideration and possible approval of proposal to purchase land in Mesquite; internal procedures of Commission Appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 19, and set date of next meeting.

Contact: C Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291

Filed: May 2, 1994, 4:06 p.m.

TRD-9440167

Office of the Governor

Saturday, May 7, 1994, 10:00 a.m.

Texas Office of Immigration and Refugee Affairs, 9101 Burnet Road, Suite 216

Austin

According to the complete agenda, the Advisory Committee on Immigration and Refugees will call to order, approval of minutes of meeting, announcement of resignation of committee member reports, state legalization impact assistance phase down, employer media campaign, Texas Refugee Program, Texas Refugee study, and general immigration legislation update, old business: letter to INS and letter to general counsel; new business: faces of sorrow photo exhibit, statewide refugee conference, and Texas conference on immigration, public comments, and adjourn.

Contact: Juan Flores, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 873-2400

Filed: April 29, 1994, 10:36 a.m.

TRD-9439997

Office of the Governor, Texas State Commission for National and Community Service

Tuesday, May 10, 1994, 2:00 p.m.

Flawn Academic Center, 2300 Inner Campus Drive, West of the Main Building

Austin

According to the complete agenda, the Board will call to order, introduction of

members; staff report, nomination and election of officers; discussion of grant review; discussion and possible scheduling of future meetings.

For assistance, call Marsha Jensen at (512) 463-1814 at least two days prior to meeting.

Contact: Randi Shade, P.O. Box 12428, Austin, Texas 78711, (512) 463-1814.

Filed: May 2, 1994, 3:00 p.m.

TRD-9440156

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Texas Department of Health

Friday, May 6, 1994, 10:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Pediatric Emergency Medical Services Advisory Committee will discuss and possibly act on approval of the minutes from the previous meeting, bureau chief's report, Emergency Medical Services for Children (EMSC) program report, data collection, "Think Child Safety", discussion items (pediatric preceptor program, guidelines for prehospital treatment of pediatric patient, "EMS Rounds" introduction, children with special needs training outline; and role of primary care provider in EMSC); action items (rural hospital survey revision, categorization criteria for Level I pilot survey, and emergency equipment list for physicians' offices), local projects update, other business not requiring committee action; and public comments

Contact: Harold Broadbent, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. 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 28, 1994, 4:09 p.m.

TRD-9439972

Thursday, May 12, 1994, 9:30 a.m.

Texas Department of Health, Room T-607, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health will hold a strategic planning summit follow-up meeting to discuss and possibly act on review of summit (introduction of product champions), introduction of staff/define roles, development of position papers on Texas Board of Health priority issues (health care reform, Texas volunteer health corps, community relations/marketing, building coalitions, Medicaid as an instrument for social good; changing role from health police to health

provider); action plan development for priorities with benchmark dates; and develop calendar with critical dates.

Contact: Hickmon Friday, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting

Filed: May 2, 1994, 4:00 p.m.

TRD-9440164

Friday, May 13, 1994, 10:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas HIV Medication Advisory Committee will discuss approval of the minutes of previous meeting, and discuss and possibly act on staff reports (client data and budget); report from Texas Department of Health Dieticians, formulary considerations (Megace, Clarithromycin; and ACTG076/AZT indications), and date of next meeting

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7357. 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 28, 1994, 4:00 p.m.

TRD-9439974

Wednesday, May 25, 1994, 9:30 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the HIV/AIDS Coordinating Council will discuss approval of the minutes of March 9, 1994, and discuss and possibly act on: overview of council meeting format; and HIV/AIDS issues proposed by the editorial subcommittee (client services; provider education, youth education; regulation, coordination of state efforts, adoption of "final draft" of HIV/AIDS issues; and overview of the next council meeting)

Contact: Linda Moore, M.S., R.N., 1100 West 49th Street, Austin, Texas 78756, (512) 458-6403. 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 29, 1994, 4:10 p.m.

TRD-9440086

**Texas Department of Health,
Statewide Health Coordinating Council**

Tuesday, May 10, 1994, 8:30 a.m.

Texas Department of Health, Room M-739, 1100 West 49th Street

Austin

According to the complete agenda, the Nominating Committee will discuss and possibly act on nominations of officers for the Statewide Health Coordinating Council.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-2167. 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: May 2, 1994, 4:00 p.m.

TRD-9440162

Tuesday, May 10, 1994, 10:00 a.m.

Texas Department of Health, Room M-739, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Department of Health, Statewide Health Coordinating Council will discuss approval of the minutes from the May 12, 1993 and April 6, 1994 meetings; and discuss and possibly act on: report of the Nominating Committee; election of officers; committee appointments; health professions in Texas; reports and issues; status report on recommendations from the 1993-1994 Texas State Health Plan; process for 1995-1996 Texas State health Plan; status of Texas Department of Health Strategic Plan; and more meeting dates.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-2167. 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: May 2, 1994, 4:00 p.m.

TRD-9440168

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**Health and Human Services
Commission**

Thursday, May 12, 1994, 9:15 a.m.

701 West 51st Street, Public Hearing Room

Austin

According to the complete agenda, the Medical Care Advisory Committee will hear opening comments; State Medicaid Director's comments, approval of minutes; proposed reimbursement rules for the ICF-MR select Level V children's class; tuber-

culosis clinic services; changes to the rules regarding pharmacy services in the long term care nursing facility requirements for licensure and medicaid certification; process for payment of lapsed LOC days in home and community-based services program; process for payment of lapsed LOC days in home and community-based services OBRA program; changing physician's order requirements for primary home care; addition of licensed professional counselors and advanced clinical practitioners as medicaid providers; revision of PASARR rules; exemption of home property for sale; broadening the 30-consecutive day requirement; new rules governing criminal history check of applicants for employment; family planning rules-standards for client care, technical change to the certification rules; military hospitals participating in medicaid; EPSDT dental professional subcommittee report, open discussion, next meeting, and adjournment.

Contact: Geri Williams, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759, (512) 502-3256.

Filed: May 2, 1994, 2:59 p.m.

TRD-9440155

Texas House of Representatives

Tuesday, May 17, 1994, 10:00 a.m.

Capitol Extension, E2.014

Austin

According to the agenda summary, the Joint Interim Committee on Petroleum Storage Tanks will call to order; roll call; public testimony; other business; and adjourn.

Contact: Lance Lively in care of Representative Clyde Alexander, P.O. Box 2910, Austin, Texas 78768, (512) 463-0730

Filed: April 28, 1994, 4:41 p.m.

TRD-9439978

Texas Department of Housing and Community Affairs

Tuesday, May 10, 1994, 9:30 a.m.

300 West 15th Street, Committee Room 1, Fifth Floor, Clements Building

Austin

According to the agenda summary, the Audit Committee of the Board of Directors will call to order; roll call, public comment, consider and possibly act on: KMPG Peat Marwick Housing Finance audited financial statements, letter on internal control and

accounting procedures, community affairs audit; fiscal year 1993 statewide audit and certification of performance measures from state auditor's office; revisions to internal audit plan, status of audits; report on internal auditing peer review; compliance and monitoring reports on RTC monitoring and status of agreement, LIHTC monitoring procedures, audit exceptions for federal grant programs; and adjourn.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3800

Filed: April 28, 1994, 1:16 p.m.

TRD-9439924

Texas State Affordable Housing Corporation

Tuesday-Wednesday, May 10-11, 1994, Noon.

