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**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date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

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

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

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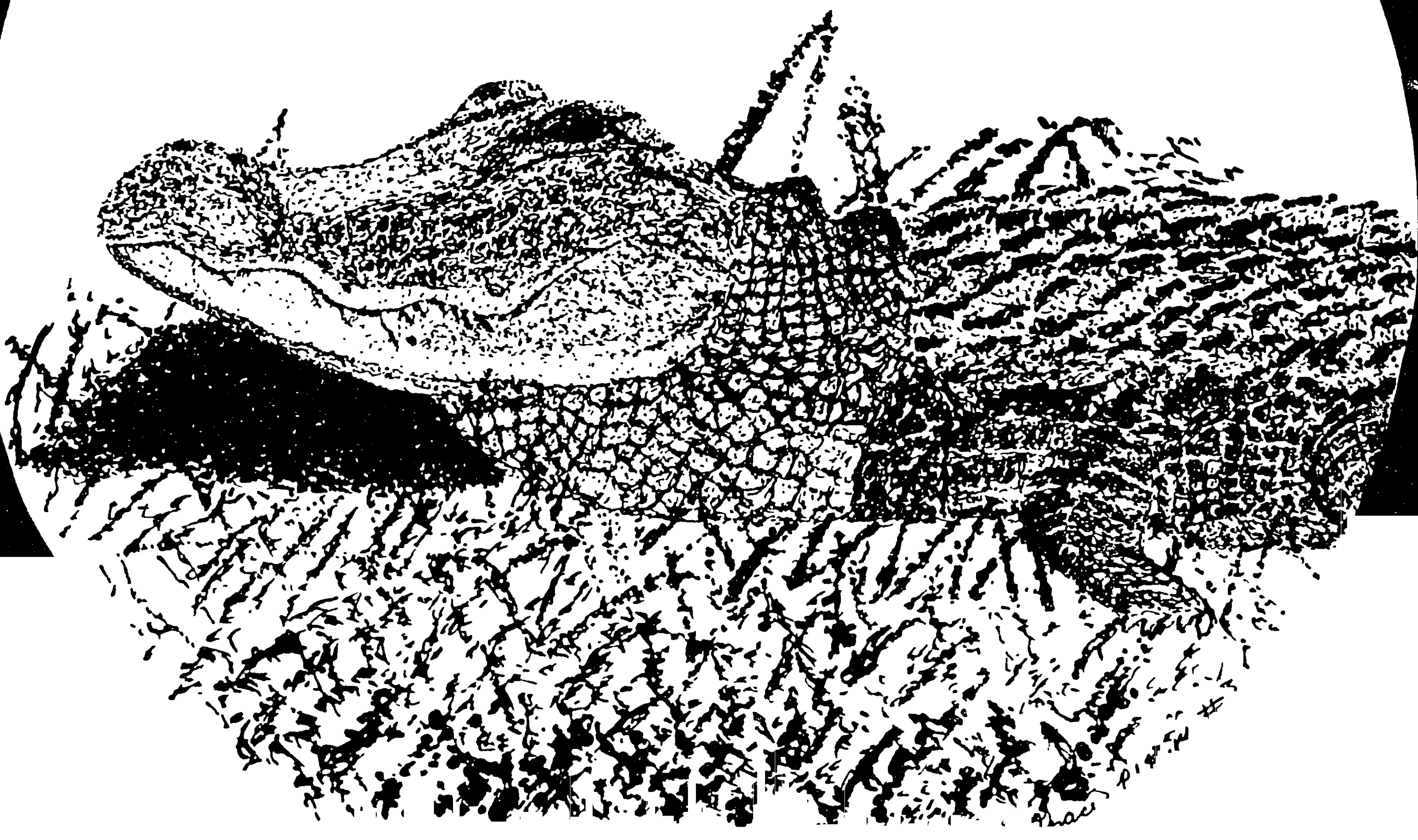
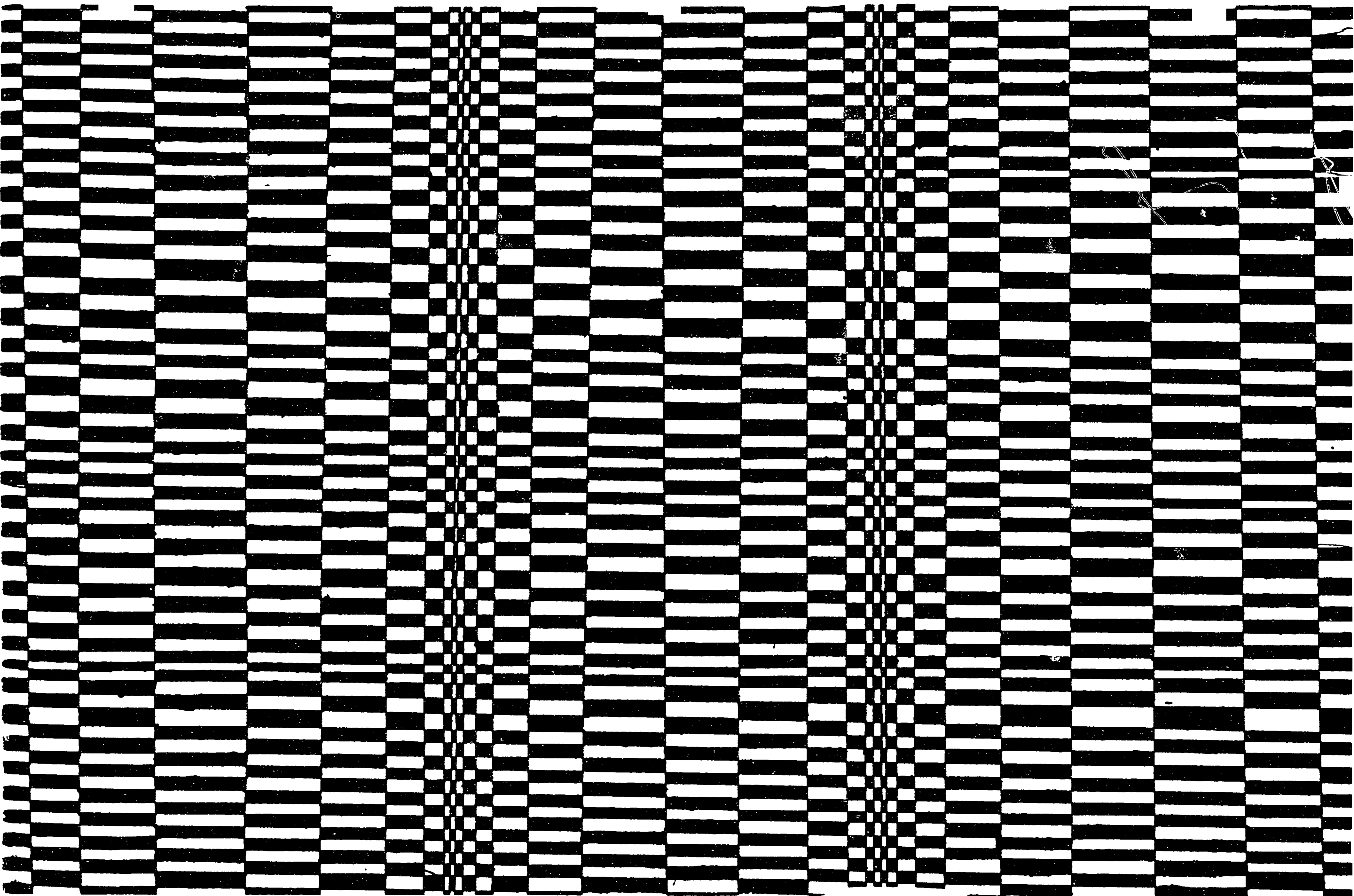
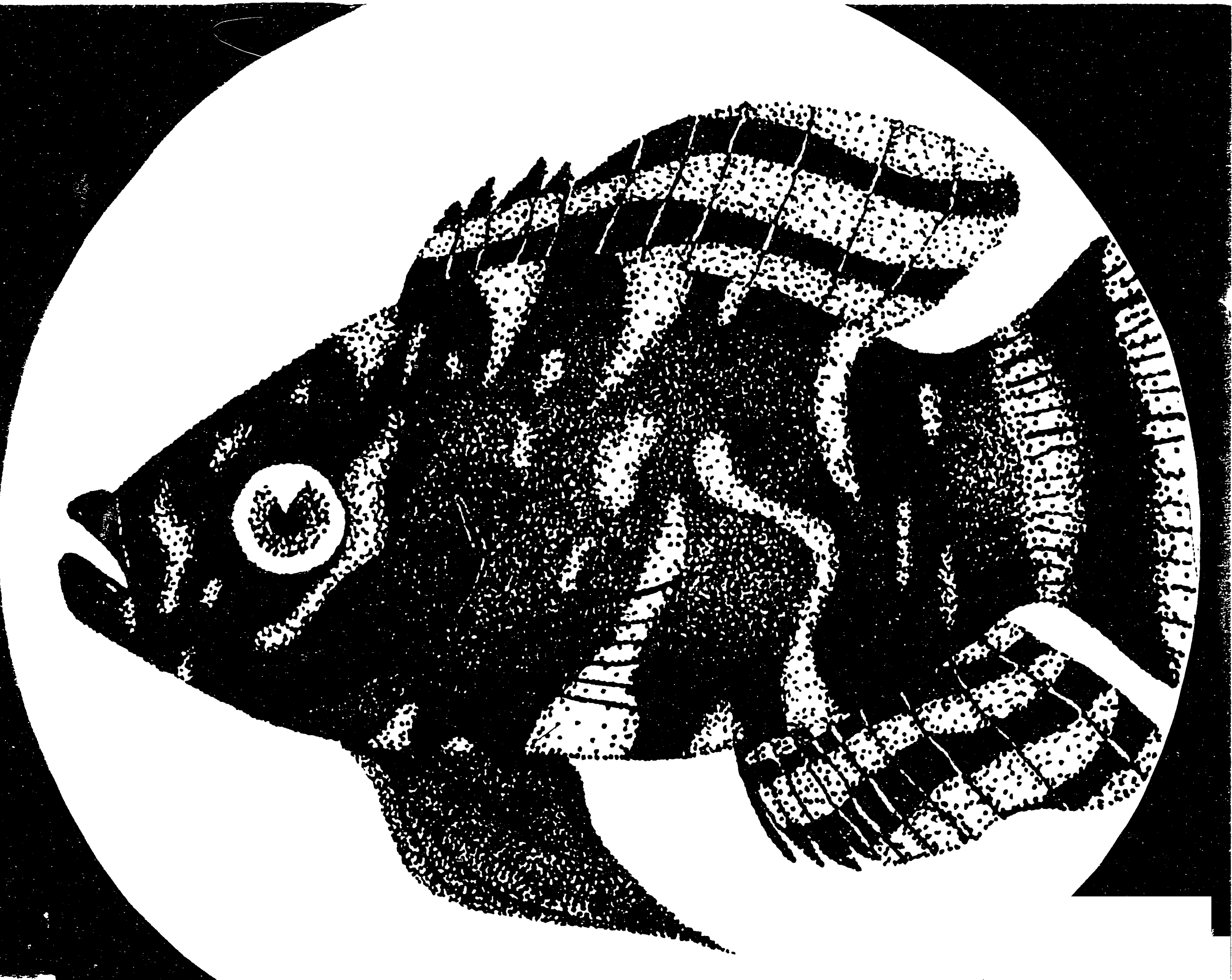
Name: Gracie Phillips
Grade: 8
School. Hendrick Middle School, Plano ISD

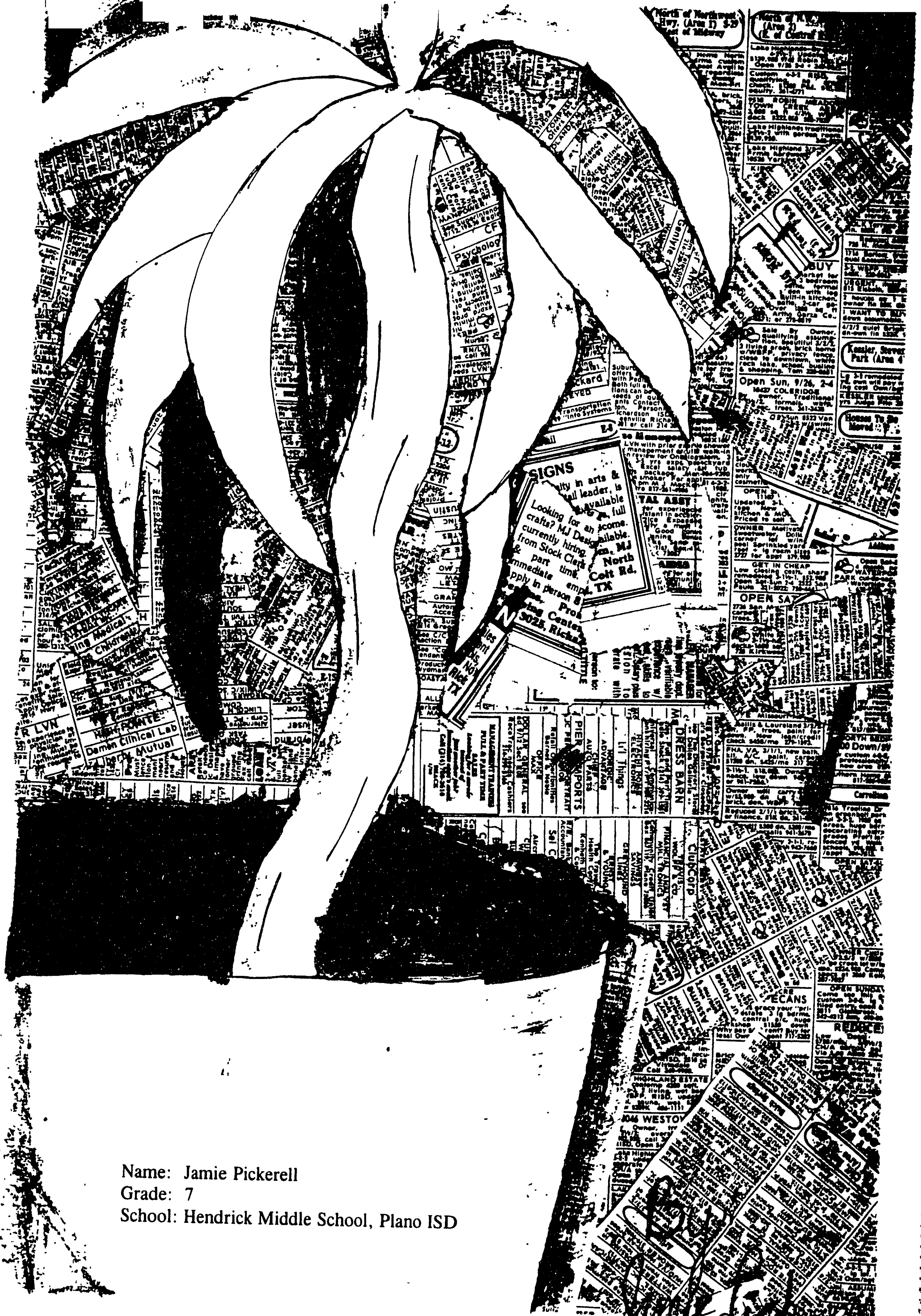




Name: Greg Buller
Grade: 7
School: Hendricck Middle School, Plano ISD



Name: Beth Reuter
Grade 7
School ndrick Middle School, Plano ISD



Name: Jamie Pickerell
Grade: 7
School: Hendrick Middle School, Plano ISD

Name: Kissy Czekaj
Grade: 8
School: Hendrick Middle School, Plan

# The Governor

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

## Appointments Made May 4, 1994

To be a member of the **Texas A&M University System Board of Regents** for a term to expire February 1, 1995: Gerald J. Ford, 200 Crescent Court, Suite 1350, Dallas, Texas 75201. Mr. Ford will be filling the unexpired term of Ross D. Margraves, Jr. of Houston, who resigned.

## Appointments Made May 6, 1994

To be **Branch Pilot for Port Aransas Bar, Corpus Christi Bay and Tributaries** for a term to expire November 30, 1997: Captain Merlin W. Haydon, Jr., 729 Crown Harbor, Corpus Christi, Texas 78402. Captain Haydon is being reappointed.

To be **Branch Pilot for Port Aransas Bar, Corpus Christi Bay and Tributaries** for a term to expire November 30, 1997: Captain James F. Wilkerson, Jr., 105 Country Club Boulevard, Portland, Texas 78374. Captain Wilkerson is being reappointed.

To be **Justice of the Fourteenth Court of Appeals** until the next General Election and until her successor shall be duly elected and qualified, effective May 16, 1994: Patrice M. Barron, 2534 Yorktown, Number 71, Houston, Texas 77056. Ms. Barron will be replacing Justice Gary Bowers of Houston, who is deceased.

## Appointments Made May 9, 1994

To be a member of the **Executive Committee of the Office for the Prevention of Developmental Disabilities** for a term to expire February 1, 1995: J. C. Montgomery, Jr., 11526 West Ricks Circle, Dallas, Texas 75230. Mr. Montgomery will be replacing Eva T. Salinas of El Paso, who resigned.

To be a member of the **Red River Compact Commissioner** for a term to expire February 1, 1999: Lowell Cable, HC01 Box 126, Sulphur Springs, Texas 75482. Mr. Cable will be replacing Nathan I. Reiter, Jr. of Texarkana, whose term expired.

To be a member of the **Texas Southern University Board of Regents** for a term to expire February 1, 1995: Frank H. Richardson, 11640 Greenbay, Houston, Texas 77024. Mr. Richardson will be filling the unexpired term of Carroll W. Phillips of Houston, who resigned.

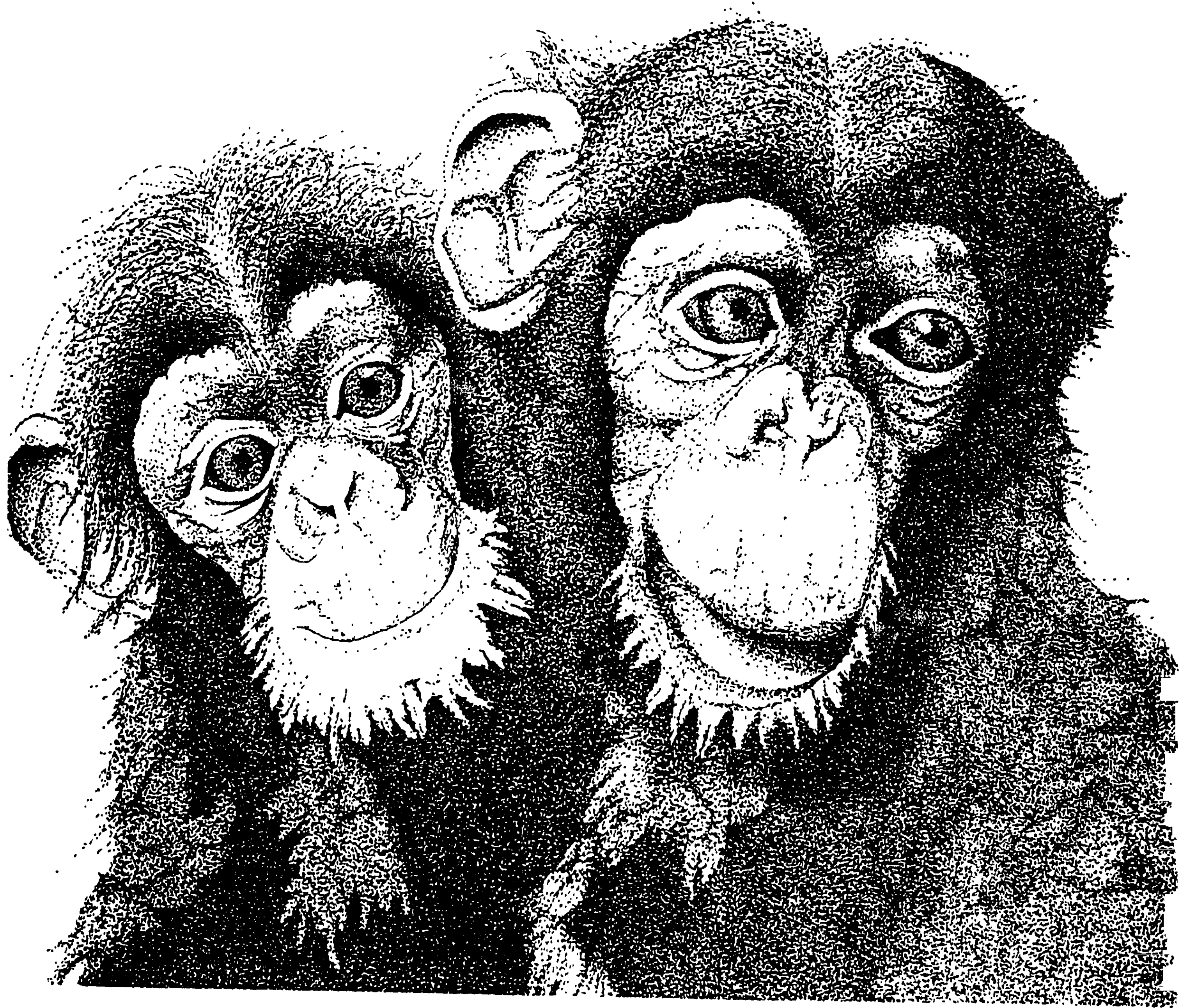
To be a member of the **State Preservation Board** for a term to expire February 1, 1995: Joseph F. Pinnelli, 2001 Exposition Boulevard, Austin, Texas 78703. Mr. Pinnelli is being reappointed.

To be a member of the **Antiquities Committee** for a term to expire January 31, 1995: Betty N. Murray, 1022 East Pierce, Harlingen, Texas 78550. Ms. Murray is being reappointed.

To be a member of the **Antiquities Committee** for a term to expire January 31, 1995: Marion Oettinger, Jr., Ph.D., 339 Thorman, San Antonio, Texas 78209. Dr. Oettinger is being reappointed.

Issued in Austin, Texas, on May 12, 1994.

TRD-9440791 Ann W. Richards
Governor of Texas



Kate Marstrand
Grade 11
Lubbock High School
Lubbock, Texas
Teacher: Cindy Wallace

# 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-238.** The Ethics Commission has been asked about the application of the revolving door prohibition and other provisions in Chapter 572 of the Government Code to a situation in which a governmental body is considering entering into a contract with an organization whose project director is a member of the board of the governing body.

**AOR-239.** The Ethics Commission has been asked to consider whether a group of district judges may accept participate without charge in an on-line computer service.

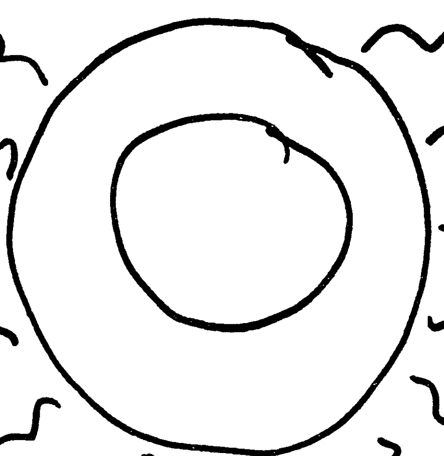
**AOR-240.** The Ethics Commission has been asked whether "a joint venture whose managing venturer and part owner is a corporation" may make political contributions.