Committee Room One, Fifth Floor, Clements Building, 300 West 15th Street

Austin

According to the complete agenda, the Board will meet to consider and possibly act upon the following: approval of minutes of March 25, 1994; budget amendments for 1994; revision to 1994 internal auditing plan, multi-family refundings of Summers Crossing and Summers Meadows, multi-family HUD Risk Share Program, purchase of HUD property-Lincoln Terrace; amendment to sales price on Peters Colony and Oak Creek Apartments due to needed capital improvements; insurance bid for RTC Properties; Low Income Housing Tax Credit Qualified Allocation Plan for publication in the *Texas Register*; Low Income Housing Tax Credit Counsel, contract for deed program; funds for homeless census; appeals process; executive director's report; executive session-THA MF Housing Revenue Bonds; anticipated litigation; act on executive session items; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: May 2, 1994, 4:39 p.m.

TRD-9440169

Tuesday, May 10, 4:30 p.m.

Committee Room One, Fifth Floor, Clements Building, 300 West 15th Street

Austin

According to the complete agenda, the Low Income Housing Tax Credit Committee will meet to consider and possibly act upon the following: approval of Low Income Housing Tax Credit Qualified Allocation Plan for publication in the *Texas Register*; approval of low income housing tax credit counsel; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78701, (512) 475-3934.

Filed: May 2, 1994, 4:39 p.m.

TRD-9440170

Wednesday, May 11, 1994, 11:00 a.m.

Committee Room One, Fifth Floor, Clements Building, 300 West 15th Street

Austin

According to the complete agenda, the Board will meet to consider and possibly act upon the following: election of officers; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934

Filed: May 2, 1994, 4:39 p.m.

TRD-9440171

Texas Department of Insurance

Tuesday, May 10, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Kenneth L. Baker, Waco, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 28, 1994, 1:56 p.m.

TRD-9439943

Wednesday, May 11, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the complete agenda, the Texas Department of Insurance will consider the application of Michael S. Wundt, San Antonio, Texas, for an Insurance Adjuster's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 28, 1994, 1:56 p.m.

TRD-9439942

Thursday, May 12, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502 Austin

According to the complete agenda, the Texas Department of Insurance will consider the application of John A. Jones, Arlington, Texas, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 28, 1994, 1:56 p.m.

TRD-9439941

Friday, May 13, 1994, 9:00 a.m.

333 Guadalupe Street, Room 1264, Tower I Austin

According to the complete agenda, the Texas HMO Solvency Surveillance Committee will call to order; approval of January 28, 1994 minutes; staff report; adoption of the annual report; adoption of legislative recommendations regarding the detection and prevention of HMO insolvency problems for the January 1995 session; review of overall HMO industry; executive session consultation with attorney regarding contemplated litigation; reconvene in open session; and adjourn.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 28, 1994, 2:11 p.m.

TRD-9439949

Friday, May 13, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502 Austin

According to the agenda summary, the Texas Department of Insurance will meet to consider the application of FHP of Texas, Inc., Houston, Texas for a Certificate of Authority to operate a Health Maintenance Organization in the State of Texas.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: May 2, 1994, 4:01 p.m.

TRD-9440165



Texas Juvenile Probation Commission

Thursday, May 5, 1994, 1:00 p.m.

Multi-Service Center Auditorium, 170 Heights Boulevard

Houston

According to the complete agenda, the Public Hearing called welcomed, discussed overview of process and ground rules for testimony; began public testimony; recessed until 6:30 p.m.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 28, 1994, 1:15 p.m.

TRD-9439921

Thursday, May 5, 1994, 6:30 p.m.

Multi-Service Center Auditorium, 170 Height Boulevard

Houston

According to the complete agenda, the Public Hearing reconvened meeting; welcomed, discussed overview of process and ground rules for testimony; general public testimony including the following issues: delinquency prevention, funding for juvenile probation services, probation/school interaction, community corrections, detention overcrowding, and detention standards waivers; and adjourned.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 28, 1994, 1:16 p.m.

TRD-9439922



Texas State Library and Archives Commission

Thursday-Friday, May 19-20, 1994, 9:30 a.m. and 9:00 a.m., respectively.

Lorenzo de Zavala State Library and Archives Building, 1201 Brazos, Room 314

Austin

According to the agenda summary, on Thursday, the Library Services and Construction Act Advisory Council will make introduction and welcome; administrative details; review and approval of SFY 1995-1998 LSCA Long Range Plan; review and approval of the FFY 1995 LSCA Annual Program: the projects to be highlighted for the Councils are: Title II-Construction Grants for FY95, Title I-Special Projects Grant Guidelines for FY95 (formerly Disadvantaged Grants), and Title II-Disability Access Remodeling Grant Guidelines for FY96; election of a new Chair of the LSCA

Advisory Council for a two-year term; information items (staff will present brief written and oral reports for Council discussion: status reports on Congressional reauthorization of LSCA, on Cash Management Improvement Act, on Texas Group, on Project Link, on Small Library Management Institute, on Access Texas, and on Library Development Biennial Budget Request; review of Disadvantaged Services Grant Guidelines; and review of Title I Grant Applications (Disadvantaged Services). On Friday, the Library Services and Construction Act Advisory Council will discuss unfinished business from previous day; and adjournment.

Contact: Ed Seldenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: April 28, 1994, 1:16 p.m.

TRD-9439923



Texas State Board of Examiners of Marriage and Family Therapists

Monday, May 9, 1994, 8:30 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Application Review Committee will discuss and possibly act on: waiver requests (Judy Young, Robert Azzarito, and Judy Johnson-Russell); and transcripts (Francisco Villalobos and Mary Ann Denton).

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. 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 29, 1994, 4:21 p.m.

TRD-9440091

Monday, May 9, 1994, 10:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Texas State Board of Examiners of Marriage and Family Therapists will discuss approval of the minutes of the March 21, 1994 board meeting; and discuss and possibly act on: executive director's report; application review committee report (waiver requests of Judy Young, Robert Azzarito, and Judy Johnson-Russell); transcripts of Francisco Villalobos and Mary Ann Denton); post degree institutes (Houston/Galveston Institute; Southwest Family Institute; and East Texas State University); supervi-

sion/supervisors (procedures for becoming an approved supervisor; and guidelines for out-of-state internships); future rule changes (administrative penalties; sexual misconduct; anonymous complaints; and other issues); insurance issues; other issues concerning licensed marriage and family therapists not requiring board action; and setting of next board meeting calendar.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 29, 1994, 4:21 p.m.

TRD-9440090

Texas Mental Health and Mental Retardation Board

Thursday, May 12, 1994, 8:30 a.m.

909 West 45th Street (Auditorium)

Austin

According to the agenda summary, the Planning and Policy Development Committee will hear citizens comments; legislative update; update to the Board regarding Community Services Steering Committee; state school closure update; medicaid briefing; and consideration of approval of the strategic plan for fiscal year 1995-1999.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, Relay Texas), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 2, 1994, 1:17 p.m.

TRD-9440133

Thursday, May 12, 1994, 11:00 a.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Human Resources Committee will hear citizens comments and human resources update.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, Relay Texas), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 2, 1994, 1:17 p.m.

TRD-9440134

Thursday, May 12, 1994, 1:15 p.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Audit Committee will hear citizens comments; audit activity update; update on community services funding audit; and internal control reviews.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, Relay Texas), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 2, 1994, 1:17 p.m.

TRD-9440135

Thursday, May 12, 1994, 2:00 p.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Business and Asset Management Committee will hear citizens comments; update on budget matters; consideration of approval of fiscal year 1994 operating budget adjustments; consideration of approval of the emergency provision of central air conditioning at the central kitchen of Rusk State Hospital construction project; consideration of an offer to sell surplus property at the Travis State School to the permanent school fund; consideration of items related to the development of Central Park; and briefing regarding the Texas Research Institute of Mental Sciences.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, Relay Texas), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 2, 1994, 1:17 p.m.

TRD-9440136

Friday, May 13, 1994, 9:00 a.m.

909 West 45th Street (Auditorium)

Austin

According to the agenda summary, the Texas Mental Health and Mental Retardation Board will call to order, roll call; citizens comments; approval of minutes of January 21, 1994 meeting and approval of minutes of March 25, 1994 meeting; and issues to be considered: chairman's report-resolution regarding mental health month and commissioner's report-announcements, program presentation-supported housing program-mental health services, and medical director's report.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, Relay Texas), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 2, 1994, 1:19 p.m.

TRD-9440137

Texas Natural Resource Conservation Commission

Tuesday, May 10, 1994, 9:30 a.m.

University of Houston/Clear Lake-Bayou Building, Forest Room, 2700 Bay Area Boulevard

Houston

According to the agenda summary, the Galveston Bay National Estuary Program Citizen's Advisory Steering Committee will discuss the structure of the public meetings; Galveston Bay plan; and Committee will discuss Bay Day and other business.

Contact: Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937.

Filed: May 2, 1994, 1:58 p.m.

TRD-9440145

Wednesday, May 11, 1994, 9:00 a.m.

Stephen F. Austin State Office Building-Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters on the contested agenda: water quality enforcement; PST enforcement; motion for rehearing; rules; solid waste management plan; proposal for decisions; 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: May 2, 1994, 9:47 a.m.

TRD-9440117

Thursday, May 12, 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 Management Committee of the Corpus Christi Bay National Estuary Program will call to order/introductions/minutes; goal development workshop; program update; sub-committee reports; presentation/approval of fiscal year 1995 technical scopes of services; and additional items/adjourn.

Contact: Richard Volk, TAMU-CC, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: April 29, 1994, 10:36 a.m.

TRD-9439996

Monday, May 23, 1994, 10:00 a.m.

Stephen F. Austin State Office Building-Room 211, 1700 North Congress Avenue
Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Brazos River Authority's request to extend the time to begin and complete construction of Lake Bosque Dam, to be constructed on North Bosque River, Brazos River Basin, in Bosque County, Texas. The applicant has requested an extension of the time to June 1, 1995 by which construction of the Dam must commence and an extension of the time to June 1, 1998 for completion of the project. Lake Bosque Dam and Reservoir are authorized under Water Use Permit Number 5093, and includes a right to divert and use water from the lake for municipal purposes in Bosque and McLennan Counties, Texas.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:36 p.m.

TRD-9440023

Monday, May 23, 1994, 10:00 a.m.

Stephen F. Austin State Office Building-Room 1149B, 1700 North Congress Avenue
Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on a standby fee application submitted by Lake LBJ Municipal Utility District. The nature and purpose of standby fees is to distribute a fair portion of the cost burden for operation and maintenance of the District's facilities and/or for financing capital costs of the District's facilities to owners of property who have not constructed improvements but have water and/or wastewater facilities or capacity available. The amount of the standby fee requested is \$24 per year per unimproved lot. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:36 p.m.

TRD-9440024

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against E. C. Herring.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:39 p.m.

TRD-9440029

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against Joe I. Salazar.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:40 p.m.

TRD-9440030

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against John S. Murchison.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:40 p.m.

TRD-9440031

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against Mike Coles.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:41 p.m.

TRD-9440032

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against Jesse H. Bain.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:41 p.m.

TRD-9440033

Friday, May 27, 1994, 9:30 a.m.

Building E, Room 201, Park 35 Circle (One Mile South of Parmer Lane on IH-35 Service Road)

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of adjudicative hearing for administrative action to be taken against Oscar Alanis.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: April 29, 1994, 3:42 p.m.

TRD-9440034

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Texas Board of Nursing Facility Administrators

Monday, May 16, 1994, 1:00 p.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Complaints Committee will discuss and possibly act on: complaints-August 1993 to March 1994; and proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 29, 1994, 4:10 p.m.

TRD-9440087

Tuesday, May 17, 1994, 10:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Finance Committee will discuss and possibly

act on: budget; estimated income for fiscal year 1994; and proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 29, 1994, 4:23 p.m.

TRD-9440094

Thursday, June 2, 1994, 10:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Policies and Procedures Committee will discuss and possibly act on proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 29, 1994, 4:10 p.m.

TRD-9440089

Friday, June 3, 1994, 9:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Education Committee will discuss and possibly act on: waiver requests; ad hoc committee; and proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 29, 1994, 4:10 p.m.

TRD-9440088

Texas State Board of Plumbing Examiners

Monday, May 9, 1994, 9:00 a.m.

929 East 41st Street

Austin

According to the agenda summary, the State Board of Plumbing Examiners will take roll call; recognize visitors; minutes of March 1994 meeting; Carroll Pruitt, International Conference of building officials; Chris Maczka, Assistant Attorney General; action on rules; enforcement committee hearings report; citations; procedure on reporting or communicating information on licensees;

committee reports; financial report; administrator's report, executive session-personnel; correspondence; examination report; field department report; request for low license number by the Associated Plumbing Heating Cooling Contractors of Texas; Gordon G. Wyrick, M 1987; and request for staff travel approval.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: April 29, 1994, 3:57 p.m.

TRD-9440062

Public Utility Commission of Texas

Tuesday, May 10, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission of Texas will consider the following dockets: 11161, 12447, 12007, 12085, and 12289.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 2, 1994, 1:16 p.m.

TRD-9440132

Tuesday, May 10, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative will discuss: reports, discussion and action on public information goals and strategies and press policy; application for NTIA grant; report from Quality Steering Committee and Subcommittees; agency interaction with Interim Legislative Committees and/or Sunset Commission; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 2, 1994, 1:38 p.m.

TRD-9440144

Thursday, May 12, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearing Division will hold a prehearing conference in Docket Number 12879-

application of Southwestern Bell Telephone Company for expanded Interconnection and Unbundling of Special Access DS1 and DS3 Services.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 2, 1994, 11:11 a.m.

TRD-9440126

Tuesday, August 9, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a consolidated hearing on the merits in Docket Number 12865-application of Contel of Texas, Inc. to offer a new rate structure and pricing of switched access local transport service in the access service tariff and Docket Number 12866-application of GTE Southwest, Inc. to offer a new rate structure and pricing of switched access local transport service in the access service tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 29, 1994, 11:21 a.m.

TRD-9440005

Texas Racing Commission

Monday, May 2, 1994, 10:00 a.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

Emergency Revised Agenda

According to the complete agenda, the Texas Racing Commission considered and acted on requests from Texas racetracks to receive out-of-state simulcasts.

Reason for Emergency: The loss of revenue anticipated from the denial of simulcasting could affect the racetracks' viability, the welfare of the horse owners and trainers, and the ability of local governments to provide necessary services.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461

Filed: April 28, 1994, 1:17 p.m.

TRD-9439925

Center for Rural Health Initiatives

Friday, May 13, 1994, 9:30 a.m.

Southwest Tower Building, Seventh Floor Conference Room, 211 East Seventh Street
Austin

According to the complete agenda, the Outstanding Rural Scholar Recognition Program Advisory Committee will discuss and possibly act on: minutes of the previous meeting; program status report to include program promotion activities, anticipated graduates for 1994, status of graduated students, budget estimate; review of proposed rules; selection and ranking of 1994 scholars; and schedule next meeting.