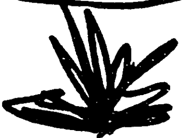
**AOR-241.** The Texas Ethics Commission has been asked to consider questions about the type of activities that may cause a group to become a political committee under Title 15 of the Election Code.

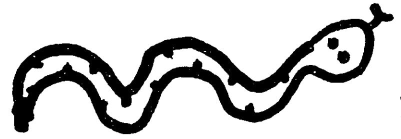
Issued in Austin, Texas, on May 12, 1994

TRD-9440881 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: May 13, 1994







Texas Knows Best!

Name: Josephine Tempongro
Grade: 5
School: Woodway Elementary, Fort Worth ISD

# EMERGENCY RULES

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

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

## TITLE 25. HEALTH SERVICES

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 401. System Administration

### Subchapter A. Advisory Committees

**• 25 TAC §401.25**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §401.25, concerning advisory committees. The new section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register.*

The purpose of the emergency adoption is to recognize a newly created advisory task force concerning equity of access to mental health and mental retardation services. The new section outlines the purpose, tasks, and duration of the committee, which is subject to all other requirements of the subchapter.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

*§401.25. Equity of Access Task Force.*

(a) The purpose of the Equity of Access Task Force is to explore and develop recommendations for a fair, sensible statewide policy to improve the equity of access to TXMHMR services for those Texans with mental illness and mental retardation who need them.

(b) Tasks of the Equity of Access Task Force include identifying:

(1) the principles which should drive such a policy;

(2) the scope of any equity pool;

(3) the factors which should be considered in such a policy;

(4) a process for implementation of such a policy; and

(5) the policy supports necessary for implementation.

(c) This advisory committee shall be abolished August 31, 1995, unless reauthorized.

Issued in Austin, Texas, on May 13, 1994.

TRD-9440872 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: May 13, 1994

Expiration date: September 11, 1994

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

♦ ♦ ♦

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part VI. Texas Department of Criminal Justice

### Chapter 152. General Allocation Rules

### Subchapter A. Institutional Division Admissions

**• 37 TAC §152.2**

The Texas Department of Criminal Justice adopts on an emergency basis an amendment to 37 TAC §152.2, concerning allocation of admissions to temporary facilities for the purpose of alleviating county jail crowding. Dangerously high population levels in many jails in the state have created conditions leading to both potential and actual outbreaks of disease and inmate disturbances, justifying emergency action. The amendment describes the method of calculating the allocation of admissions by targeting those county jails with the most critical levels of crowding. Admissions to a total of 1,200 temporary beds will be governed by this provision, which will operate through the summer of 1994, and the amendment is only needed for that time frame, so there is no simultaneous proposal of this language for permanent adoption.

The amendment is adopted on an emergency basis under the Government Code, §499.101, et seq, governing allocation of admissions, and by the Government Code, §492.013, which gives the Board of Criminal Justice general authority to adopt rules.

*§152.2. Definitions and Exceptions.*

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

(c) **As an exception to §152.3 of this title (relating to Allocation Formula), the institutional division shall utilize the following procedure for allocation of admissions to 1,2000 temporary beds beginning on June 1, 1994. Only counties that did not accept funding from the department in April for construction and operation of their own temporary beds, that are in excess of 100% of capacity, and that have a paper-ready felon population in excess of 20% of capacity, are eligible for allocation of admissions under this subsection. Capacity levels are determined by the Commission on Jail Standards. The allocation shall be calculated by determining the number of beds that would be necessary to bring all eligible counties to 100% of capacity, treating that result as the denominator and each individual county's share of the total as the numerator, and applying each county's resultant percentage by multiplying by the total of 1,200 beds.**

Issued in Austin, Texas, on May 16, 1994

TRD-9440926 Carl Reynolds
General Counsel
Texas Board of Criminal Justice

Effective date: June 1, 1994

Expiration date: September 29, 1994

For further information, please call: (512) 463-9693

♦ ♦ ♦

Name: Tony Cullother
Grade: 7
School: Spring Oaks Middle School

# 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 10. COMMUNITY DEVELOPMENT

## Part IV. Texas Department of Housing and Community Affairs

### Chapter 49. Low-Income Housing Tax Credit Rules

- **10 TAC §§49.1-49.14**

*(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 Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin )*

The Texas Department of Housing and Community Affairs proposes the repeal of §§49.1-49.14, concerning Low-Income Housing Tax Credit Rules. The sections are proposed for repeal in order to enact new sections conforming to the requirements of new regulations enacted under the Internal Revenue Code of 1986, as amended, which provide for credits against federal income taxes for owners of qualified low-income rental housing

Scott McGuire, director, Housing Finance, 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. McGuire 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 to permit the adoption of new rules for the allocation of low-income housing tax credit authority within the State of Texas, thereby enhancing the State's ability to provide safe and sanitary housing for Texans through the tax credit program administered by the Department. 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 Robert Johnston, Manager of Multi-Family Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

The repeals are proposed pursuant to the Government Code, Chapter 2306; Acts of the 73rd Legislature Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislature Senate Bill 1356, Chapter 725, effective September 1, 1993, which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas.

*§49.1. Scope.*

*§49.2. Definitions.*

*§49.3 State Housing Credit Ceiling.*

*§49.4. Applications, Market Study, Reservations; Notifications, Commitments; Extensions; Carryover Allocations, Agreements and Elections; Extended Commitment.*

*§49 5 Set-asides. Reservations and Preferences*

*§49.6. Threshold Criteria; Evaluation Factors, Selection Criteria. Final Rranking, Credit Amount, Tax-Exempt Bond Financed Projects*

*§49.7 Compliance Monitoring*

*§49 8 Housing Credit Allocations*

*§49.9 Department Records, Certain Required Filings*

*§49 10 Department Responsibilities*

*§49.11 Program Fees.*

*§49 12 Manner and Place for Filing Applications*

*§49 13. Withdrawals, Amendments, Cancellations*

*§49.14 Waiver and Amendment 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 May 13, 1994

TRD-9440885 Henry Flores
Executive Director
Texas Department Housing and Community Affairs

Earliest possible date of adoption: June 20, 1994

For further information, please call· (512) 475-3800

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The Texas Department of Housing and Community Affairs proposes new §§49. 1-49.4, concerning Low-Income Housing Tax Credit Rules. The new sections are necessary to provide procedures for the allocation by the Department of certain low-income housing tax credits available under federal income tax laws to owners of qualified low-income rental housing projects.

Scott McGuire, director, Housing Finance, 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 McGuire also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the enhancement of the state's ability to provide safe, sanitary housing for Texans through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. 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 Robert Johnston, Manager of Multi-Family Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

**The new sections are proposed under the Government Code, Chapter 2306; Acts of the 73rd Legislature Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislature Senate Bill 1356, Chapter 725, effective September 1, 1993, which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the Department and its programs.**

*§49.1. Scope.* The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs of certain low-income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Texas Department of Housing and Community Affairs was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan which is set forth in §49.6 and §49. 7 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; and Compliance Monitoring) and such Qualified Allocation Plan has been signed by the Governor. Therefore, the purpose of the sections in this chapter is to establish procedures for applying for and obtaining an allocation of the low-income housing tax credit, along with insuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations. It is a goal of this Department, through these sections, to encourage diversity through broad geographic allocation of tax credits within the state. The sections are intended to promote maximum utilization of the available tax credit amount, consistent with ensuring that the tax credits are allocated to owners of projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income. It is the policy of the Department to encourage the use of historically underutilized businesses in all of the Department's programs. In response to this policy, the Department has established a minimum goal of 30% participation of historically underutilized businesses in the low-income housing tax credit program. Project owner's are encouraged to achieve these minimum goals.

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

Ad Hoc Tax Credit Committee-That committee comprised of members of the Board of the Texas Department of Housing and Community Affairs charged with the direct oversight of the low-income Housing Tax Credit Program.

Agreement and Election Statement-An agreement between the Department, the project owner and all successors in interest to the project owner as to the aggregate housing credit allocation amount that will be allocated to the building or buildings comprising the project, and an irrevocable election by the project owner to fix the applicable credit percentage(s) for the project within five days of the close of the month in which the commitment is issued.

Applicable fraction-The fraction used to determine the qualified basis of the qualified low-income building, which is the smaller of the unit fraction or the floor-space fraction, as defined more fully in the Code, §42(c)(1).

Applicable percentage-The percentage used to determine the amount of the low-income housing tax credit, as defined more fully in the Code, §42(b).

Application-An application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a project owner requesting a low-income housing tax credit allocation.

Application Submission Procedures Manual-That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of applications for low-income housing tax credits, which said manual may be amended from time to time by the Department.

Board-The governing body of the Department.

Building in default project-A project where the building(s) is acquired from an insured depository institution in default (as defined in the Federal Deposit Insurance Act, 12 United States Code, §1813(x) , as may be amended from time to time) or from a receiver or conservator of such an institution.

Carryover allocation-An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E).

Carryover allocation document-A carryover allocation document issued by the Department to a project owner pursuant to §49.4(k) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

Carryover Allocation Procedures Manual-That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of carryover allocations for low-income housing tax credits, which said manual may be amended from time to time by the Department.

Code-The Internal Revenue Code of 1986, as the same may be amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income Housing Tax Credit Program authorized by the Code, §42, and as may be amended from time to time.

Commitment notice-A commitment notice issued by the Department to a project owner pursuant to §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

Compliance period-With respect to a project, the period of 15 taxable years beginning with the first taxable year of the credit period with respect to the project, during which the project owner is required by the Code, §42, to maintain the project as rental property and to satisfy certain low-income occupancy requirements, as more fully defined in the Code, §42(i) (1).

Contractor-One who contracts for the construction, or rehabilitation of an entire building or project, rather than a portion of the work. The contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "general contractor."

Cost Certification Procedures Manual-That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of requests for IRS Forms 8609 for projects placed into service under the Low-income Housing Tax Credit Program, which said manual may be amended from time to time by the Department.

Credit period-With respect to a building within a project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

Department-The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapters 725 and 141.

Development team-Any individual, joint venture, partnership, corporation, cooperative, trust, or other person or entity involved in the development, construction,

rehabilitation, management and/or continuing operation of the subject property, which may include any consultant(s) hired by the applicant for the purpose of the filing of an application for low-income housing tax credits with the Department.

Eligible basis-With respect to a building within a project, the building's eligible basis as defined in the Code, §42(d).

Extended Low-Income Housing Commitment Agreement-An agreement between the Department, the project owner and all successors in interest to the project owner concerning the extended low-income housing use of buildings within the project as provided in the Code, §42(h)(6). This period shall commence on the first day of the compliance period and end on the date which is 30 years after said commencement date. A sample copy of this is provided in the Reference Manual.

First Time Participant-A project owner who has not previously been awarded a low-income housing tax credit allocation from any housing credit agency, and is not affiliated with or controlled by a person or organization which has previously received an allocation of low-income housing tax credits from any housing credit agency.

FmHA-The Farmers Home Administration.

Grace period-That period of time during a published application cycle in which applications which are presented to the Department, during such period, may supply corrected and/or additional documentation in support of the application and be considered in accordance with §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects).

Handicapped person-A person having a physical or mental impairment that is expected to be of long, continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation, as more fully defined in 24 Code of Federal Regulations, §841.1, and as may be amended from time to time.

Historically underutilized businesses-Pursuant to Texas Civil Statutes, Article 601b, §§1.02, 1.03, and 1.04, entitled State Purchasing and General Services Act, a business in the form of a corporation, partnership or joint venture in which at least 51% is owned, and sole proprietorship in which 100% is owned by a person or persons who have been historically underutilized due to their identification as a member of a certain group. These individuals must regularly, continuously and substantially participate in the activities of the entity. The following are the groups which will be considered pursuant to this definition:

(A) Black Americans-persons having origins in any of the Black racial groups of Africa;

(B) Hispanic Americans-persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(C) Asian-Pacific Americans-persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific and the Northern Marianas;

(D) Native Americans-persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(E) Women-includes all women of any ethnicity.

Homeless person-An individual or family that lacks a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §841.1, and as may be amended from time to time.

Housing credit agency-An agency charged with the responsibility of allocating low-income housing tax credits pursuant to the Code, §42.

Housing credit allocation-An allocation by the Department to a project owner of a low-income housing tax credit in accordance with §49.8 of this title (relating to Housing Credit Allocations).

Housing credit allocation amount-With respect to a building within a project, that amount the Department determines to be necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

HUD-The United States Department of Housing and Urban Development, or its successor.

Identity of interest-An identity of interests exists if:

(A) Any general or limited partner, shareholder, director, officer, employee or authorized representative of the project owner is also a general or limited partner, shareholder, director, officer, employee or authorized representative of the contractor or vice versa; or

(B) the project owner (or any general or limited partner, shareholder, director, officer, employee or authorized representative of the project owner) can directly or through one or more intermediaries control or influence the decisions or policies of the contractor, including apparent control or influence over the decisions or policies, or vice versa. Apparent control or influence means any relationship that exists between the project owner and contractor (or any general or limited partner, shareholder, director, officer, employee or authorized representative of the project owner and contractor) by blood or marriage.

IRS-The Internal Revenue Service, or its successor.

Local tax exempt organization-A project owner which is described in the Code, §501(c)(3) or (4), or as these cited provisions may be amended from time to time, and which has a scope of business operation limited to the State of Texas or the governmental unit wherein the project will be situated.

Other projects-Any project which would not be considered as either a Rural, REO, First Time Participant, Small Development, Special Needs Project or could not qualify for an allocation from of the nonprofit set-aside.

Project-A low-income rental housing project the owner of which represents to be a qualified low-income housing project within the meaning of the Code, §42(g). With regards to this definition, the project is that property which is the basis for the application for low-income housing tax credits. May also be referred to as the subject property.

Project owner-Any individual, joint venture, partnership, corporation, cooperative, trust, or other person or entity that owns a project or expects to acquire a project pursuant to a purchase contract satisfactory to the Department.

Qualified Allocation Plan-An allocation plan which sets forth the threshold criteria, selection criteria, priorities, and preferences provided in the Code, §42(m)(1), and further provided in §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects).

Qualified basis-With respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, as more fully defined in the Code, §42(c).

Qualified market analyst-An individual or organization which has background in either market or economic analysis and must be able to supply the Department with dependable current data on the demand for and marketability of a project. The individual or organization must have at least five years of experience in the analysis of multifamily rental housing development.

Qualified nonprofit organization-An organization that is described in the Code, §501(c)(3) or (4), or as these cited provisions may be amended from time to time, that is exempt from federal income taxation

under the Code, §501(a), and as may be amended from time to time, that is not affiliated with or controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing, as more fully defined in the Code, §42(h)(5)(C), and Temporary Treasury Regulation, §1.42-1T(c)(5)(ii).

Qualified nonprofit project-A project with respect to which a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of the Code, §469(h), or as may be amended from time to time) in the development and operation of the project throughout the compliance period.

REO projects-Any property, which includes both land and existing dwelling units permanently attached to the land, that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property held by Fannie Mae, Freddie Mac, federally chartered banks, or by a federally-approved mortgage company or savings and loan association. Vacant land without structural improvement will not satisfy the requirements of this definition even if it is held by one of the institutions or entities referenced in this definition.

Reference Manual-That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Low-income Housing Tax Credit Program.

Rehabilitation expenditure-Amounts incurred in connection with the rehabilitation of a project the owner of which represents to be rehabilitation expenditures within the meaning of the Code, §42(e).

Reservation notice-A reservation notice issued by the Department to a project owner pursuant to §49.4(f) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

Rules-The Department's low-income housing tax credit rules, §§49.1-49.14 of this chapter (relating to Low-income Housing Tax Credit Rules).

Rural project-A project located either outside the boundaries of any Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or within the boundaries of an MSA or a PMSA designated by the FmHA as an eligible area for purposes of FmHA housing assistance programs.

Selection criteria-Criteria used to determine housing priorities of the Department which are appropriate to conditions in the state.

Small development-Qualified project consisting of not more than 25 units, and which is not a part of, or contiguous to, a larger project, which has or will apply to the Department for a tax credit allocation. This definition excludes those projects which would otherwise qualify as a rural project.

Special housing project-Any project developed specifically for special housing need groups that include mental health/mental retardation projects, group homes, housing for the homeless, transitional housing, and congregate care facilities.

State housing credit ceiling-The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3)(C).

Sustaining occupancy-The figure at which occupancy income is equal to all operating expenses and debt service requirements.

Threshold criteria-Criteria used to determine the project's qualifications which are the minimum level of acceptability for consideration under the low-income Housing Tax Credit Program.

Total housing development cost-The total of all costs incurred by the project owner in acquiring, constructing, rehabilitating and financing a project, as determined by the Department based on the information contained in the project owner's application.

Unit-Any residential rental unit in a project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation; provided, however, that single-room occupancy housing used on a non-transient basis may be treated as one or more units.

*§49.3. State Housing Credit Ceiling.*

(a) The Department shall determine the state housing credit ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the *Texas Register* as soon as may be practicable after the making of such determination

(c) The aggregate amount of housing credit allocations made by the Department during any calendar year shall not exceed the state housing credit ceiling for such year as provided in the Code

*§49.4. Applications; Environmental Assessments; Market Study, Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.*

(a) Any project owner requesting a housing credit allocation for a project must submit an application to the Department which application shall be originally executed by the project owner. This application shall contain full and complete information as to each item specified in the Application Submission Procedures Manual, as amended. The Department will require, as a part of a completed application, information to be submitted by the project owner which identifies the number of historically underutilized businesses to be used in the development and/or continuous operation of the project, in a form specified within the Application Submission Procedures Manual. Further, the Department will require the project owner to supply sufficient documentation which will represent the means by which these historically underutilized businesses were selected. The project owner is also advised that the Department will be requesting information pertaining to the use of historically underutilized businesses in the actual development of the project at the time of final allocation of tax credits, pursuant to §49.8(c) of this title (relating to Housing Credit Allocations). When any item is marked "not applicable," the project owner shall explain in detail why such item is "not applicable." The Department is authorized to request the project owner to provide any additional information it deems relevant as an addendum to the application

(b) As part of the complete application the applicant must submit a Phase I Environmental Assessment of the subject property, dated not more than six months from the date of application to the Department. In the event that a Phase I Environmental Assessment on the project is older than six months, the project owner may supply the Department with an update letter from the person or organization which prepared the initial assessment; provided, however, that the Department will not accept any Phase I Environmental Assessment which is more than 12 months old. This environmental assessment should include, but is not limited to, a review of records, interviews with people knowledgeable about the property, an inspection of the property, the building(s), and the fence line, adjoining properties, as well as any other industry standards concerning the preparation of this type of environmental assessment. If the report establishes that environmental hazards currently exist on the property, or are originating off-site but would nonetheless affect the property, the project owner must provide either a plan for the abatement of the hazard; or an operation and maintenance plan for the control of the hazard. The environmental assessment shall be conducted by an individual who has been properly certified to perform this analysis and be prepared at the expense of the project owner. For projects which have had a Phase II Environmental Assessment performed and hazards identified, the project owner is required to maintain a copy of said assessment on site available for review by

all persons which either occupy the property or are applying for tenancy. Properties financed through the FmHA, or properties with four units or less will not be required to supply this information; however, the project owners are hereby notified that it is their responsibility to ensure that the property is maintained in compliance with all state and federal environmental hazard requirements. Those projects which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection. In order for an environmental assessment to be considered as acceptable under this subsection, it must be complete at the time of submission and not submitted to the Department in a fragmented form.

(c) The Market Study requirement in the application shall comply with paragraphs (1)-(6) of this subsection as applicable.

(1) A Market Study prepared by a qualified market analyst, who is independent of the development team, and is not dated more than six months of the date of application, is required as part of the complete application when the project is either new construction or the rehabilitation of an existing project which is, at the time of application, below 70% occupancy. Projects which are comprised of ten units or less in size are not required to provide the Department with a market study. In the event that a Market Study on a project is older than six months, a project owner may supply the Department with an update letter from the person or organization which prepared the initial report; provided, however, the Department will not accept any Market Study which is more than 12 months old. The Market Study shall be prepared at the expense of the project owner and shall include, at a minimum, the following information:

(A) an evaluation of the existing occupancy rates in comparable multifamily rental residential developments in the same market area as the proposed project;

(B) project absorption rates for at least one year from the date of the study for units in comparable multifamily rental residential developments in the same market area as the project. Further, provide a projection of the time necessary for the project to achieve sustaining occupancy;

(C) an evaluation of the current physical condition of existing low-income rental housing units in the market area; sp>(D) an evaluation of the need for affordable housing within the project market area, which includes an analysis of any existing federal, state and/or locally subsidized rental housing units in the market area;

(E) an evaluation of the appropriateness of the unit-size, in terms of number of bedrooms, for the low-income housing market area;

(F) an evaluation of the appropriateness of the location and total development cost of the project for the low-income target population;

(G) an evaluation of appropriateness of the proposed rehabilitation plan and budget to adequately address the current physical deficiencies at the properties and bring the project up to or above current conditions of competing properties in the submarket;

(H) an evaluation of the appropriateness of the anticipated operating costs of the project for the housing market in which the project is located;

(I) an evaluation of the appropriateness of the existing or proposed physical amenities at the project for the low-income target population;

(J) a summary of qualifications for the individuals who participated in the development of the Market Study;

(K) a statement from the qualified market analyst concerning any identity of interest in the development of the property; and

(L) such other matters as the Department, in its sole discretion, may determine to be relevant to the Department's evaluation of the need for the project and the allocation of the requested housing credit allocation amount.

(2) the Department may require the project owner obtain a Market Study even if current occupancy is above 70%.

(3) a written certification is required, from the qualified market analyst who prepared the Market Study required under paragraph (2) of this subsection, stating that:

(A) the projected total housing development costs of the proposed project are/are not reasonable. The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusion with regards to the reasonableness of the development costs;

(B) the projected total operating costs of the proposed project are/are not reasonable. The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the reasonableness of the projected operating costs;

(C) the projected rehabilitation plan and budget is/is not reasonable to correct the current physical deficiencies and bring the project up to or beyond market standards. The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the reasonableness of the rehabilitation plan and budget;

(D) the proposed project, in light of the vacancy and absorption rates for the applicable market area, is or is not likely to result in an unreasonably high vacancy rate for comparable units within the market area (i. e., standard, well-maintained units within such market area that are reserved for occupancy by low and very-low income tenants). The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the effects of the project's development on the vacancy rates for comparable units within the market area;

(E) the projected initial rents for the project are or not reasonably affordable by low and very-low income tenants and are or not below the rental range for the comparable projects within the market area. The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the reasonableness of the rents at the project. A simple statement from the qualified market analyst that project rents are within the Code, §42, limits will not on its own satisfy this requirement; and

(F) project reserves are/are not adequate to cover operating shortfalls until the project achieves sustaining occupancy. The qualified market analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the adequacy of the project reserves.

(4) If a project owner requests a waiver of the required Market Study, the project owner shall provide the Department a separate written document, with any support information attached thereto, setting forth the exact reasons why such waiver is justified.. Such information should include at a minimum, a copy of the local Comprehensive Housing Affordability Strategy

("CHAS") report, if available, which clearly addresses the need for additional affordable rental housing as well as letters of support from local community officials such as the mayor, county judge, city manager or city planner, which also clearly express the need for additional affordable rental housing in the projects market area.