Contact: William Lydon, 211 East Seventh Street, #915, Austin, Texas 78701, (512) 479-8891.

Filed: May 2, 1994, 9:47 a.m.

TRD-9440115

Texas Senate

Friday, May 20, 1994, 9:00 a.m.

209 North Water Street, Region II Education Service Center

Corpus Christi

According to the agenda summary, the Joint Select Committee to Review the Central Education Agency will call to order; discussion of proposed preliminary conclusions; public testimony; update from Commission Meno on the revision of the Education Code; report from staff on Senate Bill 7 court proceedings and implementation; and adjournment.

Contact: Pat Hicks, P.O. Box 12068, Austin, Texas 78711, (512) 463-0355.

Filed: April 28, 1994, 4:10 p.m.

TRD-9439975

Texas State Board of Examiners of Social Worker Examiners

Friday, May 6, 1994, 9:00 a.m.

Conference Room B, Texas Employment Commission, 514 North Staples

Corpus Christi

According to the complete agenda, the Continuing Education/Competency Committee will discuss and possibly act on: review of statutory provisions, existing rules and resource materials relating to continuing education/competency; development of a draft set of rules, policies and procedures on

continuing education/competency 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 28, 1994, 4:41 p.m.

TRD-9439977

Structural Pest Control Board

Monday, May 16, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.122

Austin

According to the complete agenda, the Continuing Education Committee will consider public comment; review and approval of continuing education programs; and discuss proposed changes in continuing education requirements.

Contact: Benny M. Mathis, Jr., 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: May 3, 1994, 8:43 a.m.

TRD-9440172

Tuesday, May 17, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.122

Austin

According to the complete agenda, the Integrated Pest Management Committee will consider public comment period; review revised recommendations on IPM for schools; and discuss proposed regulations concerning IPM.

Contact: Benny M. Mathis, Jr., 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: May 3, 1994, 8:43 a.m.

TRD-9440173

The Texas State University System

Thursday-Friday, May 5-6, 1994, 11:00 a.m. and 8:00 a.m., respectively.

Court Room, Criminal Justice Center, Sam Houston State University

Huntsville

According to the agenda summary, the Board of Regents will discuss review of

matters of the Board and the four Universities in the System including: all matters reviewed by the Curriculum Committee (see Curriculum Committee agenda), the Construction and Planning Committee (see Construction and Planning Committee agenda), the Finance Committee (see Finance Committee agenda), the Rules and Regulations Committee (see Rules and Regulations Committee agenda), and a report from the Minority Enhancement Committee as submitted to the full Board for review and approval; personnel action including new employees, promotions, resignations, terminations, salary-supplements and special appointment of any system employee including the Presidents and Chancellor; discussion of litigation; budgetary changes, operating budgets and contract (including shuttle bus contracts) approvals at each university and the system administrative office; acceptance of gifts; admission requirements and fees; room rates; and land leases, purchases, easements and sales and approval of System strategic plans. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: April 29, 1994, 10:37 a.m.

TRD-9440002

Thursday, May 5, 1994, 1:30 p.m.

Court Room, Criminal Justice Center, Sam Houston State University

Huntsville

According to the complete agenda, the Curriculum Committee discussed review of matters of the Board and the four Universities in the System including: all matters of curriculum, including Twelfth Class Day and Fourth Class Day reports; substantive and non-substantive program changes, new degree programs, additions, deletions and retention of courses, additions and deletions of degree courses, admission standards, out-of-state and out-of-country studies. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: April 29, 1994, 10:36 a.m.

TRD-9440001

Thursday, May 5, 1994, 2:15 p.m.

Court Room, Criminal Justice Center, Sam Houston State University

Huntsville

According to the complete agenda, the Planning and Construction Committee discussed review of construction projects and

documents for the four Universities in the System including: preliminary plans for the Disaster Recovery Facility at Angelo State University; final acceptance of the art laboratory building-IV, approval of preliminary plans for the space for the Texas Regional Institute for environmental studies and for the renovation of the Sam Houston Memorial Museum building, approval of architect for study for the law enforcement management institute, a contract award for the renovation of eight small residence halls, authorization to take bids and issue purchase orders for renovation of the student life offices in the lowman student center, renovation of Gidley and Roy Adams residence halls, renovation of the academic building III dance studios, roof maintenance on the Johnson Coliseum and authorization to purchase real estate at Sam Houston State University; approval of preliminary plans for the new student center/bookstore, award of contracts for demolition and asbestos abatement of the general classrooms building, the demolition contract for Thomas Hall, generator and engine repairs at the cogeneration plant and authorization for property acquisition and modifications to Read Hall at Southwest Texas State University; and award of contract for the exterior building renovations and the front of campus parking lot renovation project and authorization for purchase order for asbestos abatement in Lawrence Hall at Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: April 29, 1994, 10:36 a.m.

TRD-9440000

Thursday, May 5, 1994, 3:30 p.m.

Court Room, Criminal Justice Center, Sam Houston State University

Huntsville

According to the complete agenda, the Finance Committee discussed review of financial matters of the System Office and the four Universities in the System including approval of 1994-1995 fiscal year budgets, approval of fees and internal audit reports from Southwest Texas State University and Sul Ross University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: April 29, 1994, 10:36 a.m.

TRD-9439999

Thursday, May 5, 1994, 4:00 p.m.

Court Room, Criminal Justice Center, Sam Houston State University

Huntsville

According to the complete agenda, the Rules and Regulations Committee discussed review of proposed amendments to the Rules and Regulations of the System. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: April 29, 1994, 10:36 a.m.

TRD-9439998

Texas Department of Transportation

Thursday, April 28, 1994, 4:00 p.m.

200 East Riverside Drive, Room 101

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 the 65th Judicial District Court of El Paso County, Texas; and considered retaining private legal counsel in the matter of the Court of Inquiry, in the 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 traveling public.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: April 28, 1994, 1:35 p.m.

TRD-9439936

University of Texas System

Tuesday, May 10, 1994, 10:00 a.m.

Midland Hilton Hotel

Midland

According to the complete agenda, the Board for Lease of University Lands will discuss approval of the December 14, 1993 minutes of the Board for Lease meeting; approval of tracts offered and opening of bids received on or before Tuesday, May 10, 1994; consideration of proposed Unit Agreement involving Shafter Lake Clearfork Unit, Andrews County, Texas; discussion of future lease sales; and approval of lease awards to highest bidders.

Contact: Linward Shivers, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4402.

Filed: April 29, 1994, 10:12 a.m.

TRD-9439995

Texas Workers' Compensation Insurance Facility

Monday, May 9, 1994, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th Street
Austin

According to the agenda summary, the Governing Committee will discuss approval of April 11, 1994 minutes; consideration and possible action on: 1993 actuary report, discount rate for rebates or assessments, re-assessment of outstanding assessments, revisions to investment policy, servicing company requests for reimbursements, and recommendations from the appeals committee; budget committee report on first quarter 1994 budget; executive director's report; and executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the governing committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans and personnel policies.

Contact: Peter Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: April 29, 1994, 2:59 p.m.

TRD-9440020

Texas Council on Workforce and Economic Competitiveness

Monday-Tuesday, May 16-17, 1994, 1:00 p.m. and 8:30 a.m. respectively.

Austin Community College Administration Offices, 5930 Middle Fiskville Road, Room 438 (Monday) and Room 233C (Tuesday)

Austin

According to the agenda summary, the Apprenticeship and Career Pathways Programs Design Committee will discuss approval of the minutes of the committee's March 23-24, 1994, meeting; public comment/testimony; a staff report on planning grants, involvement of JSECs, and an update on apprenticeship training; a presentation and discussion of the wage and hour laws; a panel presentation and discussion of liabil-

ity insurance issues; a discussion of the governance and administrative structure for school-to-work; a discussion of the certificate of initial mastery; a presentation on curriculum, a professional development, and education reform; a briefing from the marketing contractor; a discussion on ability group tracking; and a presentation and discussion on curriculum.

Persons with disabilities who plan to attend who may 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 arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 305-7008.

Filed: May 2, 1994, 4:01 p.m.

TRD-9440166

Regional Meetings

Meetings Filed April 28, 1994

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew, (Aqua Office), Bastrop, May 2, 1994, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas, (512) 303-3943. TRD-9439904

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging met in the Council Offices, 1706 East 29th Street, Bryan, May 3, 1994, at 2:30 p.m. Information may be obtained from Roberta Lindquist, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9439947.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, May 4, 1994, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9439920.

The East Texas Council of Governments JTPA Board of Directors met at Roy H. Laird Country Club, Kilgore, May 5, 1994, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9439912.

The East Texas Council of Governments Executive Committee met at ETCOG, Kilgore, May 5, 1994, at 2:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9439990.

The Guadalupe-Blanco River Authority Board of Directors met at Seven Oaks Resort at Woodcreek, Number One, Woodcreek Circle, Wimberley, May 3, 1994, 9:00 a.m. and Wednesday, May 4,

1994, at 8:30 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156, (21) 379-5822. TRD-9439948.

The Lamb County Appraisal District Appraisal Review Board will meet at 331 LFD Drive, Littlefield, May 17, 1994, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950. TRD-9439903.

The Lavaca County Central Appraisal District Agricultural Appraisal Advisory Board met at 113 North Main Street, Hallettsville, May 3, 1994, 8:30 a.m. Information may be obtained from Diane Munson, P.O. Box 363, Hallettsville, Texas 77964, (512) 798-4396. TRD-9439937.

The Lower Colorado River Authority Retirement Benefits Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, Travis County, May 5, 1994, at 8:30 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9439963.

The Panhandle Ground Water Conservation District Three Board of Directors Public Meeting met at the Water District Office, 300 South Omohundro Street, White Deer, May 2, 1994, at 7:30 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9439988.

Meetings Filed April 29, 1994

The Angelina and Neches River Authority Board of Directors (Regular Meeting) met at the Crown Colony Country Club, Azalea Room, Lufkin, May 3, 1994, at 10:00 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795, Fax (409) 632-2564. TRD-9440009.

The Austin-Travis County MHMR Center Public Relations Committee met at 1430 Collier Street, Austin, May 4, 1994, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9440063.

The Bell-Milam-Falls Water Supply Corporation Board of Directors met at the WSC Office, FM 485 West, Cameron, May 5, 1994, at 8:30 a.m. Information may be obtained from Dwayne Jekel, FM 485 West, Cameron, Texas 76520, (817) 697-4016. TRD-9439992.

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, May 6, 1994, at 10:00 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet,

Texas 77861, (512) 756-8291. TRD-9440017.

The Creedmoor Maha Water Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, May 4, 1994, at 7:30 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78710, (512) 243-2113. TRD-9440003.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room "C", 1401 Pacific Avenue, Dallas, May 3, 1994, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9440018.

The Guadalupe-Blanco River Authority (Revised agenda.) Board of Directors met at the Seven Oaks Resort at Woodcreek, Number One Woodcreek Circle, Wimberley, May 3-4, 1994, at 9:00 a.m. and 8:30 a.m., respectively. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9439991.

The High Plains Underground Water Conservation District Number One Board of Directors met at the City Hall, 200 East Jones Street, Dimmitt, May 3, 1994, at 1:00 p.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9440085.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C Houston, Levelland, May 3, 1994, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9440092.

The Lower Neches Valley Authority Board of Directors met at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, May 2, 1994, at 5:00 p.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9440021.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization met at the University of Texas Pan American-Business Administration Auditorium, Room 110, 1201 University Drive, Edinburg, May 5, 1994, at 6:30 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9440095.

The Upshur County Appraisal District Appraisal Review Board will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, May 16, 1994, at 9:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9440022.

Meetings Filed May 2, 1994

The Brazos Valley Development Council Regional 9-1-1 Advisory Committee will meet at 1706 East 29th Street, Bryan, May 11, 1994, at 1:30 p.m. Information may be obtained from Jill Hyde, 1706 East 29th Street, Bryan, Texas 77802, (409) 775-4244. TRD-9440104.

The Dewitt County Appraisal District Appraisal Review Board will meet at 103 Bailey, Cuero, May 11, 1994, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9440098.

The Elm Creek WSC Board will meet at the Willow Grove Baptist Church, Moody, May 9, 1994, at 7:00 p.m. Information may be obtained from Paulette Richardson, Route 1 Box 564, Moody, Texas 76557, (817) 853-2339. TRD-9440151.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, May 10, 1994, at 7:00 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9440150.

The Hunt County Appraisal District Hunt County Appraisal Review Board will meet at 4801 King Street, Board Room, Greenville, May 16-27, 1994, at 8:30 a.m. Information may be obtained from Shirley Gregory, 4801 King Street, Greenville,

Texas 75403, (903) 454-3510. TRD-9440124.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, May 11, 1994, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9440125.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, May 12, 1994, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9440112.

The Scurry County Appraisal District Agricultural Advisory Committee met at 2612 College Avenue, Snyder, May 5, 1994, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9440113.

The Stephens County Rural WSC Regular Monthly Board Meeting met at 301 West Elm Street, Breckenridge, May 5, 1994, at 7:30 p.m. Information may be obtained from Mary Barton, 301 West Elm Street, Breckenridge, Texas 76424, (817) 559-6180. TRD-9440111.

The Texas Council Risk Management Fund Executive and Budget Committees will meet at the Austin Omni Hotel, 700 San Antonio Street, Austin, May 6, 1994, at

7:00 p.m. Information may be obtained from Spencer McClure, Westpark Building Three, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9440159.

The Texas Council Risk Management Fund Board of Trustees will meet at the Austin Omni Hotel, 700 San Jacinto, Austin, May 7, 1994, at 8:00 a.m. Information may be obtained from Spencer McClure, Westpark Building Three, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9440160.



Meetings Filed May 3, 1994

The North Plains Ground Water Conservation District Number Two Board of Directors will meet at 603 East First Street, Dumas, May 10, 1994, at 10:00 a.m. Information may be obtained from Richard Bowers or Carla Gray, 603 East First Street, Dumas, Texas 79029, (806) 935-6401. TRD-9440174.

The Upper Rio Grande, Quality Work Force Planning-Region VIII met at the El Paso ISD Technical Center, 2231 Arizona Avenue, El Paso, May 5, 1994, at 11:30 a.m. Information may be obtained from Mark J. Walder, 1155 Westmoreland, #235, El Paso, Texas 79925, (915) 779-6623. TRD-9440177.





IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, as amended (Texas Civil Statutes, Articles 5069-i 04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/02/94-05/08/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c) ⁽³⁾	05/01/94-05/31/94	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on April 25, 1994

TRD-9439902 Al Endsley
Consumer Credit Commissioner

Filed: April 28, 1994

Texas Education Agency

Request for Applications, Career and Technology Education Support Programs by Community-Based Organizations, 1994-1995

RFA #701-94-027. This request for applications is filed in accordance with the Carl D Perkins Vocational and Applied Technology Education Act, Public Law 101-392, as amended, and the Texas State Plan for Vocational and Applied Technology Education.