(5) Projects which are located within either a qualified census tract or difficult development area as defined by the Secretary of Housing and Urban Development, in one of the targeted Texas counties, as set forth in the Department's Reference Manual, may submit, in lieu of the Market Study, a copy of the local CHAS report, if available, which clearly addresses the need for additional affordable rental housing and letters of support from local community officials such as a mayor, county judge, city manager or city planner, which also clearly expresses the need for additional affordable rental housing in the project's market area The Department may require that the project owner supply a market study, in conformance with the provisions of this subsection, even if the project is located within one of the aforementioned areas.

(6) The Ad Hoc Tax Credit Committee may, in its discretion, waive any of the provisions of this subsection

(d) A project owner may file an application at any time during the application acceptance cycle(s), as published from time to time by the Department in the *Texas Register*.

(e) The Department may reject any application that is incomplete or that is not filed in accordance with the Application Submission Procedures Manual, as amended

(f) Within a reasonable amount of time after evaluation, ranking, and underwriting of an application, as provided in §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the Department shall respond to the project owner in accordance with paragraph (1) or (2) of this subsection, as applicable.

(1) Unless the entire state housing credit ceiling for the applicable calendar year has been reserved, committed or allocated in accordance with this chapter, applications which receive the highest number of points, in each set-aside category, during any published application acceptance cycle, will be eligible for an evaluation by an Underwriter as provided in §49.6(b) of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), if the required Threshold Criteria have been achieved and all necessary application documents have been received in accordance with the Application Submission Procedures Manual, as amended. If such evaluation warrants, a reservation notice will be issued. The reservation notice:

(A) shall confirm that the Department has received the project owner's application and has found the application to be in satisfactory form and to contain either all required information or shall clearly specify any remaining conditions which are in need of being resolved prior to the presentation of the application to the Ad Hoc Tax Credit Committee; and

(B) shall reserve to the project owner the housing credit allocation amount specified therein, subject to the conditions set forth in §49.8(a) of this title (relating to Housing Credit Allocations) and compliance by the project owner with the remaining requirements of this chapter, and subject further to approval by the Board of the project owner's application. The reservation notice shall expire on the date specified therein.

(2) If the entire state housing credit ceiling for the applicable calendar year has then been reserved, committed or allocated in accordance with this chapter, the Department shall place all remaining applications on a waiting list and shall issue to the project owner a written notice of that action. If at any time prior to the last business day of the applicable calendar year, one or more reservation notices, commitment notices or carryover allocation documents expire and a sufficient amount of the state housing credit ceiling becomes available, then the Department shall issue a reservation notice to the project owner in the manner and with the effect described in paragraph (1) of this subsection.

(g) Within five business days of the date an application is received, the Department shall notify in writing the mayor or other equivalent chief executive officer of the municipality, if the project or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the project or a part thereof is located, to advise such individual that the project or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such project. Such comments shall be part of the documents required to be reviewed by the Board under this subsection if received by the Department within 30 days after same is mailed to said individual; otherwise, if comments are received by the Department after 30 days, same may be reviewed at the discretion of the Board under this subsection.

(h) As soon as may be practicable following issuance of a reservation notice the Department shall place the application on the agenda for review by the Board at the next meeting of the Board at which applications will be considered. Within ten calendar days after the Board reviews the application, the Department shall act upon the application in accordance with either paragraph (1) or (2) of this subsection, as applicable.

(1) If the Board approves the application, the Department shall issue a commitment notice to the project owner which commitment notice:

(A) shall confirm that the Department has approved the application; and

(B) shall state the Department's commitment to make a housing credit allocation to the project owner in a specified amount, subject to the conditions set forth in §49.8(a) of this title (relating to Housing Credit Allocations), compliance by the project owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This commitment notice shall expire on the date specified therein

(C) The commitment notice shall specify a 15 day time frame, from the date of the commitment, for any final public comments either in support or opposition to the project. Said notice shall be made in writing to the mayor or other equivalent chief executive officer of the municipality in which the property is located. If such subsequent public comments warrant, the Department may, in its sole discretion, resubmit the application to the Board of directors for further consideration or action at its next scheduled meeting.

(2) if the Board disapproves or fails to act upon the application, the Department shall issue to the project owner a written notice so stating.

(i) a project owner may request the Department to extend the expiration date of a commitment notice which has not expired, by submitting a written request for such action, accompanied by the extension fee specified in §49. 11 of this title (relating to Program Fees). The request shall specify the term of the extension requested and the reason or reasons why the project owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The Department may consider and grant such extension requests in its sole discretion; provided, however, that in no event shall the expiration date of a commitment notice be extended beyond the last business day of the applicable calendar year.

(j) A project owner, who has been issued a commitment notice which has not

expired, may request the Department to execute an Agreement and Election statement, which has been duly dated and signed by the project owner and received by the Department within five days of the close of the end of the month in which said commitment notice was issued; provided, however, that the commitment fee specified in §49.11 of this title (relating to Program Fees), has been received by the Department. Upon receipt thereof, the Department shall, if the project owner is in full compliance with the rules in this chapter and the commitment notice, execute such agreement and return a copy to the project owner.

(k) Prior to the expiration of the commitment notice a project owner who has been issued a commitment notice may request the Department to execute a carryover allocation document which has been properly completed, signed, dated and notarized by the project owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended. The commitment fee as specified in §49.11 of this title (relating to Program Fees) must be received by the Department prior to the processing of any carryover allocation documentation.

(l) Prior to the issuance of a housing credit allocation to a project owner, the project owner shall date, sign and acknowledge before a notary an extended low-income housing commitment agreement. The property owner shall then record said extended low-income housing commitment agreement, along with any and all exhibits attached thereto, in the real property records of the county where the project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. Receipt of such certified recorded original by the Department is required prior to issuance of the housing credit allocation.

*§49.5. Set-Asides, Reservations and Preferences.*

(a) 10% of the state housing credit ceiling for each calendar year shall be set-aside exclusively for qualified nonprofit projects, which meet the requirement of the Code, §42(h)(5).

(b) 90% of the state housing credit ceiling for each calendar year shall be available for all projects (including qualified nonprofit projects), subject to the following preferences or as otherwise determined by the Department:

(1) rural projects-10%;

(2) first-time participant-15%;

(3) REO projects-10%;

(4) small development-4%;

(5) special housing projects-1%; and

(6) other projects-50%.

(c) The Department may reduce or eliminate any and all setaside requirements, as provided for in this section during an application cycle. Further, the Department may redistribute the set-aside requirements in the case where an over demand occurs in any particular set-aside while an under demand occurs in another set-aside category, during a published application cycle. The Department will provide information concerning the appropriate set-aside for each application cycle in the *Texas Register*.

(d) No reservation notice or commitment notice shall be issued with respect to any project, of which the total development cost, as determined by the Department, or the acquisition, construction or rehabilitation cost exceed the limitations established from time to time by the Board as more specifically provided for within the Application Submission Procedures Manual. The Department may reduce the applicant's estimate of developers and/or contractor fees in instances where these fees are considered excessive, as more specifically provided for within the Application Submission Procedures Manual, as amended. In the instance where an identity of interest exists between the project owner and the contractor, and both parties are claiming developers fees and contractors overhead, profit, and general requirements the Department may reduce the total fees estimated to a level that it deems appropriate. Further, the Department shall deny or reduce the amount of low-income housing tax credits on any portion of costs which it deems insupportable in order to make the project feasible. The Department also may require bids in support of the costs proposed by any applicant.

(e) The Department may adopt and implement such other set-asides, reservations and preferences as the Department may deem appropriate in connection with the making of housing credit allocations.

*§49.6. Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.*

(a) Threshold criteria. To be considered for review by an underwriter, a project must first demonstrate that it meets the threshold criteria set forth as follows and as more specifically provided for in the Application Submission Procedures Manual, as amended. Only those applications meeting threshold criteria will be further considered. Project owners whose applications do not meet threshold criteria will be so informed in writing;

(1) a description of the existing or proposed physical amenities to be provided at the project, as more specifically provided for in the Application Submissions Procedures Manual;

(2) describe in detail the development costs associated with the proposed new construction or rehabilitation, in a manner consistent with that provided in the Application Submission Procedures Manual;

(3) readiness to proceed as documented by;

(A) evidence of site control in the form of a deed, contract for sale, or option to purchase agreement;

(B) evidence of current zoning from the appropriate municipal authority,

(C) evidence of all necessary utilities extended to the site; and

(D) evidence of project financing;

(4) a statement signed by the project owner stating that they intend to enter into an extended low-income housing commitment (Declaration of Land Use Restrictive Covenants) with the Department as provided in the Code, §42(h)(6) prior to the allocation of tax credits to the project, in a form prescribed by the Department in its Application Submission Procedures Manual;

(5) evidence that the pre-application notification (which includes a copy of the business plan and the application form, as specified in the Application Submission Procedures Manual) has been received by the office of the local public official as defined in §49.4(g) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) in a form consistent with that provided in the Application Submission Procedures Manual.

(6) a statement signed by the first lienholder stating that:

(A) lienholder is aware of the Declaration of Land Use Restrictive Covenants and accepts the terms and provisions, contained therein, as a restrictive covenant on the property; and

(B) lienholder agrees to enter into a subordination agreement.

(7) nonprofit projects which are requesting tax credits from the nonprofit set-aside, must supply the following:

(A) documentation evidencing that the applicant is a qualified nonprofit organization pursuant to the Code, §42(h)(5)(C);

(B) documentation which evidences that the nonprofit will own an interest in the project (directly or through a partnership) and materially participate (within the meaning of the Code, §469(h)) in the development and operation of the project throughout the compliance period; and

(C) a current listing of all directors and officers of the non-profit organization, along with information pertaining to their primary profession.

(8) current financial statements of any and all project owners and/or its general partners, in accordance with the Application Submission Procedures Manual;

(9) original copy of the completed and executed Personal Background Certification Form from any and all project owners and/or its general partners, in accordance with the Application Submission Procedures Manual;

(10) A copy of the current project rent roll, prepared in accordance with the Application Submission Procedures Manual;

(11) historical operating statements of the subject property or other such documentation in support for the proforma estimates provided by the applicant;

(12) Market Study prepared in accordance with the provisions contained within §49.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments); and

(13) environmental assessment prepared in accordance with the provisions contained within §49.4(b) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments); and

(b) Evaluation factors. The Department will consider applications for a housing credit allocation using the following evaluation and point system, which is further described in the Application Submission Procedures Manual:

(1) Applications will be evaluated against the threshold criteria as they are received in the Department during any application cycle. Applications not meeting the threshold criteria may be canceled and returned to the applicant without further review.

(2) The applications will then be ranked according to the points scored in accordance with the Application Submission Procedures Manual.

(3) Applications receiving the highest number of points, in each set-aside category, during any published application acceptance cycle, if a sufficient amount of state housing tax credits are available, will be eligible for an evaluation by an Underwriter. If such evaluation warrants, a reservation notice will be issued as provided in §49.4(f) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments), and the application will be scheduled for review by Ad Hoc Tax Credit Committee and a recommendation by such Committee to the Board concerning the issuance of a commitment notice at the next scheduled Board meeting. The Department may have an outside third party perform the underwriting evaluation as it deems necessary in its sole determination. The expense of any third-party underwriting evaluation shall be paid by the applicant prior to the commencement of the aforementioned evaluation.

(4) Applications not scoring a sufficient number of points to be considered in a given application cycle, and therefore not receiving a reservation notice, will not be rejected, but, provided that a sufficient amount of state housing credit is available, will be held in reserve until such time as all other applications which scored more points have been considered.

(5) Applications not receiving a reservation notice may be withdrawn, and the applicant may reapply to the Department, if so desired, during the next published application cycle.

(c) Selection criteria. The selection criteria, and subcategories thereof, are as follows and are further described in the Application Submission Procedures Manual:

(1) Project location.

(A) project is located in a difficult development area or qualified census tract as designated by the Secretary of HUD and qualifies for the 130% eligible-basis allowance, pursuant to the Code, §42(d)(5)(C);

(B) project is located in a city/county which was recently awarded a state prison, as more fully specified within the Reference Manual;

(C) project is located outside of the Dallas, Fort Worth or Houston MSA's or PMSA's;

(D) project contributes significantly to the economic development of the community and is within a targeted Community Development Block Grant area;

(E) project is a rural project as such term is defined in the this chapter;

(F) project is located within one of the targeted Texas counties as more fully specified within the Reference Manual;

(G) project is located within a designated state or federal enterprise zone; and

(H) project represents new construction or substantial rehabilitation in an area in which there is a measurable need for additional affordable rental housing.

(2) Housing Needs characteristics.

(A) project is located in a county in which a substantial percentage of the households are below the poverty level as defined in the Department's County Data Elements Guide located within the Reference Manual;

(B) project is located in a county in which a substantial percentage of the renter households have incomes at or below 50% of the area median income as defined in the Department's County Data Elements Guide located within the Reference Manual;

(C) project is located in a county in which a small percentage of the occupied housing units are renter occupied as defined in the Department's County Data Elements Guide located within the Reference Manual;

(D) project is located in a county in which a substantial percentage of the rental units are occupied by tenants with a cost burden as defined in the Department's County Data Elements Guide located within the Reference Manual; and

(E) project is located in a county in which a substantial percentage of the rental units are overcrowded as defined

in the Department's County Data Elements Guide located within the Reference Manual.

(3) Project characteristics.

(A) project is a federally-assisted building, within the meaning of the Code, §42(d)(6)(B);

(B) project is a low-income building eligible for prepayment of mortgage as provided in the Code, §42(d)(6)(C);

(C) property is owned by an insured depository institution in default, or by a receiver or conservator of such an institution, or is an REO property held by Fannie Mae, Freddie Mac, federally-chartered banks, federally-approved mortgage company or savings and loan association, or any other federal agency;

(D) project composition offers a unit mix which is conducive to family housing;

(E) project design and/or components promotes energy conservation,

(F) project retains federal, state, and/or local subsidies;

(G) project provides low density housing;

(H) evidence of low-income housing tax credit syndication on the subject property;

(I) the application represents substantial rehabilitation of an existing project; and

(J) evidence of project owner's readiness to commence construction or rehabilitation.

(4) Sponsor (Project Owner) characteristics.

(A) the project owner has a track record in successfully developing and operating affordable rental housing under a program designated by HUD, FmHA, RTC's Affordable Housing Disposition Program, the Department's HOME and/or Housing Trust Fund Programs, the Low-income Housing Tax Credit Program, or any other verifiable source;

(B) the management agent designated by the project owner has successful previous experience in continuing management of affordable rental housing;

(C) the project owner has entered into a management agreement that specifies how the project will be managed, the term of the agreement, parties to the agreement, and compensation for services. This agreement will also outline the steps to be taken by the management agent in order to assure compliance with the income and rent restrictions pursuant to the Code, §42; and

(D) the project owner offers a right of first refusal to the tenants of the project to purchase the project after the termination of the extended low-income housing commitment period as more fully provided for in the Code, §42(h)(6).

(5) Participation of local tax exempt organizations

(A) the project has a community based board, the majority of whose members live in the projects community, or the project is sponsored and developed by a Qualified Nonprofit Community Development Corporation; and

(B) the applicant has an agreement between a local tax-exempt organization and private developer for the operation, management, development, and/or special supportive services.

(6) Tenant populations with special housing needs.

(A) the project is located in an area in which a substantial percentage of the population is over 65 years of age as indicated in the Department's County Data Elements Guide which is provided within the Reference Manual. The project must be designed and equipped for elderly tenants. This selection criteria only applies to senior rental housing applications;

(B) the project provides units which are specifically equipped for persons with physical or mental disabilities. The project owner understands that these units must meet American National Standards Institute's building standards and Americans with Disabilities Act; and

(C) property provides transitional housing for homeless persons (including families with children), on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing.

(7) Public-housing waiting lists.

(A) project owner has committed in writing to the local public housing authority of the availability of units and agrees it will consider those households on the public housing authority's waiting list for the occupancy of such units. If there is no public housing authority in the locality, the project owner must utilize the nearest authority or the office responsible for administering the §8 program. Project owner has prepared a marketing plan to attract qualified tenants and has provided a copy to the local public housing authority and the Department. A fair-housing marketing plan will not satisfy this requirement on its own; and

(B) the project owner has received a letter from the appropriate authority citing the need for additional affordable housing units within its jurisdiction as evidenced by existing housing waiting lists.

(d) Final ranking. The Department will evaluate projects according to the strength of the project in meeting the threshold and selection criteria. The results of the evaluation will be determined by the Department in its sole discretion and will not be subject to challenge or contest by any applicant. After evaluating and scoring all applications received, the Department will rank such applications according to the number of points received. In the event that two or more applications receive the same number of points in any given set-aside category, the Department will utilize the following factors in determining which project will receive a preference in being considered for a tax credit commitment:

(1) which serve the lowest income tenants;

(2) which obligate the project owner (as evidenced by the Declaration of Land Use Restrictive Covenant Document) to serve qualified tenants for the longest period of time;

(3) which have substantial community support as evidenced by the commitment of local funds towards the construction, rehabilitation or acquisition and subsequent rehabilitation of the project;

(4) whose application demonstrates the highest readiness to proceed with the development as evidenced by the threshold criteria, as more specifically provided for in the Application Submissions Procedures Manual;

(5) whose unit composition provides the highest percentage of two bedroom or greater sized units; and

(6) which provide for the most efficient usage of the low-income housing tax credit on a per unit basis.

(e) Reaching the final ranking of an application. The Department will take into consideration the project owner's history of placing into service projects which have

been awarded tax credits. The Department may deduct points from the final score where it determines that the project owner has a history of failing to place-into-service projects which tax credit carryover allocations have been issued. The Department may disqualify applicants, whom it has reason to be believe are involved in using the tax credit program not as a means of providing affordable housing, but is a vehicle for enhancing the value of land that is intended for disposal as evidenced by a pattern of selling tax credit projects prior to placement in service or within 1 year after placement in service.

(f) Credit amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a project throughout the compliance period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the project by the Department.

(g) Tax-Exempt Bond. Financed Projects. Tax-exempt bond financed projects which will not receive tax credits through the state allocation authority are also subject to the requirements for the allocation of a housing credit dollar amount under the Qualified Allocation Plan.

*§49.7. Compliance Monitoring.*

(a) The Code, §42(m)(1)(B)(iii), requires each State Allocating Agency to include in its "Qualified Allocation Plan" a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of the Code, §42, and in notifying the Internal Revenue Service (the "Service"), or its successor, of such noncompliance which such agency becomes aware of. This procedure does not address forms and other records that may be required by the Service on examination or audit.

(b) In addition, the Department will monitor additional covenants made by the project owner in the extended low-income housing commitment agreement.

(c) The owner of a low-income housing project must keep records for each qualified low-income building in the project showing:

(1) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(2) the percentage of residential rental units in the building that are low-income units;

(3) the rent charged on each residential rental unit in the building (including any utility allowances);

(4) the number of occupants in each low-income unit;

(5) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(6) the annual income certification of each low-income tenant per unit, in the form designated by the Department in the Compliance Reference Guide, as may be amended;

(7) documentation to support each low-income tenant's income certification, consistent with the verification procedures of the United States Housing Act of 1937 §8 (§8), and as may be amended from time to time. In the case of a tenant receiving housing assistance payments under §8, the documentation requirement is satisfied if the public housing authority provides a statement to the project owner declaring that the tenants income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Reference Guide,

(8) the eligible basis and qualified basis of the building at the end of the first year of the credit period;

(9) the character and use of the nonresidential portion of the building included in the building's eligible basis under the Code, §42(d), (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(10) additional information as required by the Department.

(d) Record retention provision. The owner of a low-income housing project is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the tax credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(e) Certification and Review.

(1) Certification. Annually, at the time and in the form designated by the Department, the owner of a low-income housing project must certify that for the preceding 12-month period:

(A) the project met the minimum set-aside test which was applicable to the project,

(B) there was no change in the applicable fraction of any building in the project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(D) each low-income unit in the project was rent-restricted under the Code, §42(g)(2);

(E) all units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iii));

(F) each building in the project was suitable for occupancy, taking into account local health, safety, and building codes;

(G) either there was no change in the eligible basis (as defined in the Code, §42(d)) of any building in the project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the eligible basis under the Code, §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low-income unit in the project became vacant during the year, reasonable attempts were, or are being, made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be, rented to tenants not having a qualifying income;

(J) if the income of tenants of a low-income unit in the project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income; and

(K) an extended low-income housing commitment agreement as described in the Code, §42(h)(6), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1).

(2) Review.

(A) At least annually, at the time designated by the Department, the owner of a low-income housing project

must send to the Department for its review for compliance with the requirements of the Code, §42, the certification described in paragraph (1) of this subsection.

(B) The Department will inspect, at a minimum, 20% of low-income housing projects each year, including inspection of the income certification, the documentation the owner has received to support that certification, the rent record for each low-income tenant and any additional information deemed necessary. The Department shall give reasonable notice to the owner that an inspection will occur; however, the projects and records to be reviewed will be chosen by the Department in its sole discretion

(C) The Department may, at the time and in the form designated by the Department, require the owners of low-income housing projects to submit for compliance review, information on tenant income and rent for each low-income unit, and may require an owner to submit for compliance review a copy of the income certification, the documentation the owner has received to support that certification and the rent record for any low-income tenant.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the FmHA, whereby the FmHA agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the FmHA under its §515 program. Owners of such buildings may be excepted from the review procedures of paragraph (2)(B)(C) of this subsection or both; however, if the information provided by FmHA is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the owner must provide the Department with additional information.

(f) Inspection provision. The Department retains the right to perform an on site inspection of any low-income housing project through either the end of the compliance period or the period covered by any extended low-income housing commitment agreement, whichever is later. An inspection under this subsection is separate from any review under subsection (e)(2) of this section.

(g) Notification of Noncompliance.

(1) Notice to owner.

(A) The Department will provide prompt written notice to the owner of a low-income housing project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, review or any other manner, that the project is not in compliance with the provisions of the Code, §42.

(B) The correction period shall not exceed 90 days from the date of the notice to owner During the correction period, an owner must supply any missing certifications and bring the project into compliance with the provisions of the Code, §42. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension.

(2) Notice to the Internal Revenue Service

(A) The Department is required to file Form 8823, Low-income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period including any extension, and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected The Department will explain on Form 8823 the nature of the noncompliance or failure to certify and will indicate whether the owner has corrected the noncompliance or failure to certify

(B) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calendar year the Department receives the certifications and records.

(h) Notices to the Department.

(1) An owner of a low-income housing project must notify the Department in writing prior to any sale, transfer, exchange, or renaming of the project or any portion of the project.

(2) An owner of a low-income housing project must notify the Department in writing of any change of address to which subsequent notices or communications shall be sent.

(i) Liability. Compliance with the requirements of the Code, §42, is the sole responsibility of the owner of the building for which the credit is allowable By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the owner including the owner's noncompliance with the Code, §42.

(j) These provisions apply to all buildings for which a low-income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the Service in a manner consistent with subsection (g) of this section.

(k) The Department may amend this section at any time, provided however that reasonable notice has been given to existing project owners

*§49.8 Housing Credit Allocations*

(a) The housing credit allocation amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the project throughout the compliance period. Such determination shall be made by the Department at the time of issuance of the reservation notice, at the time of review by the Board prior to issuance of commitment notice, at the time the Department makes a housing credit allocation, and/or the date the building is placed in service. Any housing credit allocation amount specified in a reservation notice, commitment notice, allocation and/or carryover allocation document is subject to change by the Department dependent upon such determination. Such a determination shall be made solely at the discretion of the Department, considering the items specified in the Code, §42(m)(2)(B), and the Department in no way or manner represents or warrants to any project owner, sponsor, investor, lender or other entity that the project is, in fact, possible or viable

(b) The Department shall execute, when the project owner is in full compliance with the rules in this chapter, the commitment notice, the Carryover Allocation Procedures Manual and all fees as specified within §49. 11 of this title (relating to Program Fees) have been received by the Department, a carryover allocation document which has been properly completed, executed and notarized by the project owner. The Department shall return one executed copy to the project owner.

(c) The Department shall make a housing credit allocation to any project owner who holds a commitment notice which has not expired, and which all fees as specified in §49.11 of this title (relating to Program Fees), have been received by the Department. Satisfactory evidence must be received by the Department that one or more buildings within the project are completed and have been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Department shall make each such housing credit allocation by mailing or delivering IRS Form 8609 (or any successor form adopted by the Internal Revenue Ser-

vice) to the project owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will only occur after the project owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. A separate housing credit allocation shall be made with respect to each building within a project which is eligible for a housing credit.

(d) In making a housing credit allocation, the Department shall specify a maximum applicable percentage, not to exceed the applicable percentage for the building permitted by the Code, §42(b), and a maximum qualified basis amount. In specifying the maximum applicable percentage and the maximum qualified basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment specified in the Code, §42(h)(6)(C)(i).

(e) Project inspections may be required to show that the project is built or rehabilitated according to required plans and specifications. A copy of all project inspections required and accepted by the lender financing the project shall be acceptable to the Department as a certification that the project is built to plans and specifications if such inspections are required by the lender during the construction of the project. At a minimum, such inspections must include an inspection at the start-up phase, the interim phase, and a final inspection at the time the project is placed in service. If no project inspections are required by the lender financing the project, the Department may require inspections to be made of the project; such inspections may be at the start-up phase, the interim phase or a final inspection at the time the project is placed in service, and shall be performed by an independent, third-party inspector. The project owner shall pay all fees to cover the cost of said inspections.

(f) At the time each building in the project is placed in service, the project owner shall be responsible for furnishing the Department with documentation which satisfies the requirements as set forth in the Cost Certification Procedures Manual. The Department may require copies of receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the project.

*§49.9. Department Records; Certain Required Filings.*

(a) At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the state housing credit ceiling that has been reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the state housing credit ceiling that has been committed pursuant to commitment notices during such calendar year;

(3) the cumulative amount of the state housing credit ceiling that has been committed pursuant to carryover allocation documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar years; and

(5) the remaining unused portion of the state housing credit ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the Department shall publish in the *Texas Register* each of the items of information referred to in subsection (a) of this section.

(c) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a project owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-Income Housing Credit Agencies Report. When a carryover allocation is made by the Department, a copy of Form 8609 will be mailed or delivered to the project owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence above mentioned. The original of the carryover allocation document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election statement shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section.

*§49.10. Department Responsibilities.* In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the project owner's application to determine whether a building is eligible for the credit under the Code, §42. The project owner shall bear full responsibility for claiming the credit and assuring that the project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a project owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department will reject, and consider baring the project owner from future participation in the Department's tax credit program, any application in which fraudulent information, knowingly false documentation or misrepresentation has been provided. The aforementioned policy will apply at any stage of the evaluation or approval process.

*§49.11. Program Fees.*

(a) Each project owner that submits an application shall submit to the Department, along with such application, a non refundable application fee, as set forth in the Application Submission Procedures Manual .

(b) For each project which is to be evaluated by an independent third-party underwriter in accordance with §49.6(b)(3) of this title (relating to Threshold Criteria, Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the project owner will be so informed in writing prior to the commencement of any reviews by said underwriter. The cost for the third-party underwriting will be set forth in the Application Submission Procedures Manual , and must be received by the Department prior to the engagement of the underwriter. The fees paid by the project owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a commitment notice is issued by the Department to the project owner.

(c) Each project owner that receives a commitment notice shall submit to the Department, not later than the expiration date on the commitment billing notice, a non-refundable commitment fee, as set forth in the Application Submission Procedures Manual. The commitment fee shall be paid by cashier's check. Projects located within one of the targeted Texas counties, as indicated in the Reference Manual, will be exempt from the requirement to pay a commitment fee, should a commitment notice be issued.

(d) Each project owner that requests an extension of the expiration date of a commitment notice, reservation notice, or wait list notice shall submit to the Department, along with such request, a non refundable extension fee, as set forth in the Application Submission Procedures Manual and shall be paid by cashier's check. Such extension shall be granted at the sole discretion of the Department.

(e) Upon the project being placed in service, the project owner will pay a compliance monitoring fee in the form of a cashier's check, as set forth in the Application Submission Procedures Manual. The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the project.

(f) Public information requests are processed by the Department in accordance with the provisions of Texas Civil Statutes, Article 6252-17a, codified as Government Code, Chapter 552, and as amended by the Acts during the 73rd Legislature, and as may be amended from time to time. The General Services Commission and the Department determine the cost of copying, and other costs of production. ss>(g) The amounts of the application fee, commitment fee, compliance monitoring fee, administrative fees, extension fee, and other applicable fees as specified in the Application Submission Procedures Manual will be revised by the Department from time to time as necessary to ensure that such fees cover the Department's administrative expenses.

*§49.12. Manner and Place of Filing Applications.*

(a) All applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5.00 p. m on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All items submitted to the Department shall be mailed or delivered to Low-income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

*§49.13. Withdrawals, Amendments, Cancellations.*

(a) A project owner may withdraw or amend an application prior to receiving a reservation, commitment, carryover allocation document or housing credit allocation, or may cancel a reservation notice or commitment notice by submitting to the Department a notice, as applicable, of withdrawal, amendment, or cancellation.

(b) An amendment of an application that results in an increase in the requested housing credit allocation amount or increase in points, unless as provided for during the grace period, shall cause the application to be removed from consideration during the current cycle. The application will be eligible for consideration in the next cycle and will be subject to any amendments made during the intervening period as well as be subject to a new filing fee.

*§49.14. Waiver and Amendment of Rules.*

(a) The Board, in its discretion, may waive any one or more of these rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) For purposes of §49.8(b) of this title (relating to Housing Credit Allocations), the requirements for making a housing credit allocation, as set forth in the Cost Certification Procedures Manual, shall apply to all project owners which received an executed carryover allocation document from the Department on, before or after January 1, 1993.

(c) The Department may amend this chapter at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a, codified at Government Code, Chapter 2001, and as amended by the Acts of the 73rd Legislature, and as may be amended from time to time.

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 13, 1994.

TRD-9440884 Henry Flores
Executive Director
Texas Department Housing and Community Affairs

Earliest possible date of adoption. June 20, 1994

For further information, please call. (512) 475-3800

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# Part V. Texas Department of Commerce

## Chapter 176. Enterprise Zone Program Rules

### • 10 TAC §176.5

The Department of Commerce proposes an amendment to §176.5, concerning the Texas Enterprise Zone Act Government Code, Chapter 2303, and Government Code, §§481.371-481.375. The amendment is identical to that proposed by the Texas Department of Commerce in the August 31, 1993, issue of the *Texas Register* (18 TexReg 5812), and published for adoption in the January 4, 1994, issue of the *Texas Register* (19 TexReg 68), effective January 13, 1994. This proposed amendment is necessary because the rule as originally proposed inadvertently omitted certain portions of the text. The complete text of §176.5 is therefore published for public comment in this issue of the *Texas Register*.

The rule is necessary to implement the recycling market development zones, loans and grants which were established by the enactment of Government Code, §§481.371-481.375, by Senate Bill 1051, 73rd Legislature.

Renee Mauzy, staff attorney, for Texas Department of Commerce, has determined that there will be fiscal implications as a result of enforcing or administering the rule. For the first five years that the rule is in effect, the effect on state government will be the administrative costs incurred by the Texas Department of Commerce in administering the recycling market development zone portion of the Enterprise Zone Program. The actual costs will depend upon the number, scope and complexity of recycling development zones submitted.

Ms. Mauzy does not believe that the costs to local government associated with the proposed rule will be any greater or less than were such costs prior to the proposed changes to the rules. She also believes that the costs to local government, if any, will be more than offset by the economic, and other, benefits gained by the local community through participation in the Enterprise Zone Program.

Ms. Mauzy also has determined that there will be a public benefit for each of the first five years the rule is in effect The benefit is that local communities which participate in the Enterprise Zone Program may realize the creation and retention of jobs within the community; investment in the community by businesses; and the initiation, sustenance or increase in recycling activities in areas identified as economically distressed

The cost to persons complying with the rule is not quantifiable since it depends, in large part, on the amount of staff time spent, and the wages of such staff, in meeting the requirements of the rule. The costs should be more than offset by the economic benefits which the applicants will receive from participating in the Enterprise Zone Program The cost to small business will be the same as that for other businesses

A local employment impact statement has not been requested from the Texas Employment Commission concerning the impact of these rules.

Written comments concerning the proposed rule should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas, 78701 within 30 days of publication of the proposed rule.

The rule is proposed under the authority of the Texas Enterprise Zone Act, Government Code, Chapter 2303, and Government Code, §§481-371-481.375. Government Code, §481.375, directs the Texas Department of Commerce to adopt rules to implement and administer the recycling market development subchapter of the Texas Government Code, Chapter 481. The rule is also proposed under the authority of the Administrative Procedure Act, Government Code, Chapter 2001, which mandates the rulemaking procedures to be followed by state agencies.

The proposed rule affects the Government Code, §§481.371-481.375.

*§176.5. Requirements for Designation as a Recycling Market Development Zone and Respective Loans or Grants.*

(a) The department may not designate a nonimated area as a recycling market development zone unless it has first determined from an application submitted by the governing body or bodies within whose jurisdiction(s) the area is contained that :

(1) the area is a state-designated enterprise project-eligible enterprise zone, or meets the requirements for designation as an enterprise project-eligible state enterprise zone. No additional distress criteria is required other than for enterprise project-eligible enterprise zone designation;

**(2) a waste-stream analysis for the area to be affected by the recycling market development zone is provided;**

**(3) a survey of dependable markets for recyclable materials and sources for post-industrial/post-consumer secondary materials has been conducted; and**

**(4) the governing body or bodies demonstrate the ability to executive their commitments by outlining the administrative and promotional and operational procedures to develop the zone.**

**(b) Recycling market development zones will be eligible for recycling-related low-interest loans and grants from the department as funds become available from grants or other allowable sources. The purpose of the grants and loan to the governing body of an enterprise zone designated as a recycling market development zone is to fund an activity that initiates, sustains or increases recycling efforts. Administration costs related to the recycling market development loans will be reimbursed from applicable recycling market development loan funding sources including a percentage of grants and/or fees. Loans may be a minimum of $10,000, and a maximum of $500, 000, the most any zone could have outstanding at any time. Pursuant to Government Code, §481.374, under this section.**

**(1) a grant may not exceed $30,000;**

**(2) a grant recipient must match the amount of the sate grant with an equal amount of cash or an in-kind contribution which is acceptable to the department from another source; and**

**(3) the department may make loans or grants from appropriated funds or from any special fund.** Funds granted or loaned under this section may be used to:

(1)[(A)] add or upgrade infrastructures within a recycling market development zone;

(2)[(B)] provide or improve utilities within a recycling market development zone;

(3)[(C)] make loans to recycling businesses for asset financing or working capital;

(4)[(D)] fund for-profit and not-for-profit organizations for the purpose of establishing recycling programs; or

(5)[(E)] fund any other activity mutually agreed upon between the department and the enterprise zone governing body or bodies which leads to sustainable, increased recycling 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.

Issued in Austin, Texas, on May 13, 1994.

TRD-9440906 Deborah C Kastrin
Executive Director
Texas Department of Commerce

Earliest possible date of adoption. June 20, 1994

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

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# TITLE 16. ECONOMIC REGULATION

## Part III. Texas Alcoholic Beverage Commission

### Chapter 33. Licensing

### License and Permit Surcharges

### • 16 TAC §33.23

The Texas Alcoholic Beverage Commission proposes an amendment to §33 23, concerning the annual surcharges for all holders of permits and licenses issued by the commission as required by the Texas Alcoholic Beverage Code, §5.50(b), effective September 1, 1993. The section is amended by changing surcharges for all licenses and permits.

Jeannene Fox, director, Licenses and Permits has determined, based upon an estimation of the number of licenses and permits the commission will issue within the fiscal year, that for state government the estimated revenue for each of the first five years is $2,161,283, with estimated additional cost being insignificant. There will be no fiscal implications for units of local government.

Ms. Fox also has the public benefit cost is that for each year of the first five years the rule as proposed is in effect, the regulated alcoholic beverage industry will bear the entire amount of the cost of regulation by the Texas Alcoholic Beverage Commission. The effect on small businesses cannot be determined but is considered to be minimal and is not anticipated to have a disproportionate impact on those in the alcoholic beverage industry. The anticipated economic cost to persons required to comply is the applicable surcharge.

Comments on the proposal may be submitted to Jeannene Fox, Director of Licenses and Permits, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under the Texas Alcoholic Beverage Code, Subchapter B, §5.31, which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code and §5.50(b), which specifically mandates the surcharges.

The proposed rule affects the Texas Alcoholic Beverage Code, §§11.32, 11. 35, and 61.35.

*§33 23. Alcoholic Beverage License and Permit Surcharges.*

(a) A surcharge [of 20%] of all original or renewal [certificates,] permit or license fees set by the Texas Alcoholic Beverage Code [rounded upward to the nearest five dollars] shall be levied against all **license and permit holders as follows:** [certificate holders, permittees or licensees.]

**Liquor Permits.**
**Agent's Permit-$7.00**
**Airline Beverage Permit-$14**
**Beverage Cartage Permit-$11**
**Bonded Warehouse Permit-$4.00**
**Bonded Warehouse Permit (Dry Area)-$4.00**
**Brewer's Permit-$28**
**Brewpub License-$11**
**Carrier's Permit-$10.00**
**Caterer's Permit-$8.00**
**Daily Temporary Mixed Beverage Permit (Per Day)-$11**
**Daily Temporary Private Club Registration Permit-$11**
**Distiller's & Rectifier's Permit-$10.00**
**Industrial Permit-$16**
**Local Cartage Permit-$7.00**
**Local Distributor's Permit-$8.00**
**Local Industrial Alcohol Manufacturer's Permit-$9.00**
**Manufacturer's Agent's Permit-$7.00**
**Market Research Packager's Permit-$5.00**
**Medicinal Permit-$-0-**
**Minibar Permit-$14**
**Mixed Beverage Permit-$15**
**Mixed Beverage Late Hours Permit-$12**
**Non Resident Brewer's Permit-$5.00**
**Non Resident Seller's Permit-$11**
**Package Store Permit-$8.00**
**Package Store Tasting Permit-$3.00**
**Wine Only Package Store Permit-$8.00**
**Passenger Train Beverage Permit-$12**
**Physician's Permit-$-0-**
**Private Carrier's Permit-$9.00**
**Private Club Exemption Certificate Permit-$-0-**
**Private Club Registration Permit-$20**
**Private Club Beer and Wine Permit-$14**
**Private Club Late Hours Permit-$12**
**Private Storage Permit-$3.00**
**Public Storage Permit-$3.00**
**Wholesaler's Permit-$22**
**General Class B Wholesaler's Permit-$22**
**Local Class B Wholesaler's Permit-$22**
**Wine and Beer Retailer's Permit Railway Car-$9.00**
**Wine and Beer Retailer's Permit Excursion Boat-$9.00**
**Wine Bottler's Permit-$22.00**

**Winery Permit-$30**
**Winery Storage Permit-$6.00**
**Beer Licenses.**
**Agent's Beer License-$7.00**
**Branch Distributor's License-$22**
**General Distributor's License-$22**
**Importer's License-$16**
**Importer's Carrier's License-$6.00**
**Local Distributor's License-$18**
**Manufacturer's License-$28**
**Manufacturer's Warehouse License-$20**
**Non Resident Manufacturer's License-$11**
**Beer Retailer's Off Premise License-$8.00**
**Beer Retailer's On Premise License-$8.00**
**Retail Dealer's On Premise Late Hours License-$8.00**
**Temporary License-$7.00**
**Wine and Beer Retailer's Permit-$8.00**
**Wine and Beer Retailer's Off Premise Permit-$8.00**

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code, §32.11, is also exempt from the surcharge.

(b) In order to cover the costs of the administration of the mixed beverage tax by the comptroller, all holders of mixed-beverage permits and private-club registration permits shall pay in addition to the [20%] surcharge **levied in subsection (a) of this section**, an annual surcharge of $190 [$160].

(c) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(d) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

**(e) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.**

[(e) Any annual surcharge paid after September 1, 1993, in accordance with subsection (b) of this section, in excess of $160, shall be refunded to mixed beverage and private club registration permit holders.]

**(f) This section shall take effect September 1, 1994.**

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 16, 1994.

TRD-9440912 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3204

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## Prohibited Equipment

### • 16 TAC §35.11

The Texas Alcoholic Beverage Commission proposes an amendment to §35.11, concerning possession of bottle-capping devices not being per se illegal, unless they are used to perform an illegal activity. The amendment also adds the new brewpub license to this section.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has the public benefit cost is that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be a more consistent application of agency rules and policy. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under the Texas Alcoholic Beverage Code, §5.31, which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §103.02.

*§35.11. Bottle-Capping Devices.* It shall be unlawful for the holder of a general distributor's license, or a local distributor's license, or a branch distributor's license, or a retail dealer's on-premise license, or a retail dealer's off-premise license, or a wine and beer retailer's permit or a wine and beer retailer's off-premise permit or a package store permit, or a wine-only package store permit, or a **brewpub** license, or mixed beverage permit, or a private club registration permit or a private club exemption certificate permit [to sell, or] to possess on his licensed premise, any instrument or any mechanical device used[, or capable of being used, or expressly made or manufactured,] for the purpose of illegally capping or recapping of beverage bottle.

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 11, 1994.

TRD-9440866 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## Definitions

### • 16 TAC §35.41

The Texas Alcoholic Beverage Commission proposes new §35.41, defining terms used in the Texas Alcoholic Beverage Code. The new rule adds definitions of lewd and lascivious behavior and narcotics to the existing enforcement rules of the commission.

Gayle Gordon, 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. The determination is based upon the nature of the rule; it is an enforcement tool which does not impact taxes or revenues.

Ms. Gordon 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 increased compliance with the laws of the state and a decrease in the amount of criminal activity which occurs on licensed premises. 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 Gayle Gordon, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under the Texas Alcoholic Beverage Code, Subchapter B, §5.31, which provides the commission with the authority to adopt rules relating to the enforcement and administration of the Alcoholic Beverage Commission Code.

The proposed rule affects the Alcoholic Beverage Code, §§104.01, 61.71(a) (11).

*§35.41. Terms Defined.* The following words and terms, when used in this chapter, and §11.46(3) have the following meanings except when the context clearly indicates otherwise.

Lewd and vulgar entertainment or acts-any sexual offenses contained in the Texas Penal Code, Chapter 21 or any public indecency offenses contained in the Texas

Penal Code, Chapter 43 (See Texas Alcoholic Beverage Code, §104.01(6).

Narcotic-any substance defined in the Texas Controlled Substances Act, §481.002(5),(6),(7) or (26), (See Texas Alcoholic Beverage Code, §104.01(9)).

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 12, 1994.

TRD-9440767 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3204

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## Chapter 41. Auditing

### Records and Reports by Licensees and Permittees

• 16 TAC §41.20

The Texas Alcoholic Beverage Commission proposes new §41.20, concerning the timely filing of all excise reports, considering a report timely if due diligence in making the report is demonstrated.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that persons responsible for filing reports will not be penalized if they have exercised all due diligence to file a report and it is either postmarked late or arrives late. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under the Texas Alcoholic Beverage Code, §5. 31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, Chapter 201, Subchapters A and B, and Chapter 203.

*§41.20. Timely Filing of Reports.* With respect to all tax reports required under the Texas Alcoholic Beverage Code, Chapter 201, or this chapter, a person filing a report of making a tax payment complies with the filing requirements for timeliness for a report not filed or a payment not made on time if the person exercised reasonable diligence to comply with the filing requirements and the failure to file or the making of a late payment is not the fault of the person.

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 11, 1994.

TRD-9440667 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## Chapter 45. Marketing Practices

### Subchapter A. Standards of Identity for Distilled Spirits

• 16 TAC §45.4

*(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Alcoholic Beverage Commission proposes the repeal of §45.4, concerning the standards of identity for distilled spirits, to include certain lower alcohol distilled beverages.

Randy Yarbrough, assistant administrator 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. Yarbrough also has determined that for each year of the first five years the repeal as repealed is in effect the public benefits anticipated as a result of enforcing the repeal as proposed will be some persons will be able to consume lower-alcohol distilled spirits under this rule. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal as proposed.t

Comments on the proposal may be submitted to Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The repeal is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed repeal affects the Texas Alcoholic Beverage Code, §1.04(3).

*§45.4. The Standards of Identity.*

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 11, 1994.

TRD-9440913 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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The Texas Alcoholic Beverage Commission proposes new §45.4, concerning the standards of identity for distilled spirits, to include certain lower-alcohol distilled beverages.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that some persons will be able to consume lower alcohol distilled spirits under this rule. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendments are proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Texas Alcoholic Beverage Code, §1.04(3).

*§45.4. The Standards of Identity.* Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows:

(1) Class 1-neutral spirits or alcohol. "Neutral spirits" or "alcohol" are distilled spirits produced from any material at or above 190 proof, and, if bottled, bottled at not less than 80 proof.

(A) "Vodka" is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color.

(B) Grain spirits" are neutral spirits distilled from a fermented mash of grain and stored in oak containers.

(2) Class 1-whiskey. "Whiskey" is an alcoholic distillate from a fermented mash of grain produced at less than 190 proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whiskey, stored in oak containers (except that corn whiskey need not be so stored), and bottled at not less than 80 proof, and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(A) "Bourbon whiskey," "rye whiskey," "wheat whiskey," "malt whiskey" or "rye malt whiskey" is whiskey produced at not exceeding 160 proof from a fermented mash of not less than 51% corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125 proof in charred new oak containers; and also includes mixtures of such whiskies of the same type.

(B) ""Corn whiskey" is whiskey produced at not exceeding 160 proof from a fermented mash of not less than 80% corn grain, and if stored in oak containers stored at not more than 125 proof in used or uncharred new oak containers and not subjected in any manner to treatment with charred wood; and also includes mixtures of such whiskey.