Eligible Applicants The Texas Education Agency (TEA) is requesting applications (RFA #701-94-027) from independent school districts, educational service centers, and postsecondary institutions that will collaborate with community-based organizations that have the capacity to provide career and technology education support programs, services and activities for the appropriate eligible applicant. An eligible applicant and the community-based organization that desire to conduct such a support program shall prepare jointly an application. Two or more eligible applicants may form a cooperative and enter into an

agreement with a community-based organization. The community-based organization will employ staff and be responsible for the delivery of services and activities. The eligible applicant will serve the collaborative effort as fiscal agent for the project.

Description. The eligible applicant may apply directly to the TEA for funding so that the community-based organization may provide one or more of the following career and technology education services: outreach programs that facilitate the entrance of youth into a program of transitional services and their subsequent entrance into career and technology education, employment, or other education and training; transitional services such as attitudinal and motivational prevocational training programs; prevocational education preparation and basic skills development conducted in cooperation with business concerns; special prevocational preparation programs targeted for inner-city youth, non-English speaking youth, Appalachian youth, and the youth of urban and rural areas having a high density of poverty who need special prevocational education programs; career intern programs, model programs for school dropouts, assessment of students' needs in relation to career and technology education and jobs; and guidance and counseling to assist students with occupational choices and with the selection of a career and technology education program.

Dates of Project. The project will begin no earlier than July 1, 1994, and will end no later than June 30, 1995.

Project Amount. Approximately \$904,287 in federal funds is available for this project. The project is 100% federally funded. Funding for each individual project will be based

on the actual cost of the services and activities identified and justified in the application but shall not exceed \$50,000. Funding for cooperative projects shall not exceed \$50,000.

Selection Criteria. Applications will be approved based upon the ability of the joint applicants to carry out all requirements contained in the request for application. The eligible applicant must provide evidence that the community-based organization is a private, non-profit organization with demonstrated effectiveness in providing job training services and represents the community or significant segments of the community. Special consideration shall be given to the needs of severely economically and educationally disadvantaged youth, ages 16-21, inclusive. Individuals with disabilities who are educationally and economically disadvantaged, as well as school drop-outs, may also participate. TEA is under no obligation to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit the TEA to pay any costs incurred prior to the approval of an application. The issuance of this RFA in no way obligates the TEA to award a grant or to pay any costs incurred in the preparation of a response. TEA reserves the right to select from the highest-ranking applications those that will provide the most effective, comprehensive career and technology educational services.

Requesting the Application. A copy of the complete request for application (RFA #701-94-027), may be obtained by writing the: Document Control Center, Texas Education Agency, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about this request, contact Toni M. Dean, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

Deadline for Receipt of Applications. Applications may be delivered by mail or in person to the Texas Education Agency, Document Control Center, Room 6-108. The Document Control Center is open Monday-Friday, 8:00 a.m. to 5:00 p. m., excluding holidays. To be considered for funding, applications must be received in the Document Control Center no later than 5:00 p.m. on Friday, June 10, 1994.

Issued in Austin, Texas, on May 2, 1994.

TRD-9440101 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: May 2, 1994

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Request for Proposal, Performance Evaluation and/or Cost Analysis of Pilot Programs for the Inclusion of Students with Disabilities in Regular/General Education

RFP #701-94-022. This request for applications is filed under Senate Bill 5, Article III, Rider 45, of the 73rd Legislature.

Eligible Applicants. The Texas Education Agency (Agency) is requesting proposals (RFP #701-94-022) from private companies and/or individuals for conducting a performance evaluation and/or cost analysis of school

districts and cooperatives of school districts which have implemented pilot programs to include students with disabilities who are eligible for special education services in inclusive, supportive educational programs. Such pilot programs must have been in response to Request for Application #701-93-019 or #701-94-007.

Description. The objectives of the cost analysis and program evaluation are to identify, collect, and analyze appropriate data for evaluating the effectiveness of funded pilot programs regarding academic and social competency outcomes for students with and without disabilities, and the process(es) leading to these outcomes; conduct a thorough cost analysis of pilot programs examining the costs for regular and special education associated with the inclusion of students with disabilities in general education; and to provide a written report describing the results of the data for student outcomes, processes, and costs analysis. A representative sample (minimum 10%) of the funded pilot programs would need to be visited by the proposer in order to collect data. Data is to be collected by telephone, mail, fax, and program site visits.

Dates of Project. The funding cycle for Performance Evaluation and/or Cost Analysis of Pilot Programs for the Inclusion of Students with Disabilities in Regular/General Education runs from August 1994-September 1996. Applicants to RFP #701-94-022 should plan for a starting date of August 22, 1994. The final report will need to be submitted no later than September 30, 1996.

Project Amount. Funds will be provided for proposal(s) that best address the objectives of the Request for Proposals as stated in the "Technical Component" section of the RFP. The Agency has set aside a total of \$250,000 from Individuals with Disabilities Education Act Part B federal funds.

Selection Criteria. One proposal will be selected for the performance evaluation and one proposal will be selected for the cost study. Proposers may apply for both components or one component of the request for proposal. Proposals will be approved based on the ability of each proposer to carry out all requirements contained in the request for proposal.

Requesting the Application. A copy of the complete request for proposal (RFP #701-94-022) may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 or by calling (512) 463-9304. Please refer to the RFP #701-94-022 in your request.

Further Information. For clarifying information about this request, contact Peter O. Kircher or Shirley Sanford, Division of Special Education, Texas Education Agency, (512) 463-9362.

Deadline for Receipt of Proposals. The deadline for submitting a proposal is 5:00 p.m., June 24, 1994.

Issued in Austin, Texas, on May 2, 1994.

TRD-9440102 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: May 2, 1994

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Texas Department of Health
Notice of Availability of Funds for
Fiscal Year 1995 Grants to Support
HIV Minority Education Projects

The Texas Department of Health (TDH) is requesting proposals from governmental, public and private non-profit entities located within the state of Texas to develop and implement or continue projects that demonstrate effective health education and risk-reduction (HERR) strategies to prevent infection and reduce the transmission of the Human Immunodeficiency Virus (HIV). In awarding funds for HIV education programs, the TDH shall give special consideration to effective HIV education programs directed toward those populations in which there is significant evidence of infection (e.g., gay/bisexual men, injecting drug users (IDU's), school drop-out youth, high-risk minorities, homeless persons and/or individuals who exchange sex for drugs/money).

Funding of these grants has been authorized by the Public Health Service Act, §301(a) and §317 (42 United States Code (USC), §241(a) and §247(b)), as amended, Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects. In awarding grants for education programs the TDH will endeavor to complement existing programs in a community to prevent unnecessary duplication of services; provide HIV education programs for populations engaging in behaviors conducive to HIV transmission; initiate needed HIV education programs where none exist; and promote early intervention activities and treatment of persons with HIV infection. The strategic goals for this project are as follows: increase public understanding of, involvement in, and support for HIV prevention; prevent or reduce behaviors or practices that place persons at risk for HIV infection, or if already infected, place others at risk and, increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

A target population is the population for whom the proposed project is directed. Proposals for this RFP will be considered which address minority-targeted HIV/AIDS education/prevention activities for, but not limited to, the following groups: (racial or ethnic minorities only) substance users including IDUs (especially those who share needles and other paraphernalia); men who have or have had sex with men (including gay identified and non-gay identified); youth in high-risk situations (e.g., youth who are engaging or who are likely to engage in high-risk behavior, including runaways, youth who have had Sexually Transmitted Diseases (STD), gay and bisexual youth, juvenile offenders, youth using drugs, youth who barter or sell sex), women in high-risk situations (including partners of infected persons and partners of persons who engage in high-risk behavior); persons, both male and female, who exchange sex for drugs, money, housing, or food; persons who are, or were, sex or needle-sharing partners of those already listed; persons with a newly-diagnosed STD and persons who have a history of repeated STDs; persons in the correctional and criminal justice systems (e.g., parole, probation, and transition programs), homeless persons in high-risk situations (e.g., migrants); persons with multiple sex partners, at-risk persons who are hearing-impaired, visually-impaired, mobility-impaired, and/or developmentally disabled, or rural/farm and migrant populations.