(C) "Straight whiskey": Whiskies conforming to the standards prescribed in subparagraphs (A) and (B) of this paragraph, which have been stored in the type of oak containers prescribed, for a period of two years or more shall be further designated as "straight;" for example, "straight bourbon whiskey," "straight corn whiskey" and whiskey conforming to the standards prescribed in subparagraph (A) of this paragraph, except that it was produced from a fermented mash of less than 51% of any one type of grain, and stored for a period of two years or more in charred new oak containers shall be designated merely as "straight whiskey." No other whiskies may be designated "straight." "Straight whiskey" includes mixtures of straight whiskies which, by reason of being homogeneous, are not subject to rectification tax under the Internal Revenue Code of the United States, and also mixtures of straight whiskies of the same type produced by the same proprietor at the same distillery all of which are not less than four years old.

(D) "Whiskey" distilled from bourbon (rye, wheat, malt, or rye malt) mash" is whiskey produced in the United States at not exceeding 160 proof from a fermented mash of not less than 51% corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored in used oak containers; and also includes mixtures of such whiskies of the same type. Whiskey conforming to the standard of identity for corn whiskey must be designated corn whiskey.

(E) "Light whiskey" is whiskey produced in the United States at more than 160 proof, on or after January 26, 1968, and stored in used or uncharred new oak containers; and also includes mixtures of such whiskies If "light whiskey" is mixed with less than 20% of straight whiskey on a proof gallon basis, the mixture shall be designated "blended light whiskey" (light whiskey-a blend)

(F) "Blended whiskey" (whiskey-a blend) is a mixture which contains at least 20% of straight whiskey on a proof gallon basis and, separately or in combination, whiskey or neutral spirits. A blended whiskey containing not less than 51% on a proof gallon basis of one of the type of straight whiskey shall be further designated by that specific type of straight whiskey; for example, "blended rye whiskey" (rye whiskey-a blend).

(G) "A blend of straight whiskies" (blended straight whiskies) is a mixture of straight whiskies. A blend of straight whiskies consisting entirely of one of the types of straight whiskey, and not conforming to the standard for "straight whiskey," shall be further designated by that specific type of straight whiskey; for example, "a blend of straight rye whiskies" (blended straight rye whiskies)

(H) "Spirit whiskey" is a mixture of neutral spirits and not less than 5% on a proof gallon basis of whiskey, or straight whiskey, or straight whiskey and whiskey, if the straight whiskey component is less than 20% on a proof gallon basis.

(I) "Scotch whiskey" is whiskey which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whiskey for consumption in the United Kingdom; provided, that if such product is a mixture of whiskey, such mixture is "blended Scotch whiskey" (Scotch whiskey-a blend).

(J) "Irish whiskey" is whiskey which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whiskey for home consumption; provided, that if such product is a mixture of whiskies, such mixture is "blended Irish whiskey" (Irish whiskey-a blend).

(K) "Canadian whiskey" is whiskey which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whiskey for consumption in Canada; provided, that if such product is a mixture of whiskies, such mixture is "blended Canadian whiskey" (Canadian whiskey-a blend).

(3) Class 3-gin "Gin" is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80 proof. Gin produced exclusively by original distillation or by redistillation may be further designated as "distilled." "Dry gin" (London dry gin), "Geneva gin" (Hollands gin), and "Old Tom gin" (Tom gin) are types of gin known under such designations.

(4) Class 4-brandy. "Brandy" is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190 proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80 proof. Brandy, or mixtures thereof, not conforming to any of the standards in subparagraphs (A)-(H) of this paragraph shall be designated as "brandy," and such designation shall be immediately followed by a truthful and adequate statement of composition.

(A) "Fruit brandy" is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, with or without the addition of not more than 20% by weight of the pomace of such juice or wine, or 30% by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy shall include mixtures of such brandy with not more than 30% (calculated on a proof gallon basis) of lees brandy. Fruit brandy, derived from grapes, shall be designated as "grape brandy" or "brandy," except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the resi-

due thereof, which has been stored in oak containers for less than two years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word "immature." Fruit brandy, other than grape brandy, derived from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (for example, "peach brandy") , except that "apple brandy" may be designated "applejack " Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy" qualified by truthful and adequate statement of composition.

(B) "Cognac," or "Cognac grape brandy," is grape brandy distilled in the Cognac Region of France, which is entitled to be so designated by the laws and regulations of the French government.

(C) "Dried fruit brandy" is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins or from raisin wine, shall be designated as "raisin brandy." Other brandies shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried." All forms of dried fruit brandy are prohibited. Reference should be made to §45.29 of this title (relating to Certain Products Prohibited).

(D) "Lees brandy" is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as "lees brandy," qualified by the name of the fruit from which such lees are derived.

(E) "Pomace brandy," or "marc brandy," is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as "pomace brandy, or "marc brandy," qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as "grappa" or "grappa brandy "

(F) "Residue brandy" is brandy distilled wholly or in part from the fermented residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in subparagraphs (A) , and (C)-(E) of this paragraph may, regardless of such fact, be designated "residue brandy," but the use of such designation shall be conclusive, precluding any later change of designation.

(G) "Neutral brandy" is brandy produced at more than 170 proof and shall be designated in accordance with the standards in this paragraph, except that the designation shall be qualified by the word "neutral;" for example, "neutral citrus residue brandy."

(H) "Substandard brandy" shall bear as a part of its designation the word "substandard," and shall include the following:

(i) any brandy distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 degrees Celsius); measurements of volatile acidity shall be calculated exclusive of water added to facilitate distillation;

(ii) any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material; and

(iii) all forms of substandard brandy are prohibited. (Reference should be made to §45.29 of this title (relating to Certain Products Prohibited)).

(5) Class 5-blended applejack. "Blended applejack" (applejack-a blend) is a tixture which contains at least 20% of apple brandy (applejack) on a proof-gallon basis, stored in oak containers for not less than two years, and not more than 80% of neutral spirits on a proof-gallon basis if such mixture at the time of bottling is not less than 80 proof, and also included mixtures solely from such distillates.

(6) Class 6-rum. "Rum" is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190 proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80 proof; and also includes mixtures solely of such distillates.

(7) Class 7-tequila. "Tequila" is an alcoholic distillate produced in the State of Jalisco, Republic of Mexico, from a fermented mash derived principally from the agave tequilana weber ("blue" variety) grown in the same region, with or without additional fermentable substances, distilled in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to tequila and bottled at not less than 80 proof, and also includes mixtures solely of such distillates.

(8) Class 8-mescal. "Mescal" or "mescal tequila" is an alcoholic distillate not produced in the State of Jalisco, Republic of Mexico, produced from a fermented mash derived principally from the agave tequilana weber ("blue" variety), with or without additional fermentable substances, distilled in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to mescal and bottled at not less than 80 proof, also includes mixtures solely of such distillates.

(9) Class 9-cordials and liqueurs. Cordials and liqueurs are products obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and containing sugar, dextrose, or levulose, or a combination thereof, in an amount not less than 2-1/2% by weight of the finished product.

(A) "Sloe gin" is a cordial or liqueur with the main characteristic flavor derived from sloe berries.

(B) "Rye liqueur" and "bourbon liqueur" (rye, bourbon cordial) are liqueurs, bottled at not less than 60 proof, in which not less than 51%, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whiskey, straight rye or straight bourbon whiskey, or whiskey distilled from a rye or bourbon mash, and which possess a predominate characteristic rye or bourbon flavor derived from such whiskey. Wine, if used, must be within the 2-1/2% limitation provided in §45. 5 of this title (relating to Alteration of Class and Type) for coloring, flavoring, and blending materials.

(C) "Rock and rye," "rock and bourbon," "rock and brandy," and "rock and rum" are liqueurs, bottled at not less than 48 proof, in which, in the case of rock and rye and rock and bourbon, not less than 51%, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whiskey, straight rye or straight bourbon whiskey, or whiskey distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup; with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominate characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2-1/2% limitation provided in §45.5 of this title (relating to Alteration of Class and Type) for harmless coloring, flavoring, and blending materials.

(D) The designation of a cordial or liqueur may include the word "dry" if the sugar, dextrose, or levulose, or a combination thereof, are less than 10% by weight of the finished product.

(E) Cordials and liqueurs shall not be designated as "distilled or compound."

(10) Class 10-flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whiskey. "Flavored brandy," "flavored gin," "flavored rum," "flavored vodka," and "flavored whiskey" are brandy, gin, rum, vodka, and whiskey, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60 proof. The name of the predominate flavor shall appear as a part of the designation. If the finished product contains more than 2-1/2% by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12-1/2% by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product. If the product is less than 70 proof, it must be labeled "low proof", "diluted" or some identification approved by the commission to indicate that the product is lower in alcohol content.

(11) Class 11-imitations. Imitations shall bear, as a part of the designation thereof the word "imitation" and shall include the following. Nothing herein shall be construed as modifying the restrictions of §45.29 of this title (relating to Certain Products Prohibited).

(A) any class or type of distilled spirits to which have been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(B) any class or type of distilled spirits (other than distilled spirits required under §45.11 of this title (relating to Labels: Class and Type)) to bear a distinctive or fanciful name and a truthful and adequate statement of composition to which has been added flavors considered to be artificial or imitation. In determining whether a flavor is artificial or imitation, recognition will be given to which is considered to be "good commercial practice" in the flavor manufacturing industry.

(C) any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whiskey essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(D) any type of whiskey to which beading oil has been added;

(E) any rum, tequila or mescal to which neutral spirits or distilled spirits other than rum, tequila, or mescal, respectively, have been added;

(F) any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine;

(G) any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(12) Class 12-geographical designations.

(A) Geographical names for distinctive types of distilled spirits (other than names found by the administrator under subparagraph

(B) of this paragraph to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name unless:

(i) in direct conjunction with the name there appears the word type" or the word "American" or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name; and

(ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region.

(B) The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Bau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(C) Only such geographical names for distilled spirits as the administrator finds have by usage and common knowledge lost their geographical significance to such extent, that they have become generic shall be deemed to have become generic. Examples are London dry gin, Geneva (Hollands) gin.

(D) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Puerto Rico rum, Demerara rum.

(E) The words "Scotch," "Scots," "Highland," or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not be used to designate any product not wholly produced in Scotland.

(13) Class 13-products without geographical designations but distinctive of a particular place.

(A) The whiskies of the types specified in paragraph (2)(C) and (F)-(H) of this section are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraphs, together with the words "American type" or the words "produced (distilled, blended) in _______," the blank to be filled in with the name of the foreign country; provided, that the word "bourbon" shall not be used to describe any whiskey or whiskey-based distilled spirits not produced in the United States. If whiskey of any of these types is composed in part of whiskey or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whiskey and the country or origin thereof.

(B) The name for other distilled spirits which are distinctive products of a particular place or country, an example is Habanero, shall not be given to the product of any other place or country unless the designation for such product includes the word "type" or an adjective such as "American,N or the like, clearly indicating the true place of production. The provisions for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the administrator finds they have become generic.

Examples are Slivovitz, Zubrovka, Arrack, and Kirschwasser.

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 11, 1994.

TRD-9440914 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

## Subchapter A. Standards of Identity for Distilled Spirits

**• 16 TAC §45.21**

The Texas Alcoholic Beverage Commission proposes an amendment to §45.21, concerning the standards of fill for distilled spirits, which will combine all rules sections regarding distilled spirits sizes into one section. The amendment incorporates current §45.141 into §45.21, and existing §45.141 is being proposed for repeal in this issue of the *Texas Register*.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that by combining two rules pertaining to the same subject, the public will benefit from a clearer understanding of the regulation. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P O. Box 13127, Austin, Texas 78711.

The amendments are proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §101.41 and §201. 17.

*§45.21. Standards of Fill.*

(a) **Authorizes standards of fill. In addition to the above stated container sizes and standards of fill authorized for the importation of and sale of distilled spirits in this state, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Bureau of Alcohol, Tobacco and Firearms are hereby authorized, however, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.** The standards of fill for all distilled spirits, whether domestically manufactured, domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows: (Caution: Possession and sale of sizes less than 1/2 pint are subject to special restrictions in the Alcoholic Beverage Code )

| | |
|---|---|
| 1 gallon | 4/5 pint |
| 1/2 gallon | 1/2 pint |
| 1 quart | 1/8 pint |
| 4/5 quart | 1/10 pint |
| 1 pint | 1/16 pint (brandy only) |

(b)-(c) (No change.)

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

Issued in Austin, Texas, on May 11, 1994.

TRD-9440669 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption. June 20, 1994

For further information, please call: (512) 206-3202

## Subchapter B. Standards of Identity for Wine

**• 16 TAC §45.49**

The Texas Alcoholic Beverage Commission proposes an amendment to §45.49, concerning authorized container sizes for wines. The amendment incorporates portions of current §45 141, which is being proposed for repeal in this issue of the *Texas Register*.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that rules dealing with the same issue will be consolidated to make their meaning clearer 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P O. Box 3127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code

The proposed rule affects the Alcoholic Beverage Code, §101.41 and §201. 17.

*§45.49. Containers.*

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of its contents is hereby prohibited.

(b) The sale of wine in containers which have blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler, or bottler, or any other person, different from the person whose name is required to appear on the brand label, is hereby prohibited.

(c) The capacity of containers for wine bottled in the United States and offered for sale in Texas shall be limited to the following sizes· 4.9 gallons, three gallons, one gallon, 1/2 gallon, one quarter, 4/5 quarter, one pint, 4/5 pint, 2/5 pint, six ounces, for all wines; 4/5 gallon and 2/5 gallon for wines bottled in traditional bordeaux or burgundy shapes (including still, sparkling, and carbonated wines); 15/16 quarter for aperitif wines only; and 1/2 pint

for wines bottled in traditional chianti or round shapes.

**(d) In addition to the container sizes and standards of fill authorized for the importation and sale of wine in this state, stated in subsections (a)-(c) of this section, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Bureau of Alcohol, Tobacco and Firearms are hereby authorized; however, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this 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 May 11, 1994.

TRD-9440670 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call. (512) 206-3202

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## Subchapter C. Standards of Identity for Malt Beverages

### • 16 TAC §45.73

The Texas Alcoholic Beverage Commission proposes an amendment to §45.73, concerning labels for malt beverages, prohibiting private labels for retail establishments which include the name, tradename or trademark of any retail establishment, including private clubs.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the strengthening of prohibited relationships between interest in different levels of the industry. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects Alcoholic Beverage Code, §§102.01, 102.15, 108. 5, and 108.06.

*§45.73. Label: General.*

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

**(c) Only a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's license may apply for and receive label approval on beer, ale, or malt liquor.**

**(d) No application for a label shall be approved which indicates by any statement, design, device, or representation that the malt beverage is a special or private brand brewed or bottled for, or that includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee.**

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 11, 1994

TRD-9440671 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call. (512) 206-3202

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### • 16 TAC §45.79

The Texas Alcoholic Beverage Commission proposes an amendment to §45.79, concerning the statement of alcoholic content on labels of containers of malt beverages, which will allow the printing of the alcoholic content, as a percentage of volume on the label of beer and malt liquor.

The amendment implements legislation, passed by 73rd Legislature, authorized such disclosure.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to know the alcoholic content of beer and malt liquor that is purchased 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §101.67.

*§45.79. Alcoholic Content.*

(a) The alcoholic content and the percentage and quantity of the original extract may [shall not] be stated.

(b) Form of statement.

**(1) If the alcoholic content is stated, it shall be stated in percentage of alcohol by volume, and shall not be stated by percent by weight, proof, or by maximums or minimums.**

**(2) The statement of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by subsection (c) of this section.**

(c) Tolerances.

**(1) For malt beverages containing 0.5% or more of alcohol by volume, a tolerance of 0.3% will be permitted, either above or below the stated percentage of alcohol.**

**(2) Any malt beverage labeled as having more than 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume, regardless of any tolerance.**

**(3) Any malt beverage labeled as "beer" may not contain more than 4.0% alcohol by weight regardless of any tolerance permitted in subsection (c) (1) of this section.**

**(4) Any malt beverage labeled as "malt liquor," "ale," or other such similar designation may not contain 4.0% or less alcohol by weight regardless of any tolerance permitted in subsection (c)(1) of this section.**

**(5) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under subsection (d) of this section, the actual alcoholic content may not equal or exceed 2.5% alcohol by volume, regardless of any tolerance permitted in subsection (c)(1) of this section.**

**(d) Low alcohol or reduced alcohol. The terms "low alcohol" or "reduced alcohol" may only be used on malt beverages containing less than 2.5% alcohol by volume.**

**(e) Alcoholic content statement. All portions of any alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color.**

**(f) Advertising of alcoholic content. The alcoholic content shall not be used in any form of advertisement by means of comparison with other products, nor shall the terms, "strong," "full-strength," "high-proof," or any other reference to alcoholic content, or any statement of the percentage and quantity or the original extract, or any numerals, letters, characters, figures, or similar words or statements likely to be considered as statements of alcoholic content be used in any advertisements. This does not preclude the use of terms "low-alcohol" or "reduced alcohol" as used on labels in accordance with subsection (d) of this 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 May 11, 1994.

TRD-9440672 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## • 16 TAC §45.80

The Texas Alcoholic Beverage Commission proposes an amendment to §45.80, concerning legal sizes of beer and malt liquor. The amendment bring the rule up to date with all legal sizes approved by the Legislature.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that regulated entities will have one place to look for all authorized legal sizes. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §101.44.

*§45.80. Net Contents.*

(a) (No change.)

(b) Net contents of beer shall be stated as follows:

(1) one barrel;

(2) 1/2 barrel;

(3) 1/4 barrel;

(4) 1/8 barrel;

(5) 32 [12] fluid ounces;

(6) 24 fluid ounces;

(7) 16 [32] fluid ounces;

**(8) 12 fluid ounces;**

**(9) 8 fluid ounces; and**

**(10) 7 fluid ounces.**

(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 May 11, 1994.

TRD-9440673 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## • 16 TAC §45.82

The Texas Alcoholic Beverage Commission proposes an amendment to §45.82, concerning prohibiting labeling of malt beverages with private or special labels, including the name, trademark or tradename of any retail establishment.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the strengthening of tied-house provisions of the law prohibiting inter-industry relations. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §§102.01, 102.15, 108.05, and 108.06.

*§45.82. Prohibited Practices.*

(a) Statements on labels. Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

(1)-(6) (No change.)

**(7) Any statement, design, devise, or representation that the malt beverage is a special or private brand brewed or bottled for, or that includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee.**

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

[(g) Use of numerals. Labels shall not contain any statements, designs, or devices whether in the form of numerals, letters, characters, figures, or otherwise which are likely to be considered as statements of alcoholic content. ]

(g)[(h)] Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

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-9440674 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## • 16 TAC §45.90

The Texas Alcoholic Beverage Commission proposes an amendment to §45.90, concerning deleting language in subsection (c) that prohibits advertising of alcoholic content of malt beverages, which is now located in §45.79.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be a clearer understanding contained in one rule pertaining to alcoholic content statements. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects Alcoholic Beverage Code, §101.67.

*§45.90. Prohibited Statements.*

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

[(c) Alcoholic content. The advertisement shall not contain any statement of alcoholic content or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, or figures, likely to be considered as designations of alcoholic content.]

(c)[(d)] Class.

(1) No product containing less than 0. 5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.

(2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as "ale, reporter, or stout or by any other class or type designation commonly applied to malt beverages containing 4.0% or more of alcohol by weight.

(d)[(e)] Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.

(e)[(f)] Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are in any respect untrue.

(f)[(g)] Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

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

Issued in Austin, Texas, on May 11, 1994.

TRD-9440675 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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# Subchapter D. Advertising and Promotion

## All Beverages

## • 16 TAC §45.101

The Texas Alcoholic Beverage Commission proposes an amendment to §45. 101, concerning prohibitions against cents-off coupons and rebates on purchases of alcoholic beverages.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the prohibition will ensure monetary inducements other than the item price will not be offered to encourage consumption of alcoholic beverages. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O Box 13127, Austin, Texas 78711.

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §102.07(d)

*§45.101. Rebates, Coupons and Premium Stamps.*

(a) It shall be unlawful for the holder of a license or permit to give or offer to give to any person premium stamps or any other type of inducement with the purchase of alcoholic beverages The term "premium stamp" is hereby declared to include but not be limited to the following exchange stamps, trade stamps, green stamps, gold stamps, and cash register premium tapes.

**(b) No holder of a manufacturing, wholesale, or retail level license or permit may give any rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.**

**(c) No holder of a manufacturing, wholesale, or retail level license or permit may offer or give away with the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product.**

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 11, 1994

TRD-9440676 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 206-3202

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## • 16 TAC §45.103

The Texas Alcoholic Beverage Commission proposes an amendment to §45 103, concerning clarifications of happy hour regulations, to change certain provisions relating to price controls or regulations.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow reasonable activities to be offered under happy hour promotions regarding pricing of drinks without otherwise inducing customers to over consume. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O Box 13127, Austin, Texas 78711

The amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, Chapter 108.

*§45.103. Regulations of "Happy Hour"*

(a) (No change.)

(b) Except as provided in subsection (c) of this section, the following rules shall be applied to maintain the utilization of a "happy hour" as an appropriate means of attracting customers.

(1) (No change.)

(2) Except as specifically authorized by this rule, no permittee or licensee shall serve [an] alcoholic beverages at no charge to any general segment of the population; provided, however, it shall not be construed as preventing the permittee or licensee from giving[, without prior advertising,] an alcoholic beverage to individual customers celebrating their weddings, birthdays, anniversaries or similar events or to one person or a group in a situation where the providing of an alcoholic beverage at no charge would be in conformity with normal business practices, **or in a business promotion or situation where one complimentary beverage is provided for all patrons during a given time period.**

(3)-(4) (No change.)

[(5) No permittee or licensee shall increase the volume of alcohol contained in a drink without increasing proportionally the price regularly charged for the same type of drink, including beer and wine.]

(5)[(6)] No permittee or licensee shall advertise or offer any "happy hour" promotion after 11:00 p.m. on any day

(c)-(e) (No change.)

(f) Some specific practices which shall be considered as violation of this rule are listed below. This list is intended to enumerate some of the most common practices and is neither meant to be exclusive in its content nor to infer that any practice not listed here is legal

(1) sale of two for one; or any multiple drinks for the price of one;

[(2) "doubles" for the price of singles;]

(2)[(3)] ladies nights (where ladies drink free or for a reduced price); and

(3)[(4) one price, all you can drink

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 11, 1994.

TRD-9440677 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call: (512) 206-3202

## • 16 TAC §45.106

The Texas Alcoholic Beverage Commission proposes new §45.106, concerning sweepstakes offered by companies manufacturing alcoholic beverages, setting regulations consistent with language in §102.07 and §108.061 of the Alcoholic Beverage Code.

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow national manufacturers of alcoholic beverages the ability to offer sweepstakes advertisements in Texas and will allow Texans to participate in national sweepstakes. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P O Box 13127, Austin, Texas 78711

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §102.07(e) and §108.061.

*§45.106. Sweepstakes and Games of Chance.*

(a) As authorized in the Alcoholic Beverage Code, §102.07 and §108.61, the holder of the following licenses and permits may offer a prize to a consumer if the offer is part of a nationally conducted promotional sweepstakes activity legally offered and simultaneously conducted during the same time period in 30 or more states:

(1) manufacturer's license,

(2) non-resident manufacturer's license;

(3) brewer's permit;

(4) non-resident brewer's permit;

(5) distiller's and rectifier's permit;

(6) winery permit;

(7) wine bottler's permit; or

(8) non-resident seller's permit.