Preference will be given to those programs directed toward at risk populations where there is significant evidence of

infection and that successfully perform activities in at least one of the following areas: street outreach/small group activities; STD clinics; and/or probation/parole/correctional facilities. Preference will also be given to those applicants who are not currently receiving State HIV Education Prevention Funds should the Center for Disease Control (CDC) appropriate level or less than level funding for HERR activities.

Projects are strongly encouraged to develop collaborative efforts with other projects providing HIV/AIDS HERR Prevention Programs within their respective regions. Collaboration occurs when two or more agencies or organizations (although this does not imply a contractual relationship) are committed to working together in a cooperative effort toward agreed upon objectives. The purpose of this requirement is to ensure a well-balanced and regionally diversified spectrum of HIV/AIDS Prevention Programs. Those agencies that submit evidence of strong cooperative efforts will be given preference in the competitive process. The Texas Department of Health (TDH) wishes to minimize any duplication of services in any given region.

HERR programs and services should be culturally competent, sensitive to issues of sexual identity, developmentally appropriate, and linguistically specific. Personnel hired for these projects should be indigenous to the communities they serve (e.g., African American individuals to serve the African American community). Programs funded for HERR activities should not include presentations directed to low-risk general audiences and school-based activities are not to exceed 25% of total programmatic objectives.

The Public Health Service Act, §301(a) and §317(42 USC, §241(a) and §247(b)), as amended, authorizes TDH to award grants to develop or expand projects that provide for the establishment of education and information programs to prevent and reduce exposure to, and transmission of HIV. This is an authorizing law and does not appropriate any funds. This announcement is made prior to an appropriation of funds to allow new and continuation applicants sufficient time to respond to the application due date.

Pending notification of appropriation, the TDH intends to fund 20-27 projects with budgets in the range of \$40,000 to \$60,000 per project. If your agency is awarded a grant through this project, this does not necessarily mean that you will be awarded the amount requested. Each awarded application will be for a two year project period (January 1, 1995-December 31, 1996) and a one year budget period (January 1, 1995-December 31, 1995) with a mid-project mini-application process to be scheduled at the end of the first project year. The specific amount to be funded for each project will depend on the merit and scope of the proposed project and the availability of funds.

The deadline date for submission of applications for funding through this project is July 8, 1994 on or before 5.00 p.m. (Central Standard Time). For additional information or to obtain a grant application packet, please contact Larry Cuellar, Minority Education Consultant, at (512) 458-7304, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on May 2, 1994.

TRD-9440099 Susan K Steeg
General Counsel
Texas Department of Health

Filed May 2, 1994

Texas Higher Education Coordinating Board

Notice of Meeting

The Family Practice Advisory Committee will meet on May 11, 1994 from 10:00 a.m. to 1:00 p.m. in Building 5, Room 5.139, 7745 Chevy Chase Drive, Austin, Texas. The Advisory Committee is to consider the following: Fiscal Year 1994 available funds for Supplemental Grants, Fiscal Year 1995 available funds, applications for Operational/Support Programs for Fiscal Year 1995, and outline a funding request to the legislature for Fiscal Years 1996-1997. For further information please contact Stacey Silverman at (512) 483-6200.

Issued in Austin, Texas, on April 28, 1994

TRD-9440007 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: April 29, 1994

Texas Department of Human Services

Public Notice - Amendment and Clarification of the Competitive Procurement Announcement for Child Care Management Services (CCMS)

The Texas Department of Human Services (TDHS) amends and clarifies its announcement of the Competitive Procurement for Child Care Management Services (CCMS) Contractors that was published in March 15, 1994, issue of the Texas Register (19 TexReg 1856)

Revised Closing Date: The closing date for TDHS to receive a proposal has been extended from 5:00 p.m. on June 13, 1994, to 5:00 p.m. on June 20, 1994.

Clarification Regarding Subcontracting: It is TDHS' expectation that the CCMS shall directly manage the primary CCMS functions of client services, vendor management and financial management. A CCMS may use subcontracting for a primary CCMS function only if the subcontracted activities: Are under the direct management, supervision and control of the CCMS, enhance or do not adversely affect the operation of the CCMS and do not represent an inefficient use of CCMS staff or resources, do not involve a delegation of authority for actions that legally bind the CCMS; are staffed by persons meeting the same expectations that TDHS has for CCMS staff; and receive prior approval by TDHS.

Issued in Austin, Texas, on April 29, 1994

TRD-9440019 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: April 29, 1994

Texas Department of Insurance

Notice of Hearing

The Texas Department of Insurance proposes new §§1.1301-1.1317, concerning practice and procedures for

all industry-wide rate cases in which the hearing is held at the State Office of Administrative Hearings, including benchmark/flexibility band hearings held under Article 5.101 of the Texas Insurance Code, rate cases for assigned risk automobile insurance, rate cases for the Texas Catastrophe Insurance Pool, title insurance rate cases, and credit insurance presumptive rate cases. These procedural rules are passed under the authority of Texas Insurance Code, Article 5.121, which authorizes the Department to adopt procedures to streamline insurance rate proceedings. The Department will consider the adoption of new sections 1.1301-1.1317 in a public hearing under Docket Number 2098, schedule for 9:00 a.m. on June 6, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

Written comments on the proposal may be submitted to Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication.

The new sections are proposed under the Texas Insurance Code, Article 1.03A, which authorizes the Commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute, and Texas Insurance Code, and Article 5.121 which authorizes the Department to adopt procedures to streamline insurance rate proceedings.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439869 D J Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed: April 26, 1994

Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed enforcement order was entered regarding On-Site Analytical (TWC Registration Number 53132) on April 22, 1994, \$3,440 in administrative penalties, with \$524 deferred.

Information concerning any aspect of this order may be obtained by contacting LaDonna Castenuela, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0460.

Issued in Austin, Texas, on April 27, 1994.

TRD-9440028 Glona A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 29, 1994, 3:39 p.m.

An enforcement order was entered regarding Garry Luker doing business as Hood County Water and Granbury Water Services (Docket Number 30124-E) on April 27, 1994, assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Maria Sanchez, Staff Attorney,

Texas natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0462.

Issued in Austin, Texas, on April 29, 1994.

TRD-9440025 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 29, 1994

An agreed enforcement order was entered regarding the City of Merket (Permit Number 10786-001) on April 25, 1994, assessing \$12,300 in administrative penalties, with \$6,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Roxanne Cook, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-6638.

An agreed enforcement order was entered regarding Runnels Septic Services, Inc. (Municipal Solid Waste Registration Number 710017) on April 25, 1994, assessing \$8,600 in administrative penalties with \$2,600 deferred and waived pending compliance.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0458

Issued in Austin, Texas, on April 28, 1994.