(b) Any sweepstakes promotion must be legally offered and simultaneously conducted during the same time period in 30 or more states.

(c) A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(d) A person must be 21 years of age or older to enter a sweepstakes promotion

(e) If entries to a sweepstakes promotion are packaged with or within packages of alcoholic beverages, an alternative method of entry not requiring the purchase of an alcoholic beverage must be provided. The chances of winning by entering via a non-purchase entry must be as great as entries which require a purchase of an alcoholic beverage In no case shall the number of prizes offered be greater than 1.0% of the total number of entries in the contest or sweepstakes.

(f) Except as specifically authorized by this section, and the Alcoholic Beverage Code, §102.07 and §108.061, it shall be unlawful for any person to sell or distribute any alcoholic beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked.

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 11, 1994.

TRD-9440678 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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• 16 TAC §45.107

The Texas Alcoholic Beverage Commission proposes new §45.107, concerning advertising by private club registration permit holders, to require that all alcohol advertisements by private clubs indicate that alcohol service is for members and their guest only.

Randy Yarbrough, assistant administrator, 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. Yarbrough 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 compliance with the law regarding the advertisement of alcoholic beverages in dry areas of the state. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, Chapter 32 and §108 01.

*§45.107. Advertising of Alcoholic Beverages by Private Clubs.* The holder of a private club registration permit or a private club exemption certificate must in any advertisement either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, must state that the service of alcoholic beverages is only for persons who are members of the club.

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 11, 1994.

TRD-9440679 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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• 16 TAC §45.108

The Texas Alcoholic Beverage Commission proposes new §45.108, concerning the authorization for manufacturers of distilled spirits and wines to sponsor participants in certain events and for those participants to wear brand logo items on clothing or uniforms.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that advertising on clothing and equipment of persons sponsored by manufacturers of distilled spirits and wine will be the same as for beer, making regulations more uniform and understandable. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §108.03.

*§45.108. Restrictions to the Use of Brand Names and Insignia by Industry.*

(a) This section is promulgated pursuant to the Alcoholic Beverage Code, §108.03.

(b) Advertising of alcoholic beverages on caps, regalia or uniforms worn by employees of manufacturers, distributors, distilleries, or wineries or by a participant in any game, sport, athletic contest or revue, when said participant is sponsored by a manufacturer, distributor, distiller, or winery shall be limited to the firm name and address of said manufacturer, distributor, distiller, or winery and the brand names and slogans which appear on the container labels for such alcoholic beverages which have been approved by the administrator.

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 11, 1994.

TRD-9440680 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call (512) 206-3202

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• 16 TAC §45.109

The Texas Alcoholic Beverage Commission proposes new §45.109, concerning the restocking and rotation of alcoholic beverages in retail licensed premises, and prohibiting the complete resetting of shelves of a retailer by anyone but a retailer or his employees

Randy Yarbrough, assistant administrator, 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. Yarbrough 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 uniform policies as to what services a wholesaler may provide to a retail account and prohibiting wholesalers from excluding any competitor's product. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P O Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §102.19.

*§45.109. Restocking and Rotation of Alcoholic Beverages.*

(a) This rule is promulgated under the Texas Alcoholic Beverage Code, §102.19, which provides for the Alcoholic Beverage Commission to set guidelines for wholesalers and distributors to rotate and stock alcoholic beverages. The purpose of this rule is to set guidelines for proper stocking and rotation of alcoholic beverages at the premises of a retail license or permit holder and to define what activities constitute an illegal service to a retailer.

(b) Other than a consumer and any licensed retailer authorized to sell alcoholic beverages, and his employees, no person shall remove, replace or stock any display of alcoholic beverages in a retail establishment except the holders of the following licenses and permits and their employees

(1) general distributor's license;

(2) local distributor's license,

(3) branch distributor's license,

(4) general Class-B wholesaler's permit;

(5) local Class-B wholesaler's permit;

(6) wholesaler's permit; or

(7) the holder of a manufacturer's license, a brewer's permit, or a wine bottler's permit specifically authorized to sell directly to a retail license or permit.

(c) The authorized personnel referenced in subsection (b) of this section may:

(1) place brands sold by him on a retailer's shelves, coolers, or displays in space allocated to his brands by the retailers;

(2) move brands sold by him from a retailer's storage area and place it on a retailer's shelves, coolers, or other display location allocated to his brands by the retailer; or

(3) move a competitor's product to a "limited nature" if they have encroached upon the space allocated to his brands by the retailer. If a competitor's product is moved, it must be moved to an available location assigned to that brand by the retailer. If no space is available, the retailer must be notified of the encroaching product and shall have the responsibility of moving the product.

(d) The persons listed in subsection (b) of this section may not:

(1) re-set the shelves for any retailer; or

(2) clean or mop shelves, floor space, or display areas or perform any other services incidental to a re-set of alcoholic beverages.

(e) It is not the intention of this rule that the "limited nature" movement of a competitor's product be used in any way as the basis of a cooler or shelf "re-set" for any retailer. If a retailer wishes to completely rearrange his shelf or cooler space, it must be done by his own employees.

(f) A schematic diagram or drawing may be furnished by a distributor or wholesaler to a retailer, but there are certain restrictions on the preparation and use of schematics, as follows:

(1) the distributor or wholesaler may use his own past sales to the retailer;

(2) the distributor or wholesaler may use market sales or shipment data correlated or compiled from public records or reports; and

(3) the distributor or wholesaler may use sales or purchase data on other brands which are furnished to him by the retailer; provided, however, such sales or purchase data must be fully compiled and be in a readily usable form when furnished by the retailer to the distributor or wholesaler. A distributor or wholesaler may not perform an audit or inventory of a retailer's stock in order to gather data to compile a schematic.

(4) The furnishing of a schematic is prohibited and will be considered illegal if it is tied to or is part of a commitment or promise by the distributor or wholesaler to furnish services to the retailer (such as labor to re-set a cooler box in accordance with the schematic) which is an inducement prohibited by the code. The use of a schematic as a sales tool only, to demonstrate to the retailer how he can benefit from optimum shelf displays, is not per se illegal. It only becomes illegal if it is coupled with a scheme calculated to induce a retailer by providing services not specifically authorized by the code or rule of the commission.

(g) The activities authorized in subsection (c) of this section may only be performed during the hours when the sale or delivery of specific alcoholic beverages are legal.

(h) Nothing in this section is deemed to authorized any wholesale or manufacturing license or permit holder to perform any service for a retailer other than what is specifically authorized in this 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 May 11, 1994.

TRD-9440681 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## • 16 TAC §45.110

The Texas Alcoholic Beverage Commission proposes new §45.110, concerning exclusion of competitor's products by any offer of advertising, payment, gift or service by a wholesaler or manufacturer to a retailer.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clear statement of activities which are prohibited if they result in either partial or total exclusion of any competitor's product. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, under §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §§109.08, 102.07(a) and (b) and 108.06.

*§45.110. Exclusion.*

(a) General.

(1) This section is promulgated pursuant to the authority expressed in the Texas Alcoholic Beverage Code, §109.08, pertaining to the exclusion of alcoholic beverages at any location.

(b) Nothing in the Texas Alcoholic Beverage Code, §109.08, shall be construed as authorizing any of the following:

(1) payments or allowances to retailers, directly or indirectly (i.e., radio, TV stations, etc.) for sign locations, floor space, shelf space, or for other advertising space inside or outside of buildings, or on fences, walls, mirrors, menu cards, menu signs, or in newspapers, or on radio or television, or any advertising for the benefit of a particular retailer;

(2) any type of advertising paid for in whole or in part, directly or indirectly by a manufacturer or wholesaler, where any specific retailer is in any degree the direct beneficiary of such payment;

(3) transportation of organized groups of retailers or consumers by any manufacturer or wholesaler;

(4) furnishing of service trailers with dispensing equipment by a manufacturer or wholesaler;

(5) the sale of any alcoholic beverage by a manufacturer or wholesaler under any arrangement other than unit price accurately reflected upon the seller's invoice; or

(6) the furnishing, giving, lending or selling by a manufacturer or wholesaler to a retailer or consumer of anything not clearly authorized specifically by statute, by rule of the commission, or by expressed approval in a marketing practices opinion that such practice is legal under the Alcoholic Beverage Code.

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

Issued in Austin, Texas, on May 11, 1994

TRD-9440682 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## Malt Beverages

### • 16 TAC §45.111

*(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin )*

The Texas Alcoholic Beverage Commission proposes the repeal of §45 111, concerning games of chance. Since the passage of new laws allowing advertisement sweepstakes, this rule is no longer applicable

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section is repealed, there are no public benefits anticipated. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P O Box 13137, Austin, Texas 78711

The repeal is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed repeal affects the Alcoholic Beverage Code, §102.07(e) and §108.061.

[*§45 111. References to Games of Chance Prohibited* It shall be unlawful for any person to sell or distribute any malt beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked ]

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 11, 1994.

TRD-9440683 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3202

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## All Beverages

### • 16 TAC §45.111

The Texas Alcoholic Beverage Commission proposes new §45.111, concerning outdoor advertising in dry areas to prohibit any form of outdoor advertisement of alcoholic beverages in any area voted dry for the sale of alcoholic beverages.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be a more consistent interpretation of laws pertaining to outdoor advertising 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §102.7(e) and §108.061

*§45.111. Outdoor Advertising in Dry Areas.* Except as provided specifically in the provisions of the Texas Alcoholic Beverage Code, Chapter 108, Subchapter B, no person may advertise or promote any alcoholic beverage through outdoor advertising in any dry area.

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 11, 1994

TRD-9440684 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call: (512) 206-3202

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### • 16 TAC §45.112

The Texas Alcoholic Beverage Commission proposes an amendment to §45. 112, concerning use of brand names and insignias of beer. The amendment deletes subsection (e) which now applies to liquor, as well as beer, now located in §45.108.

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be the clarification of rules and their interpretation to insure fair and uniform enforcement 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendments are proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code

The proposed rule affects the Alcoholic Beverage Code, §108.03.

*§45.112 Use of Brand Names and Insignia Restricted.*

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

[(e) Advertising of beer on caps, regalia or uniforms worn by employees of manufacturers or distributors or by a participant in any game, sport, athletic contest or revue, when said participant is sponsored by a manufacturer or distributor, shall be limited to the firm name and address of said manufacturer or distributor and the brand names and slogans which appear on the container labels for such beer which have been approved by the administrator.]

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 11, 1994.

TRD-9440685 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call (512) 206-3202

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## • 16 TAC §45.113

The Texas Alcoholic Beverage Commission proposes an amendment to §45. 113, concerning relaxation of certain restrictions pertaining to malt beverages, clarifying certain regulatory provisions to comply with changes in the Alcoholic Beverage Code.

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be a clearer understanding of regulations that are consistent with recent changes in statutes. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendments are proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §108 04

*§45 113 Relaxation of Certain Restrictions.*

(a) General

(1) (No change )

(2) As used in this section, the terms "manufacturer," "distributor," "retailer," and "consumer" shall all refer to, and be limited to, the lawful sale, gift and consumption of **malt beverages** [beer]

(b) -(e) (No change )

(f) Gifts

(1) The gift of beer **or malt liquor** as a purely social courtesy to unlicensed friends and associates of a manufacturer or distributor shall be lawful

(2) (No change )

(3) A manufacturer or distributor may donate beer **or malt liquor** to any unlicensed civic, religious or charitable organization for consumption in a wet area

(4) There shall be no restrictions on gifts of money or any other thing of value made by manufacturers or distributors to unlicensed civic, religious, patriotic, or charitable organizations **However, advertising of events put on by a civic, religious, patriotic, or charitable organization to which donations by the malt beverage industry have been made, shall include promotion of the civic, religious, or charitable sponsor or cause in a manner at least equal or greater than the advertising of the industry donor.**

(5)-(6) (No change.)

(g) Bar spending and beer sampling tests.

(1) Bar spending, wherein the **malt beverages** [beer] purchased by a manufacturer or distributor for a consumer is consumed on retail-licensed premises in the presence of the giver, shall be lawful. **In no case shall the bar spending be excessive, pre-arranged or pre-announced.**

(2)-(3) (No change.)

(h)-(k) (No change.)

(l) Restocking. Restocking of displays and rotation of **malt beverage** [beer] stock in a retail establishment from the retailer's storeroom, salesroom, display counter and coolers, by a representative of a manufacturer **acting under authority granted by §62.12(a) of the code,** or a distributor shall be lawful.

(m)-(o) (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 11, 1994

TRD-9440686 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call (512) 206 3202

# Liquor (Distilled Spirits and Wine)

## • 16 TAC §45.117

The Texas Alcoholic Beverage Commission proposes new §45 117, concerning prizes, premiums and gifts to consumers by manufacturers or wholesalers of liquor

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clear understanding of what kind of activities are authorized under the law 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, under §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code

The proposed rule affects the Alcoholic Beverage Code, §102.07(d).

*§45.117. Prizes, Premiums, and Gifts to Consumers.*

(a) This section is authorized under the Texas Alcoholic Beverage Code, §102.07(d), authorizing certain gifts or prizes to consumers as advertising promotions.

(b) Persons holding permits to manufacture, bottle or act as wholesalers for distilled spirits or wine may sell or offer for no cost, prizes, premiums or gifts directly to consumers subject to the following conditions:

(1) the offer(s) must be national in scope;

(2) the offer(s) must be legally offered and the promotion simultaneously conducted in 30 or more states; and

(3) rebates, or coupons redeemable by the public for the purchase of alcoholic beverages are prohibited

(c) The type of items which may be offered, but are not limited to this list, are:

(1) caps,

(2) sunglasses,

(3) t-shirts;

(4) pen and pencil sets; and

(5) other similar novelty items and specialty items of limited value bearing brand advertising which may be approved by the administrator or his designee.

(d) Consumer product promotional activities wherein distilled spirits or wine may be purchased by the holder of a nonresident seller's permit or wholesaler's permit for a consumer and consumed on the premises of a retail on-premise permit, in the presence of the buyer, shall be legal. In no case shall any promotional activity be excessive, pre-arranged or pre-announced.

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 11, 1994.

TRD-9440687 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3202

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## • 16 TAC §45.118

The Texas Alcoholic Beverage Commission proposes new §45.118, concerning advertising specialties furnished to retailers by liquor manufacturers or wholesalers, to comply with changes made in the Alcoholic Beverage Code by the 73rd Legislature.

Randy Yarbrough, assistant administrator, 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. Yarbrough 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 clear regulations to implement new laws dealing with advertising of liquor. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section is as proposed.

Comments on the proposal may be submitted to Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code, §102.07(b).

*§45.118. Advertising Specialties Furnished to Retailers.*

(a) General.

(1) This section is promulgated pursuant to the authority expressed in the Texas Alcoholic Beverage Code, §102.07 and §108.03, authorizing advertising specialties which may be furnished to a retailer by either a manufacturer or wholesaler of liquor or wine.

(2) As used in this section, the terms "manufacturer," "wholesaler," and "retailer" shall refer to and shall be limited to those persons engaged in the lawful sale of liquor and wine.

(b) Promotion on change mats, thermometers, etc.

(1) The following items, when bearing prominently displayed the advertisement of the business or brand name of any manufacturer or wholesaler, may be furnished, given or sold to retailers for use on the retailer's licensed premises only: change mats, thermometers, barometers, calendars, clocks, blank menus, menu covers, license frames, game schedules, sports and outdoor pictorials which may be changed seasonally, mirrors having a surface not exceeding three hundred square inches, ice buckets, cork screws, bottle stoppers, and price cards capable of carrying the brand name of only one manufacturer.

(2) Other items of a kindred nature but not listed in this section may be authorized by the administrator from time to time.

(3) Nothing in this section shall be construed as authorizing a manufacturer or wholesaler to give or offer to give any gift, prize, bonus, premium, trophy, service or other thing of value to any retailer, employee of a retailer or consumer unless expressly authorized in this section, §45.117 and §45.119 of this title (relating to Advertising and Promotion).

(c) Service and repair. A manufacturer or wholesaler may service and repair items furnished, given or sold to a retailer under authority of subsection (b) of this section. Such service and repair may include the replacement of neon, fluorescent of incandescent tubes or bulbs and the general cleaning and upkeep of the item.

(d) Cost of items.

(1) The total value of all advertising specialties for any one brand furnished to a retailer in any one calendar year may not exceed $78.

(2) No permittees may pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted under this subsection.

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 11, 1994.

TRD-9440688 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3202

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## • 16 TAC §45.119

The Texas Alcoholic Beverage Commission proposes new §45.119, concerning the relaxation of prohibitions against the distilled spirits and wine industry giving anything of value to civic, religious and charitable organizations.

Randy Yarbrough, assistant administrator, 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. Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that charitable, civic, and religious groups may now receive gifts or benefits from the distilled spirits and wine industry in exchange for advertising. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new section is proposed under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed rule affects the Alcoholic Beverage Code §109.58.

*§45.119. Relaxation of Certain Restrictions (Liquor and Wine).*

(a) This section is promulgated under the provisions of the Texas Alcoholic Beverage Code, §109.58, which authorizes the distilled spirits and wine industry to make a gift to civic, religious, and charitable organizations.

(b) The offer as a gift, liquor or wine as a purely social courtesy to unlicensed friends and associates shall be lawful.

(c) A member of or representative of the distilled spirits or wine industry may donate trophies of nominal value to unlicensed civic, religious, or charitable organizations.

(d) A member of or representative of the distilled spirits or wine industry may donate liquor or wine to any unlicensed civic, religious, or charitable organization for consumption in a wet area.

(e) There shall be no limits on the gifts of money or any other thing of value made by members or representatives of the distilled spirits or wine industry to unlicensed civic, religious, patriotic, or charitable organizations. However, advertising of events put on by a civic, religious or charitable organization to which donations by the liquor or wine industry have been made, shall include promotion of the civic, religious, or charitable sponsor or cause in a manner at least equal or greater than the advertising of the industry donor.

(f) The term "civic, religious and charitable organizations" shall not be construed as including organizations which are

primarily fraternal, political, or social, nor shall it include organizations of public officials or public employees.

(g) "Unlicensed" as used in this section shall mean "not having a permit or license authorizing the sale or service of alcoholic beverages."

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 11, 1994.

TRD-9440689 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 206-3202

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## • 16 TAC §45.120

The Texas Alcoholic Beverage Commission proposes new §45 120, concerning co-packaging of items with distilled spirits for advertising purposes.

Randy Yarbrough, assistant administrator, 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 Yarbrough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of civic, religious and charitable organizations to obtain support and funds from the liquor and wine industry in exchange for advertising and good will. 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O Box 13127, Austin, Texas 78711

The new section is proposed under Alcoholic Beverage Code, §5 31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code

The proposed rule affects the Alcoholic Beverage Code, §102 07(a)(5)

*§45.120. Co-Packaging of Liquor*

(a) "Co-packs" are defined by Texas Alcoholic Beverage Code, §102 07(a)(5), as those alcoholic beverages packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(b) If any alcoholic beverage is sold by a wholesaler as a "co-pack," no retailer may separate the other packaged item and sell it by any other means other than the way it was originally packaged when received.

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-9440690 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3202

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# Subchapter E. Miscellaneous

## Metric System

## • 16 TAC §45.141

*(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin )*

The Texas Alcoholic Beverage Commission proposes the repeal of §45.141, concerning metric sizes of liquor (distilled spirits and wines). The provisions of the rule have been incorporated in §45 49 and §45.21.

Randy Yarbrough, assistant administrator, 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. Yarbrough 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 consolidation of rules dealing with the same subject matter 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 Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The repeal is proposed under the Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed repeal affects the Alcoholic Beverage Code, §101.41 and §201.17

[*§45.141. Authorized for Liquor.* In addition to the container sizes and standards of fill otherwise authorized for the importation and sale of liquor in this state, container sizes and standards of fill based upon international metric units of measure and authorized by the United States Bureau of Alcohol, Tobacco, and Firearms are hereby authorized; provided, however, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this 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 May 11, 1994.

TRD-9440691 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3202

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# Chapter 50. Alcohol Awareness and Education

## • 16 TAC §§50.2-50.21

*(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Alcoholic Beverage Commission proposes the repeal of §§50. 2-50.21, concerning the minimum substantive and procedural requirements for the approval, conducting, and certification of seller-server training programs.

The repeal is proposed for the purpose of allowing new rules which are more specific to be put in place.

Kristin Sprague, coordinator of seller-server certification, 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.

Ms. Sprague 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 ease of enforcement and compliance by the rules to be substituted therefore 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 Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The code affected by the repeals is the Alcoholic Beverage Code, §106.14.

*§50.2. Definitions and Construction.*

*§50.3. The Law Pertaining to Intoxicated Persons.*

*§50.4. The Law Pertaining to Minors.*

*§50.5. The Law Pertaining to Proper Identification.*

*§50.6. Detection of Intoxication.*

*§50.7. Monitoring Customer Behavior.*

*§50.8. Physiology.*

*§50.9. Detection of Minors.*

*§50.10. Invalid Identification.*

*§50.11. Intervention Pertaining to Minors.*

*§50.12. Intervention Pertaining to Intoxication.*

*§50.13. Additional Program Content.*

*§50.14. Application for Program Approval.*

*§50.15. Revocation of Program Approval.*

*§50.16. Eligibility of Program.*

*§50.17. Application for Trainer Certification.*

*§50.18. Revocation of Trainer Approval.*

*§50.19. Application for Trainee Certification.*

*§50.20. Trainee Certification.*

*§50.21. Revocation of Trainee Certification.*

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 11, 1994.

TRD-9440692 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3420

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## • 16 TAC §50.2

The Texas Alcoholic Beverage Commission proposes new §50.2, concerning definitions. These definitions and the rules of construction are set out in order to facilitate the interpretation of the ensuing rules proposed under the Alcoholic Beverage Code, §106.14.

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs The new section affects the Alcoholic Beverage Code, §106.14.

*§50.2. Definitions and Construction.*

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

(1) Customer–A person, patron or member of an establishment where the certified trainee is an agent or employee. The term is not limited to persons who have been sold or served alcoholic beverages by an agent or employee of the establishment

(2) Intoxication–As that term is defined in Texas Civil Statutes, Article 67011-1(a)(2), to wit.

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 or more (Alcohol concentration means: the number of grams of alcohol per 100 milliliters of blood, the number of grams of alcohol per 210 liters of breath, or the number of grams of alcohol per 67 milliters of urine.)

(3) Program-Seller training program–as that term is used in the Texas Alcoholic Beverage Code, §106.14.

(4) Seller or server–One who sells, serves, dispenses or delivers alcoholic beverages under the authority of a license or permit.

(5) Student or trainee–A seller or server attending or participating in a seller training program.

(b) Each word and term used in this chapter shall have the meaning given to it by

(1) a definition in this chapter; or

(2) a definition in the Texas Alcoholic Beverage Code; or

(3) a definition in the Texas Penal Code, Titles 1, 2, or 3; or

(4) the common dictionary definition.

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 11, 1994.

TRD-9440693 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3204

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## • 16 TAC §50.3

The Texas Alcoholic Beverage Commission proposes new §50.3, concerning the procedures and requirements to become a certified seller-server training program, as well as the program content requirements as necessitated by Texas Civil Statutes, §106.14.

Kristin Sprague, coordinator of seller-server certification, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin,

Texas 78711, (512) 206-3420.

**The new section is proposed under Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs.**

**The new section affects the Alcoholic Beverage Code, §106.14.**

*§50.3. Application for Program Approval.*

(a) Application for program approval shall be made by the person, corporation or other entity who will administer and supervise the actual teaching of the program to Texas sellers and servers. The commission specifically finds that the training entity or school is an inseparable part of the seller training program. The integrity and ability of the people directly engaged in the administration, supervision and training of the curriculum to seller trainees are an integral part of the program contemplated by the Texas Alcoholic Beverage Code, §106. 14. Therefore, a curriculum, alone, is not eligible for approval.

(b) Application for approval shall be made on forms provided by the commission.

(c) No licensee or permittee, or his spouse, agent, servant, or employee, or any subsidiary or affiliate, may directly or indirectly conduct, sponsor, or support a seller training program approved under this chapter except as provided in the Texas Alcoholic Beverage Code, §106.14(c) and (d).

(d) A licensee or permittee may be a member of an Advisory Board, but not the Governing Board of a non-profit agency which sponsors a seller training program.

(e) A bona fide state trade association qualified under this section may train personnel of its own regular membership and non-members of the same level of the alcoholic beverage industry. For the purposes of this subsection, package stores which hold local distributor's permits, and private clubs, shall be considered to be retailers. State retail trade associations may also train individual members of the general public. To qualify under this subsection a trade association must:

(1) be a statewide organization with members in at least 10 Texas counties;

(2) have been in existence as a statewide organization for at least 20 years;

(3) not be an organization primarily composed of members of a particular retail chain.

(f) Persons engaged in the manufacturing or wholesaling of alcoholic beverages for national distribution may contribute to the development of a curriculum of seller training being developed for national use: provided, that any such contribution or involvement shall not be directly or indirectly tied to the actual offering of training to employees of any retailer, group of retailers, or the general public. Such involvement by an alcoholic beverage manufacturer shall be in a primarily noncommercial manner consistent with the spirit and intent of the provisions of the Texas Alcoholic Beverage Code and the rules of the commission prohibiting the tied-house and prohibiting the furnishing of things of value to a retailer of alcoholic beverages

(g) No licensee, permittee, or other person engaged in the manufacturing or wholesaling level of the alcoholic beverage industry, or any agent, servant, or employee of any of those, may directly or indirectly conduct or sponsor a seller training program for retail level employees or members of the general public.

(h) Each application shall be accompanied by a full and complete copy of the curriculum, including a copy of all materials to be used therewith, including workbooks, videos, and examinations. The curriculum and other materials shall be indexed and labeled in detail to indicate the location of all of the requirements for program approval specified in this chapter. The amount of time allocated to cover each segment of the curriculum shall be specified with a minimum of 200 minutes of instruction required. Programs utilizing a different format from lecturing will be evaluated case by case. Each application shall also be accompanied by a trainer development program which includes a minimum of eight hours of study time, eight hours of observation and eight hours of practice teaching in front of an audience. The initial trainer for a school-program may substitute the eight hours of observation for an additional eight hours of practice teaching (with or without a live audience).

(i) The program shall include:

(1) Section 50.2(a)(2) of this title (relating to the Definition of Intoxication).

(2) The law pertaining to intoxicated persons. Each approved seller training program shall review and explain all provisions of the Texas Alcoholic Beverage Code pertaining to intoxicated persons and provisions of the Texas Penal Code pertaining to public intoxication and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate

(3) The law pertaining to minors. Each approved seller training program shall review and explain all provisions of the Texas Alcoholic Beverage Code relating to the sale or service of alcoholic beverages to minors, the provisions of the code relating to purchase, possession or consumption of alcoholic beverages by minors and the provisions of the code relating to a person making alcoholic beverages available to a minor or permitting a minor to possess or consume alcoholic beverages and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate.

(4) The law pertaining to proper identification. Each approved seller training program shall review and explain the Texas laws pertaining to false, counterfeit, or deceptively similar identification documents including, specifically, the Texas Traffic Laws, Driver's License, Texas Civil Statutes, Article 6687b, Article II, §11(a) and §14A(a); Article IV, §32(a), §32A(a) and (b), and §33(a); and Article VI, §44A(a), and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate.

(5) Detection of intoxication.

(A) Each approved seller training program shall explain how to detect possible intoxication. It shall describe the common indicators including, but not limited to, slurred speech, mental confusion, impaired balance, impaired motor ability, bloodshot eyes, the smell of alcoholic beverages on the breath, dishevelment, nausea and signs of lost control of bladder or bowels. The program shall note that an intoxicated person may sometimes display none of the common indicators. It shall describe ways to detect an atypical intoxicated person through methods such as conversations calculated to reveal emotional stability or common indicators which might not otherwise be manifest.

(B) Students shall be made aware that serious illness can masquerade as intoxication. All students shall be instructed to recognize bracelet and necklace emblems of the Medic Alert Foundation and the significance of such identification.

(6) Monitoring customer behavior

(A) Each approved seller training program shall describe techniques for monitoring customer behavior for the purpose of implementing timely intervention pursuant to paragraphs (10) and (11) of this subsection (relating to Intervention pertaining to minors, and Intervention pertaining to intoxication). It shall describe methods to obtain appropriate information in a commercially acceptable manner, including

(i) observing customer response during any conversations with the seller;

(ii) observing customer interaction with third parties;

(iii) observing the customer's initial mood and general conduct; and

(iv) observing any change in any of the customer behavior previously mentioned.

(B) Each program shall describe and explain typical warning signs that customer behavior may be degenerating toward illegal behavior. Such warning signs shall include:

(i) the development of any indicator of intoxication other than the smell of alcoholic beverages on the breath;

(ii) any continuing argument or physical confrontation with any person;

(iii) any rapid or pronounced change in mood or emotional state such as excessive euphoria, sadness, confusion, excitability or aggressiveness.

(7) Physiology.

(A) Each approved seller training program shall include a basic explanation of how the human body reacts to the ingestion of beverage alcohol. It shall use simple language and concepts. It shall explain the effect of variables including body weight and type, gender, muscle/fat ratios, type and timing of food consumption, fatigue, and common diseases or disorders. It shall explain how alcohol can interact with many types of medicines and other drugs.

(B) Each program shall include a basic discussion of alcoholism as a disease and the addictive property of alcohol.

(C) Each program shall describe the Know Your Limits Chart developed by the Distilled Spirits Council of the United States, Inc., or a similar chart, and provide a copy of the chart.

(8) Detection of minors.

(A) Each approved seller training program shall explain techniques for determining if a customer is a minor. It shall explain the common signs of underage status including lack of physical maturity. It shall stress that most minors are mature in physical appearance before the age of majority, and that signs of physical maturity are not a reliable guide.

(B) Each program shall describe and explain conduct and mannerisms which might raise a suspicion of minority status. It shall include:

(i) a discussion of current fads and fashions in clothing, accessories, and grooming among minors;

(ii) a description, based upon authoritative sources, of behavior patterns characteristic of minors;

(iii) an explanation of how to look for suspicious behavior such as:

(I) a group of young-appearing persons pooling their money and giving it to the oldest-appearing member;

(II) a youthful appearing person waiting in the background away from the point of purchase or service while an adult obtains more than one serving; and

(III) prior observation that a particular adult has purchased for a youthful-appearing person.

(9) Identification.

(A) Each approved seller training program shall describe valid drivers licenses and identification certificates issued by the Texas Department of Public Safety.

(B) Each approved seller training program shall explain how to detect invalid identification documents presented in an attempt to establish proof of adult status. This shall include counterfeit and altered official documents. It shall also include unofficial documents which are deceptively similar to official documents. Emphasis shall be placed on drivers licenses and identification cards issued by the state of Texas and other states. Each program shall describe the most common types of counterfeiting and alteration and shall describe warning signs such as erasures, cut-and-paste numerals, substandard or inconsistent graphics and substandard lamination.

(10) Intervention pertaining to minors.

(A) Each approved seller training program shall describe and explain techniques of intervention to prevent or terminate illegal sale, service, possession, or consumption regarding a minor.

(B) Such techniques shall include, when appropriate to the circumstances:

(i) ask for and carefully examine an identification card;

(ii) removal of the alcoholic beverages in a non-aggressive manner from the reach or sight of the offender;

(iii) an explanation that the demeanor of the seller or server should never be such that is likely to provoke violence;

(iv) an explanation of the obligation to notify law enforcement authorities in the event that intervention attempts fail;

(v) specific examples of words and conduct which may be used in an attempt to avoid or terminate illegal activity amicably.

(11) Intervention pertaining to intoxication.

(A) Each approved seller training program shall explain effective techniques of intervention with persons who are intoxicated or who appear to be becoming intoxicated. This part of the program is of considerable importance to the public peace and safety and shall therefore receive due emphasis. The program may take into account the fact that permittees, licensees, and their employees will generally desire to avoid alienating a customer whenever possible. Therefore, the program shall describe specific language and conduct of the seller or server which is calculated to terminate or avoid illegal behavior of the customer as amicably as possible.

(B) Such techniques shall include, when appropriate to the circumstances:

(i) an explanation that the demeanor of the seller or server should never be such that is likely to provoke violence;

(ii) removal of the alcoholic beverages in a non-aggressive manner from the reach or sight of the offender;

(iii) specific examples of words and conduct which may be used in an attempt to avoid or terminate illegal activity amicably;

(iv) an explanation of how to slow down service of alcoholic beverages;

(v) a suggestion that food, snacks or alternative beverages be served and an explanation of the types of food most likely to slow or reduce intoxication.

(C) The student shall be made aware that coffee and other caffeine-containing products do not reduce intoxication, but may misleadingly appear to do so.

(D) The student shall be made aware of designated driver programs and shall be encouraged to provide such special services and courtesies to a designated driver as may be allowed by the student's employer.

(E) The student shall be made aware of the obligation to notify law enforcement authorities in the event that intervention attempts fail.

(12) Additional program content.

(A) The administrator is hereby delegated the authority to modify or add requirements for the content of approved seller training programs in addition to the requirements specified in this chapter.

(B) Any approved seller training program may contain any additional material except material which the administrator finds under the circumstances tends to be:

(i) a substantial detraction from the effectiveness of the minimum program requirements; or

(ii) a substantial detriment to the health, safety, or welfare of the general public or any segment thereof.

(C) Approved programs are encouraged to exceed the minimum requirements of program content and to develop new methods and techniques designed to fulfill the intent of the Texas Alcoholic Beverage Code, §106 14.

(13) Appropriate testing of trainees in a form and manner adequate to demonstrate the effectiveness of the training program shall be required.

(j) Each application for program approval shall be accompanied by a cashier's check, certified check or U S postal money order in the amount of $250.

(k) Programs found to be acceptable under this chapter shall be approved in writing by the administrator in such form as he may deem to be appropriate.

(l) Approval shall be valid for a period of three years unless earlier revoked

(m) A person commits an offense under the Texas Alcoholic Beverage Code, §101.61, if he falsely represents to any person that a program has been approved by the commission or administrator, or misleads any person into believing that a program is approved by the commission or administrator when, in fact, it is not.

(n) The developer of a curriculum, or his authorized agent, may for marketing purposes in the normal course of business represent that the basic curriculum is part of an approved program, provided such representation is, in fact, truthful.

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 11, 1994.

TRD-9440694

Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 206-3204

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## • 16 TAC §50.4

The Texas Alcoholic Beverage Commission proposes new §50.4, concerning the administration of the program with respect to filing reports, class facilities, eligible trainees, program presentation, testing and trainee certification.

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P O Box 13127, Austin, Texas 78711, (512) 206-3420

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs.

The new section affects the Alcoholic Beverage Code, §106 14.

*§50.4. Program Administration*

(a) The Texas Alcoholic Beverage Commission shall receive written notification from each school at least three business days prior to the session date Said notice shall include the date, time, and location of each class and shall be received in the headquarters of the Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711 or local field office on forms prescribed by the commission. The commission must be notified by phone of session cancellation prior to the actual session date except when cancellation cannot be anticipated before the session's scheduled start. When cancellation cannot be anticipated, the commission must be notified within a reasonable time.

(b) All training facilities shall meet the requirements of the Americans with Disabilities Act (ADA) and contain:

(1) adequate seating facilities for all students;

(2) appropriate space to ensure that visuals can be seen from all seating positions;

(3) private space to limit distractions; and

(4) access to a restroom.

(c) Sessions may be monitored unannounced to evaluate the trainer presentation and the classroom environment.

(d) Programs approved for licensees/permittees or hotel management companies shall be limited to employees of the said licensee, permittee, or hotel management company.

(e) No class may exceed 50 trainees. Trainees who arrive more than 15 minutes after the start of the program session shall be denied admission to the session.

(f) Discussion must be presented in a manner consistent with the contents of the approved instructor's guide.

(g) Each program session will be presented in a continuous block of instruction. While instruction shall be interrupted for brief breaks, these should be limited in number and duration. The program must be presented in its entirety to each student in a language approved for use by the instructor.

(h) Each trainee is to be tested immediately following the conclusion of instruction at the program session he or she attends. Testing of session participants at any other place or time is prohibited.

(i) Each trainee must correctly answer at least 70% of the questions found on the test administered to him. Schools are encouraged to set higher completion standards. Trainees who receive failing scores may be immediately retested once. Otherwise, trainees must repeat the course in full.

(j) All tests shall be administered on a closed-book basis.

(k) At the trainer's discretion the test may be offered in a language best understood by the trainee. Bilingual instructors may, in response to direct inquiries,

clarify test questions using another language.

(l) Each test must be maintained by the school for a period of at least four years and be made available to the Commission upon written request.

(m) Reports of Seller Training shall be made by the training entity or school to the commission. Reports must be delivered or postmarked within 30 calendar days of the date on which the session was held upon forms prescribed and approved by the administrator.

(n) Each Report of Seller Training shall contain the name, social security number and date of birth of each student in that class who has completed the training program and has passed the required test.

(o) The certified trainer who actually conducted the program shall in connection with the Report of Seller Training verify in writing under oath that each designated student has successfully completed the program approved by the commission on the date indicated and shall verify such other facts as the administrator may from time to time direct.

(p) Applications for trainee certification shall be accompanied by a cashier's check, certified check, or U.S. postal money order in the amount of $2.00 per trainee.

(q) The administrator shall send the certificates to the school which trained the trainees. Upon receipt, the school shall make a good faith effort to promptly transmit each certificate to the appropriate trainee. Failure to comply with this requirement is grounds for revoking or suspending approval of the seller training program administered by that school.

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 11, 1994.

TRD-9440695 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204

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## • 16 TAC §50.5

The Texas Alcoholic Beverage Commission proposes new §50.5, concerning the denial, revocation or suspension of program approval.

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5 31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs

The new section affects the Alcoholic Beverage Code, §106 14.

*§50 5. Denial, Revocation or Suspension of Program Approval*

(a) The administrator may deny approval of any program upon a finding that

(1) the program does not meet the minimum course requirements set out in this chapter, or

(2) the Application for School-Program Certification is not correct or complete; or

(3) any agent of the program has been convicted of a felony or of a misdemeanor related to theft, fraud or misrepresentation and three years have not passed since the discharge of any sentence imposed as a result of the conviction, or

(4) any agent of a privately sponsored program or his/her spouse is an alcoholic beverage licensee or permitee; or

(5) any agent of the program violates this chapter or the Alcoholic Beverage Code, §106.14.

(b) The applicant has the right to request a hearing within ten days after receipt of the notice of denial.

(c) The administrator may, after notice and opportunity for hearing, revoke or suspend approval of any program upon a finding that.

(1) the manner in which the program is being, or has been, administered has substantially impaired the effectiveness of the program; or

(2) any agent of the program has made a false or misleading statement, report, or representation to the commission regarding the conduct or administration of the program; or

(3) any agent of the program has been convicted of a felony or of a misdemeanor related to theft, fraud or misrepresentation and two years have not passed since the discharge of any sentence imposed as a result of the conviction; or

(4) the program has failed to make a timely report or has failed to communicate any information to the Texas Alcoholic Beverage Commission required by this chapter; or

(5) any agent of the program violates this chapter or the Alcoholic Beverage Code, §106.14.

(d) The entity administering the program has the right to request a hearing within ten days after receipt of the notice of revocation or suspension.

(e) A person whose school-program certification is revoked under this section may not apply for another certificate under this chapter until one year has elapsed from the date of revocation

(f) If the applicant or entity fails to request a hearing pursuant to subsection (b) or (d) of this section, the right to a hearing is waived and the administrator's finding and decision is final The administrator may assess a penalty based upon that finding and decision

(g) Denial, revocation or suspension shall be served at the main offices of the applicant or its registered agent for service either by certified mail or by personal service upon any adult agent or employee of the applicant at the said main offices.

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 11, 1994

TRD-9440696 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 206-3204

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## • 16 TAC §50.6

The Texas Alcoholic Beverage Commission proposes new §50 6, concerning the application for a trainer's certification

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a

result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs.

The new section affects the Alcoholic Beverage Code, §106.14.

*§50.6. Application for Trainer Certification.*

(a) Only trainers holding currently valid certification under this section shall be eligible to teach an approved seller training program. This requirement is not intended to prohibit the use of an uncertified guest instructor who has special expertise in the field which he teaches. The certified trainer shall be present during guest instruction and shall remain responsible for training quality.

(b) Application for trainer certification shall be made by the person to be certified on forms provided by the commission.

(c) Each application shall include certification by an approved seller training program entity or school that the applicant is qualified and competent to teach that seller training program.

(d) No licensee or permittee, or his spouse, agent, servant or employee may conduct a seller training program approved under this chapter except as provided in the Texas Alcoholic Beverage Code, §106.14(c) and (d).

(e) Each application shall be accompanied by a cashier's check, certified check, or U.S. postal money order in the amount of $5.00.

(f) Trainers found to be acceptable under this chapter shall be approved in writing by the administrator in such form as he may deem to be appropriate.

(g) Approval shall be valid for a period of three years unless earlier revoked.

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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General Counsel
Texas Alcoholic Beverage Commission

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## • 16 TAC §50.7

The Texas Alcoholic Beverage Commission proposes new §50.7, concerning the denial, revocation or suspension for a trainer's certification.

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs. The new section affects the Alcoholic Beverage Code, §106.14.

*§50.7. Denial or Revocation of Trainer Approval.*

(a) The administrator may deny approval of any trainer upon a finding that:

(1) the applicant for a privately sponsored program or his/her spouse is an agent of an alcoholic beverage licensee or permittee; or

(2) the Application for Trainer Certification is not correct or complete; or

(3) the applicant has been convicted of a felony or of a misdemeanor related to theft, fraud or misrepresentation and three years have not passed since the discharge of any sentence imposed as a result of the conviction.

(b) The applicant has the right to request a hearing within ten days after receipt of the notice of denial.

(c) The administrator may, after notice and opportunity for hearing, revoke approval of any trainer upon a finding that:

(1) the seller training program entity no longer authorizes the trainer to teach their seller training program; or

(2) the trainer no longer qualifies as a trainer under subsection (a) of this section.

(d) The trainer has the right to request a hearing within ten days after receipt of the notice of revocation.

(e) If the applicant or trainer fails to request a hearing pursuant to subsections (b) or (d) of this section, the right to a hearing is waived and the administrator's finding and decision is final. The administrator may assess a penalty based upon that finding and decision.

(f) Revocation shall be served upon the trainer either in person or by certified mail. A copy of the revocation shall be served upon the chief executive officer of each seller training program employing that trainer, either in person or by certified mail directed to the main offices of the seller training program or its registered agent for service

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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General Counsel
Texas Alcoholic Beverage Commission

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## • 16 TAC §50.8

The Texas Alcoholic Beverage Commission proposes new §50.8, concerning the certification of trainees who have successfully completed an approved seller training program

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government.

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code There will be no effect on small businesses The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106 14 and Texas

Civil Statutes, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs.

The new section affects the Alcoholic Beverage Code, §106.14

*§50.8. Trainee Certification.*

(a) Upon receipt of the proper report the administration shall issue an appropriate certificate to each trainee signifying that the trainee has successfully completed an approved seller training program.

(b) Each certificate shall be valid for two years.

(c) The commission shall require an additional $2.00 for each duplicate certificate issued.

(d) The commission shall maintain a list of currently certified seller trainees by name, social security number, and date of birth. This list shall be a public record by name only. The social security numbers shall not be a public record. However, if the inquiring party submits a name and either a social security number or a date of birth for verification of certification, the commission may tell the inquiring party whether or not the subject of the inquiry is a currently certified trainee of an approved seller training program.

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-9440699 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call (512) 206-3204

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### • 16 TAC §50.9

The Texas Alcoholic Beverage Commission proposes new §50.9, concerning the exemption from administrative action that a licensee/permittee may receive as a result of requiring their employees to attend a commission-approved seller training program.

Kristin Sprague, coordinator of seller-server certification, has determined that there will be no significant fiscal implications as a result of enforcing or administering the section for the first five-year period on either units of state or local government

Ms. Sprague also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better education of the public concerning laws involving intoxication and the purchase of alcohol by a minor, which will in turn aid in the enforcement of the Alcoholic Beverage Code. There will be no effect on small businesses The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator of Seller-Server Certification, P.O. Box 13127, Austin, Texas 78711, (512) 206-3420.

The new section is proposed under the Alcoholic Beverage Code, §106.14 and Texas Civil Statutes, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller training programs. The new section affects the Alcoholic Beverage Code, §106.14.

*§50.9 Licensee/Permittee Exemption from Administration Action.* The commission shall require each Licensee/Permittee who claims exemption from administrative action under the Texas Alcoholic Beverage Code, §106.14, to produce evidence by affidavit indicating that the licensee/permittee met the three criteria outlined in §106.14(a).

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 11, 1994.

TRD-9440700 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

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For further information, please call. (512) 206-3204

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# Part VI. Texas Motor Vehicle Commission

## Chapter 103. General Rules

### • 16 TAC §103.13

The Texas Motor Vehicle Board proposes new §103.13, concerning Show Limitations and Restrictions. This new section provides for a restriction on the number and location of new motor home shows and exhibitions in which a licensee may participate in Texas.

Proposed new §103.13 provides that a new motor home dealer, licensed in Texas, is restricted to one show or exhibition per year in which sales activity may be conducted and such show or exhibition must be located in the licensee's market area. Proposed new §103.13 also allows licensees to attend shows or exhibitions outside their market area so long as no sales activity is conducted.

Brett Bray, director, Motor Vehicle 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. Bray has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed section

Mr. Bray 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 imposition of reasonable show and exhibition restrictions on new motor home dealers thereby protecting consumers from exposure to sales practices by licensees who are not geographically convenient. 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 Brett Bray, Division Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768. For further information, Mr. Bray can be reached at (512) 476-3587.

The new section is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of the act, and to govern practice and procedure before the agency

Motor Vehicle Commission Code, §3.06, is affected by the proposed new section.

*§103.13. Show Limitations and Restrictions.* A licensee can attend and offer for sale their motor homes, recreational vehicles, or travel trailers at a show or exhibition only one time per year and only in their market area. Licensees can attend, but are not allowed to offer their motor homes, recreational vehicles or travel trailers for sale at recreational vehicle shows outside of their market area.