TRD-9440100 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 29, 1994

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**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 Cy Banner; Application Number TA-7252 for a temporary water use permit application to divert and use a total of ten acre-feet for a one-year period from Independence Creek, tributary of the Pecos River, tributary of the Rio Grande, Rio Grande Basin, for mining purposes (oil and gas exploration) in Terrell County, Texas. The proposed point of diversion is from the creek approximately 43 miles northeast of Sanderson, Terrell County, Texas, at a maximum rate of 0.67 cfs (300 gpm).

Application of Poynor Community WSC, Application Number 30357-C, for a Water CCN and decertification of portion of CCN Number 10852 issued to Virginia Hills WSC in Anderson and Henderson Counties, Texas.

Issued in Austin, Texas, on April 29, 1994.

TRD-9440026 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 29, 1994

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Request for Proposal

Notification of Availability of Grants for the Development and Implementation of Recycling Market Development Programs.

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of grant funding to support the development of markets for recyclable materials. The grant awards are intended to help recycling programs access existing markets and/or to develop new markets for recyclable materials.

Eligible applicants include counties, municipalities, special districts, school and junior college districts, and other legally constituted government subdivisions and non-profit service and/or environmental protection organizations. Joint projects with commercial business entities are eligible and encouraged, but the commercial business entity cannot be the recipient or direct beneficiary of this grant.

The total amount to be awarded under this grant program is \$200,000. No award to a single applicant under the RFP will be less than \$25,000 or more than \$50,000. Financial assistance provided by TNRCC must be matched by grant recipients with funds and/or designated in-kind services totalling at least one-half the amount contributed by TNRCC. Projects will be funded for one year and are expected to start September 1, 1994. The deadline for applying for a grant under this RFP will be 5:00 p.m., Friday, June 24, 1994.

In order to be considered for funding, applications must be prepared and submitted in accord with the printed guidelines that are available from TNRCC as part of Grant Application Packet Number 94MAR. A sample contract will be included in the Grant Application Packet in an effort to expedite the negotiation of contracts. Although the TNRCC recognizes particular needs of various public

entities, major deviation from the sample contract should not be expected. Those desiring to receive this grant application packet, are encouraged to write or call the Municipal Solid Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6698; or call the Clean Texas 2000 Environmental Information Center at 1-800-64-TEXAS and request Grant Application Packet Number 94MAR.

Issued in Austin, Texas, on May 2, 1994.

TRD-9440027 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: May 2, 1994

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North Central Texas Council of Governments

Request for Consultant Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG is requesting proposals from consultants to conduct a Before-and-After Study on several proposed bike/pedestrian facilities in the Dallas-Fort Worth area. This study will evaluate the mobility and air quality benefits associated with construction of new bike paths or extensions of existing ones and pedestrian rights-of-way. The study will assess traffic conditions in each neighborhood before and after implementation of the proposed improvements. This will involve an inventory of the automobiles, bicycles, roadways, and bicycle/pedestrian paths in the area as well as the level of congestion and air quality. The study will be divided into two major sections. The first section (Before Phase) will focus on the existing conditions around each facility prior to the proposed changes, while the second section (After Phase) will deal with conditions around the facility after the proposed improvements have been made. Results from the two phases will then be compared and analyzed. This Request for Proposal will focus exclusively on the "Before" phase of the project.

Contract Award Procedures. The firm selected to perform this study will be recommended by the Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendation and, if found acceptable, will issue an award of contract.

Regulations. NCTCOG in accordance with Title Vi of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code, §§2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

Due Date. Proposals must be submitted no later than noon, Monday, May 16, 1994, to Issac Akem, Transportation Planner I, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 695-9243.

Issued in Arlington, Texas, on April 28, 1994.

TRD-9440103 Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: May 2, 1994

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Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on April 25, 1994, to amend a certificate of convenience and necessity pursuant to §§16(a), 18(b), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

Docket and Title Number. Application of Fort Bend Telephone Company to Amend Certificate of Convenience and Necessity within Fort Bend County, Docket Number 12964, before the Public Utility Commission of Texas.

The Application. In Docket Number 12964, Fort Bend Telephone Company seeks approval of the application to amend the existing exchange area boundary between its Needville exchange and Contel of Texas, Inc.'s Boling exchange in order provide Needville exchange service to subscribers located in the Cedar Creek subdivision at their request.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before May 25, 1994.

Issued in Austin, Texas, on April 28, 1994.

TRD-9440065 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 29, 1994

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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 Richardson ISD, Richardson, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom

Service for Richardson ISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 12968.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Richardson ISD. The geographic service market for this specific service is the Richardson, 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 teletypewriter for the deaf.

Issued in Austin, Texas, on April 28, 1994.

TRD-9440064 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 29, 1994

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**Texas Low-Level Radioactive Waste
Disposal Authority**

**Notice of License Application
Information Meeting**

In accordance with the Health and Safety Code, the Authority has submitted a license application to the Texas Natural Resource Conservation Commission for the operation of a low-level radioactive waste disposal facility in Hudspeth County, Texas.

Copies of the license application are available for viewing at Austin office of the Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas, (512) 451-5292, and the Sierra Blanca office at 203 FM 1111 South, Sierra Blanca, Texas (915) 369-3391.

Authority staff will be available to answer questions concerning this license application on Tuesday, May 10, 1994, from 8:00 a.m. to 12:00 p.m. in their offices at 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

For more information, please contact Adriana Riojas, Public Information Officer, at (512) 451-5292.

Issued in Austin, Texas, on April 28, 1994.

TRD-9439889 Lee H. Mathews
Deputy General Manager and Legal
Counsel
Texas Low-Level Radioactive Waste
Disposal Authority

Filed: April 29, 1994

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Railroad Commission of Texas

Notices of Intent

The Railroad Commission of Texas is submitting a request for funds under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (as amended Octo-

ber 1, 1991) to reclaim an abandoned mine opening in Terlingua, Texas in Brewster County. The abandoned mine opening is approximately 55 feet long by 35 feet wide and in excess of 150 feet deep. Work on the project would be accomplished in accordance with the Texas Abandoned Mine Land Program administered by the Railroad Commission of Texas.

Proposed reclamation of the site would include installing a cast-in-place, steel reinforced, concrete barrier over the opening and constructing a retaining wall to divert the arroyo drainage back into the original channel.

Interested persons are invited to comment on any possible impact his proposed project might have on the area or community. Comments or inquiries are to be received no later than May 20, 1994, and may be submitted to the following mailing address: Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attention: Melvin B. Hodgkiss, P.E., Director.

Issued in Austin, Texas, on April 28, 1994.

TRD-9430926 Mary Ross McDonald
Assistant Director, Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: April 28, 1994

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The Railroad Commission of Texas is submitting a request for funds under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (as amended October 1, 1991) to reclaim an abandoned mine openings near Malakoff, Texas in Henderson county. The mine openings are a result of the collapse of abandoned underground lignite mine workings. Work on the project would be accomplished in accordance with the Texas Abandoned Mine Land Program administered by the Railroad Commission of Texas.

Proposed reclamation of the site would include excavation of the sinkholes, placement of fill material in the mine openings, construction of terraces to divert run-off away from the sinkholes, and revegetation of all disturbed areas. Interested persons are invited to comment on any possible impact this proposed project might have on the area or community. Comments or inquiries are to be received no later than May 20, 1994, and may be submitted to the following mailing address: Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attention: Melvin B. Hodgkiss, P.E., Director.

Issued in Austin, Texas, on April 28, 1994.

TRD-9430927 Mary Ross McDonald
Assistant Director, Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: April 28, 1994

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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