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 11, 1994

TRD-9440760 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Proposed date of adoption: June 23, 1994

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

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# TITLE 25. HEALTH SERVICES

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 401. System Administration

### Subchapter A. Advisory Committees

#### • 25 TAC §401.25

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §401 25,concerning advisory committees The new section is proposed contemporaneously with its emergency adoption in this issue of the *Texas Register*

In keeping with provisions of Senate Bill 383 (73rd Legislature), the proposed new section recognizes a newly created advisory committee concerning equity of access to mental health and mental retardation services The new section outlines the purpose, tasks, and duration of the committee, which is subject to all other requirements of Chapter 401, Subchapter A, concerning advisory committees

Leilani Rose, director, Office of Financial Services, has determined that there will be no significant fiscal implications for state or local government as a result of administering the section as proposed

Dennis Jones, commissioner, has determined that during the first five-year period the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the rule is the creation of an advisory committee which will develop recommendations for a fair, sensible statewide policy to improve the equity of access to TXMHMR services for those Texans with mental illness or mental retardation who need them Local economic impact is anticipated to be insignificant There will be no effect on small businesses There is no anticipated cost to persons required to comply with the proposed new section

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

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

The proposed rule affects Texas Civil Statutes, Article 6252-33.

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 13, 1994

TRD-9440873 Ann K Utley
Chairman
Texas Mental Health and Mental Retardation Board

Earliest possible date of adoption: June 20, 1994

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

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### Chapter 409. Medicaid Programs

### Subchapter D. Home and Community-based Services

#### • 25 TAC §§409.101, 409.103, 409.119

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes amendments to §§409.101 and 409 103 and new §409 119, concerning home and community-based services (HCS).

The purpose of the amendments and new section is to describe a process by which payment for services can be requested for days when documentation of a current level-of-care (LOC) determination was not in place for an individual who was eligible for and received services provided by an HCS provider In addition, a reference in §409 101 to the Texas Department of Health in relation to determinations of level-of-care is revised to reference the Texas Department of Human Services

The subchapter being amended and expanded with a new section is one of a number of rules transferred from the Texas Department of Human Services (TDHS) to the Texas Department of Mental Health and Mental Retardation effective October 1, 1993 The amendments and new sections have been approved by the Medical Care Advisory Committee

Leilani Rose, director, Financial Services Department, has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that during the first five-year period the rules as proposed are in effect the public benefit anticipated as a result of enforcing or administering the rules is that reimbursable services which have been provided for individuals enrolled in the HCS program will be paid. 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

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P O Box 12668, Austin, Texas 78711-2668, within 30 days of publication

The sections are proposed under the Health and Safety Code, Title 7, §532 015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers, and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed amendments and new section would affect Texas Civil Statutes, Article 4413(502) §16

*§409 101 Client Eligibility Criteria*

(a) (No change )

(b) To be determined eligible by TXMHMR for HCS services, clients must also

(1) meet the ICF-MR I, V, or VI level-of-care criteria as determined by the Texas Department of **Human Services (TDHS)** [Health (TDH)] according to applicable state and federal regulations and as verified by a current Level of Care (LOC) Assessment form

(A) (No change )

(B) (No change )

**(C) In order for payment to be considered for days that a client was receiving HCS services but did not have a current LOC assessment form in place, the provider must follow the process described in §409.119 of this title (relating to Gaps in Level-of-Care Coverage.)** [Any gaps in level of care coverage periods result in loss of payment to the provider ]

(c)-(d) (No change )

*§409 103 Provider Claims Payment*

(a)-(b) (No change )

(c) The provider agency is not entitled to payment if

(1) -(2) (No change )

(3) gaps exist in the coverage **period** [periods] for [the Level of Care Assessment form or] the Individual Plan of Care for Home and Community-based Services form Coverage periods are defined by the begin and end dates on the Individual Plan of Care for Home and Community-based Services form [and the effective and end dates on the Level-of-Care Assessment form]

*§409 119 Gaps in Level-of-Care Coverage After September 1, 1992*

(a) To request payment for days when services were delivered to a client without a current LOC determination, the HCS program manager shall submit a letter to the TXMHMR HCS Program Coordination Office along with

(1) a photocopy of the most recent LOC assessment form approved by either TDHS for the enrollment of the client or by TXMHMR for a continued stay review:

(2) a new LOC assessment form identical to the form mentioned in paragraph (1) of this subsection for each period of time for which there was a lapsed LOC except for the following modifications:

(A) purpose code "E" is marked for item 16;

(B) the beginning and ending dates of the period for which no valid LOC existed are written in the comment section;

(C) A physician's signature certifying that the person required an ICF/MR LOC during that time period; and

(D) the physician's initial's in the comment section acknowledging the request for payment.

(3) a completed verification statement, a copy of which is attached to this subchapter as Exhibit A, signed by the chief executive officer of the provider;

(4) a purchase voucher (form 4116) to request payment for the period specified on the LOC form with purpose code "E" in item 16.

(b) If the request for payment is for a period of lapsed LOC:

(1) between September 1, 1992, and August 31, 1994, the request must be submitted by October 17, 1994; or

(2) after September 1, 1994, the request must be submitted as described in §409.105 of this title (relating to Rejected Claims.)

(c) If the gap in LOC coverage extends over two fiscal years, a separate request must be submitted for the each time period in each fiscal year.

(d) There must be a current individual plan of care in place for the period of time for which payment is sought. The individual plan of care cannot be retroactive.

(e) A request for payment will not be approved for periods of time that a LOC has been denied by TDHS.

(f) Purpose code "E" LOCs may not be used to establish initial HCS eligibility or to enroll a client into HCS.

(g) TXMHMR shall notify the program provider within 45 days of receipt of the request in the form of an approved LOC or a letter of denial of payment. The provider may appeal the denial of payment following the procedure described in §409.106 of this title (relating to Right to Appeal.)

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 13, 1994.

TRD-9440870 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Earliest possible date of adoption: June 20, 1994

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

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## Subchapter E. Home and Community-based Services–OBRA

### • 25 TAC §409.154, §409.159

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes amendments to §409.154 and §406.159, concerning home and community-based services–OBRA (HCS-O).

The purpose of the amendments is to describe a process by which payment for services can be requested for days when documentation of a current level-of-care (LOC) determination was not in place for an individual who was eligible for and received services provided by an HCS-O provider. In addition, references in the section to the Texas Department of Health in relation to determinations of level-of-care are revised to reference the Texas Department of Human Services.

The subchapter being amended is one of a number of rules transferred from the Texas Department of Human Services (TDHS) to the Texas Department of Mental Health and Mental Retardation effective October 1, 1993. The amendments have been approved by the Medical Care Advisory Committee.

Leilani Rose, director, Financial Services Department, has determined that for each year of the first five-year period the sections as proposed are in effect there will be no significant fiscal impact on state or local government as a result of enforcing the sections as proposed.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that during the first five-year period the rules as proposed are in effect the public benefit anticipated as a result of enforcing of amdinistering the rules is that reimbursable services which have been provided for individuals enrolled in the HCS-O program will be paid. 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.

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

The sections are proposed under the Health and Safety Code, Title 7, §532. 015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed amendments affect Texas Civil Statutes, Article 4413(502), §16.

*§409.154. Level-of-Care Criteria.*

(a) Waiver clients must meet the level-of- care criteria for Intermediate Care Facilities for the Mentally Retarded (ICF-MR I, V, VI, or VIII) as determined by the **Texas Department of Human Services (TDHS)** [Texas Department of Health (TDH)] according to applicable state and federal regulations, and as verified by a current level-of-care assessment.

(b) A preadmission level-of-care assessment performed by **TDHS** [TDH] expires 90 days from its issuance.

(c) level-of-care assessments must be performed annually for all waiver clients. [Any gaps in the level-of-care coverage periods result in loss of payment to providers, as specified in §48.3904 ((c)(5) of this title (relating to Provider Claims Payment).]

**(d) In order for payment to be considered for days since September 1, 1992, that a client was receiving HCS-O services but did not have a current LOC assessment form in place, the provider must submit a letter to the TXMHMR HCS Program Coordination Office along with:**

**(1) a photocopy of the most recent LOC assessment form approved by either TDHS for the enrollment of the client or by TXMHMR for a continued stay review;**

**(2) a new LOC assessment form identical to the form mentioned in paragraph (1) of this subsection for each period of time for which there was a lapsed LOC except for the following modifications:**

**(A) purpose code "E" is marked for item 16;**

**(B) the beginning and ending dates of the period for which no valid LOC existed are written in the comment section;**

(C) a physician's signature certifying that the person required an ICF/MR LOC during that time period; and

(D) the physician's initial's in the comment section acknowledging the request for payment.

(3) a completed verification statement, a copy of which is attached to this subchapter as Exhibit A, signed by the chief executive officer of the provider;

(4) a purchase voucher (form 4116) to request payment for the period specified on the LOC form with purpose code "E" in item 16.

(e) If the request for payment is for a period of lapsed LOC:

(1) between September 1, 1992, and August 31, 1994, the request must be submitted by October 17, 1994; or

(2) after September 1, 1994, the request must be submitted as described in §409.105 of this subchapter (relating to Rejected Claims.)

(f) If the gap in LOC coverage extends over two fiscal years, a separate request must be submitted for each time period in each fiscal year.

(g) There must be a current individual plan of care in place for the period of time for which payment is sought. The individual plan of care cannot be retroactive.

(h) A request for payment will not be approved for periods of time that a LOC has been denied by TDHS.

(i) Purpose code "E" LOCs may not be used to establish initial HCS-O eligibility or to enroll a client into HCS-O.

(j) TXMHMR shall notify the program provider within 45 days of receipt of the request in the form of an approved LOC or a letter of denial of payment. The provider may appeal the denial of payment following the procedure described in §409.162 of this title (relating to Right to Appeal.)

*§409.159. Provider Claims Payment.*

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

(c) The organization providing waiver program services is not entitled to payment if:

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

(5) gaps exist in the coverage period [periods] for the [level-of-care assessment or the] individual plan of care for waiver program services. Coverage periods are defined by the begin and end dates on the individual plan of care for waiver services form[, and by the effective and end dates on the level-of-care assessment form].

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 13, 1994.

TRD-9440869 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Earliest possible date of adoption: June 20, 1994

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

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# TITLE 28. INSURANCE

## Part I. Texas Department of Insurance

### Chapter 7. Corporate and Financial Regulation

### Subchapter F. Reinsurance

**• 28 TAC §7.611**

The Texas Department of Insurance proposes an amendment to §7.611, concerning Indemnity Insurance Agreements-Required Provisions, which require an indemnity reinsurance agreement to contain certain provisions in order for a ceding insurer to reflect the agreement in its financial statement. The amendment to §7.611(4) is necessary to implement House Bill 1461, 73rd Legislature, which amended Insurance Code, Article 5.75-1(n), to allow the offset of mutual debits and credits between the ceding insurer and the assuming insurer, whether arising out of one or more indemnification reinsurance agreements. In addition, the amendment adds new paragraphs (8)-(10) and renumbers existing paragraph (8) as paragraph (11). The new paragraphs will require indemnity reinsurance agreements to contain a provision concerning the status of any reinsurance intermediary and a provision that the written reinsurance agreement is the entire agreement between the parties. Such provisions are standard provisions in most reinsurance contracts, but have not been required by regulation.

A. W. Pogue, acting associate commissioner for the financial program has determined that for the first five-year period the 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. Pogue 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 the amendment will be the effective regulation of reinsurance treaties between insurance companies. Generally, there is no anticipated cost of compliance with the proposed amendments since the amendment to paragraph (4) is required by House Bill 1461, and the amendment is less restrictive than the existing regulation. The other amendments merely codify standard practices in the reinsurance industry. For those insurers which have to amend their contracts to comply with paragraphs (8)-(10), Ms. Pogue estimates the cost to prepare the amendments to an existing contact would not exceed $2,000. If there is more than one reinsurance contract between the insurers, the cost to amend each additional contract should not exceed $100 per contract.

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

The amendment is proposed under the authority of the Insurance Code, Articles 5.75-1, 3.10 and 1.03A and Government Code, §§2001.004-2001.038. Articles 5.75.1(n) and 3.10 authorizes the commissioner to adopt reasonable rules relating to the accounting and financial statement requirements and the treatment of reinsurance agreements between insurers, including asset debits or credits, reinsurance debits or credits, and reserve debits or credits relating to the transfer of risks or liabilities by reinsurance agreements and to any contingencies arising from reinsurance agreements. Article 1.03A authorizes the commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application. Government Code, §§2001.004-2001.038 authorizes each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state agency.

The proposed rule affects Texas Insurance Code, Articles 3.10 and 5.75-1.

*§7.611. Indemnity Reinsurance Agreements-Required Provisions.* Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of the Insurance Code, Article 3.10 or Article 5.75-1, or otherwise in compliance with this subchapter unless the reinsurance agreement :

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

(4) provides in any provision dealing with offsets that :

(A) if the ceding insurer is subject to the Insurance Code, Article

3.10, then any offsetting provisions shall be limited to such contract and are specifically between the ceding insurer and the reinsurer and are provided for in such contract, or

(B) if the ceding insurer is subject to Insurance Code, Article 5.75-1, then any offsetting provisions must provide that:

(i) the right of offset is limited to reinsurance contracts between the ceding insurer and the reinsurer; and

(ii) each reinsurance contract shall only provide for offsetting of mutual debits and mutual credits where the insurers are acting in the same capacity under each contract.

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

(8) provides that where payments are made to a reinsurance intermediary (intermediary) the reinsurer assumes all credit risk of the intermediary related to payments made to the intermediary. The following shall be deemed acceptable for evidencing compliance with this subsection: payments by the ceding insurer to the intermediary shall be deemed to constitute payments to the reinsurer and that payments by the reinsurer to the intermediary shall be deemed to constitute payment to the ceding insurer only to the extent that such payments are actually received by the ceding insurer;

(9) includes a provision indicating that the written agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement;

(10) includes a provision whereby any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by the parties; and

(11)[(8)] complies with any other Texas Department of Insurance [State Board of Insurance] rules in effect.

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 13, 1994.

TRD-9440898 D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Earliest possible date of adoption: June 20, 1994

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

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# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter 291. Water Rates

### Subchapter I. Wholesale Water or Sewer Service

**• 30 TAC §§291.128-291.138**

The Texas Natural Resource Conservation Commission (Commission) proposes the repeal of §§291.131-291.136 and proposes new §§291.128-291.138 concerning appeals of wholesale water and sewer rates.

Section 291.128 identifies the statutory authority under which a water and sewer rate appeal can be filed.

Section 291.129 sets forth several definitions utilized in the subchapter.

Section 291.130 describes those items a petition must contain and sets forth specific timelines for submitting a petition under this subchapter.

Section 291.131 provides for executive director determination of probable grounds as required with the Texas Water Code, §11.041.

Section 291.132 describes the process for conducting a preliminary evidentiary hearing.

Section 291.133 describes the factors to be considered in a preliminary evidentiary hearing to determine whether the protested rate violates to the public interest.

Section 291.134 describes the process by which the commission will either dismiss an appeal because it finds the contract is not adverse to the public interest or remand the matter for further evidentiary proceedings to establish rates on a cost of service basis.

Section 291.135 establishes guidelines to determine cost of service.

Section 291.136 establishes which party will have the burden of proof at the preliminary and subsequent hearings.

Section 291.137 establishes conditions for changing commission ordered rates.

Section 291.138 requires providers of water or sewer service for resale to report the rates it charges for these services to the commission annually.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections are in effect there will be fiscal implications anticipated as a result of administration and enforcement of the sections. The effect on state government will be a minor increase in cost of approximately $2,000 in fiscal year 1994, $10,000 in 1995 and $5,000 in each of the fiscal years 1996-1998. These costs are associated with the collection and processing of data required to be submitted by providers of water and wastewater service. These sections will have implications for the costs of conducting evidentiary hearings for all parties to such hearing, including the state. While preliminary hearings may represent an additional cost in certain cases, the opportunity for such hearing will mitigate the requirements for more lengthy and costly proceedings for cases dismissed at the preliminary step. The potential costs that may be avoided will vary with the particular circumstances of each individual case. It is anticipated, however, that there will be no net effect on the state or potential parties to contested rate cases. Requirements for reporting of rate information will result in additional costs to water and wastewater service providers. These costs will also vary, but are not anticipated to exceed $200 in the first year or $50 in succeeding years for most affected service providers. Service providers which would qualify as small businesses will be affected to the same extent as any entity subject to these sections. It is assumed that costs for these small businesses will vary in proportion to the size of the operation and the number of customers served.

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the process of appeals of water and wastewater rates, the more efficient application of the state's resources to the appeals process and the more accurate determination of the appropriate basis for water and wastewater rates. There are no additional costs anticipated for any individual required to comply with these sections as proposed.

Written comments on the proposal may be submitted to Dean Robbins, P.E., Director, Water Utilities Division, P.O. Box 13087, Austin, Texas 78711-3087. In order to be considered, written comments must be received in the Water Utilities Division by 5:00 p.m., 30 days after the publication date of this proposal. A public hearing on this proposal will be held on Friday, June 10, 1994, at 10:00 a.m. in Room 201S, Building E of TNRCC Park 35 Office Complex, 12118 North IH-35, Austin.

The new sections are proposed under the Texas Water Code, §5.103, which authorizes the commission to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state and the Texas Water Code, §§511.041, 12.013, and 13.043, which govern appeals or petitions for review of wholesale water and wastewater rates.

*§291.128. Petition or Appeal Concerning Wholesale Rate.* This subchapter sets forth substantive guidelines and procedural requirements concerning:

(1) a petition to review rates charged for the sale of water for resale filed pursuant to the Texas Water Code Chapter 11 or 12; or

(2) an appeal pursuant to the Texas Water Code, §13.043(f), (appeal by retail public utility concerning decision by a provider of water or sewer service).

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

Petitioner-The entity that files the petition or appeal.

Protested rate-The rate demanded by the seller.

Cash Basis calculation of cost of service-A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and reasonable capital expenditures which are not debt financed. Basic revenue requirement components under the cash basis do not include depreciation.

Utility Basis calculation of cost of service-A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, taxes, depreciation expense on plant assets committed to wholesale service, and return on investment

*§291.130. Petition or Appeal.*

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code.

(b) The petition must clearly state the statutory authority which the petitioner invokes, and the relief which the petitioner seeks Any applicable contract must be attached to the petition.

(c) An appeal pursuant to the Texas Water Code, §13.043(f), must be initiated by filing of the petition within 90 days after the date of notice of a decision of the provider of water or sewer service is received from the provider of service.

*§291.131 Executive Director's Determination of Probable Grounds* Where a petition is subject to the Texas Water Code, §11.041, the executive director shall determine within ten days of the filing of the application whether there are probable grounds for the complaint. For purposes of this subsection only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.132 of this title (relating to Petition or Appeal). Upon a finding of no probable grounds, the executive director should direct the petitioner to amend its petition so that it is sufficient. If the executive director determines there are probable grounds, the executive director shall forward the petition to the commission for an evidentiary hearing.

*§291.132. Preliminary Evidentiary Hearing.*

(a) The commission shall conduct a preliminary evidentiary hearing to determine whether there are probable grounds for further evidentiary hearings.

(b) The examiner shall prepare a proposal for decision with proposed findings of fact and conclusions of law concerning whether there are probable grounds for further evidentiary hearings, and shall submit such recommendation to the commission no later than 120 days after the filing of a sufficient petition.

(c) Prior to the preliminary evidentiary hearing discovery shall be limited to matters relevant to the preliminary evidentiary hearing.

(d) The seller and buyer may agree to consolidate the preliminary evidentiary hearing on probable grounds and the evidentiary hearing on cost of service. If the seller and buyer so agree the examiner shall hold a consolidated evidentiary hearing.

*§291.133. Determination of Probable Grounds.* The commission shall determine there are probable grounds for further evidentiary hearings if after the preliminary evidentiary hearing the commission concludes any one or more of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the sellers's financial integrity and operational capability;

(2) the protested rate places an excessive financial burden on the purchaser or the purchaser's ultimate customers;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, factors to be considered may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) whether the seller reasonably demonstrates that conditions that affect the cost of providing service are the basis for a change in rates;

(C) The seller has changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;

(E) Incentives necessary to encourage regional projects or water conservation;

(F) the seller's costs attributable to meeting federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale;

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;

(4) the protested rate appears to discriminate between the purchaser and others who purchase water or sewer service from the seller, and the seller does not provide reasonable support for such discrimination;

(5) the seller demands the protested rate pursuant to a contract entered into on or after (effective date of rules), 1994, and the contract is not based upon a cost of service study provided to the purchaser on or before entering into the contract. For purposes of this provision, "contract" shall not include an amendment to a contract so long as such amendment does not extend the term of the contract.

*§291.134. Commission Action to Protect Public Interest, Set Rates.*

(a) If as a result of the preliminary evidentiary hearing the commission determines there are no probable grounds the commission will deny the petition or appeal by final order. A final order which dismisses a petition or appeal must state the bases upon which the commission finds the contract does not adversely affect the public interest.

(b) If the commission determines there are probable grounds the commission will remand the matter for further evidentiary proceedings. No later than 90 days after remand the seller shall file with the Office of Chief Clerk five copies of a cost of service study which supports the protested rate. The commission's subsequent review will investigate whether the protested rate is consistent with the ratemaking mandates of the Texas Water Code, Chapters 11-13. If the commission finds the rate

is unreasonably preferential, prejudicial, or discriminatory, or not just and reasonable, the commission will cancel the complained of rate, and set rates on a cost of service basis. A final order must state the bases upon which the commission finds the protested rate adversely affects the public interest.

*§291.135. Determination of Cost of Service.*

(a) The calculation of the annual cost of service shall follow the mandates of the Texas Water Code, Chapters 11-13. The calculation of cost of service may rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs

(b) Where the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

*§291 136 Burden of Proof* The petitioner shall have the burden of proof in preliminary evidentiary proceedings to determine probable grounds. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings subsequent to the determination of probable grounds.

*§291.137 Commission Order to Discourage Succession of Rate Disputes.* If the commission finds the protested rate adversely affects the public interest and sets rates on a cost of service basis then the commission shall add the following provisions to its order.

(1) The rate set by commission order shall continue in effect unless and until the parties agree upon different rates or the commission sets other rates in a future proceeding.

(2) If the seller proposes to change the rate set by the commission then, notwithstanding provisions found in commission Rule 291, Subchapter I, concerning burden of proof, the seller shall have the burden of proof concerning probable grounds, and the seller's cost of service.

(3) The provisions issued pursuant to this subsection shall have no effect on rate actions taken two or more years after the commission issues its order which finds the protested rate adversely affects the public interest and sets rates on a cost of service basis.

*§291 138. Filing of Rate Data.*

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission requires each provider of water or sewer service for resale to report the rates it charges to purchasers.

(b) By January 31st of each year each provider of water or sewer service for resale shall file a report with the commission's Water Utility Division. The report must identify for each purchaser:

(1) rates charged;

(2) total dollar amount charged, and total volume of service provided;

(3) a calculation showing total dollar amount charged divided by total volume of service provided, and

(4) other information requested by the executive director.

(c) A report under this subsection must identify the 12-month period from which data was collected. The end of the reported 12-month period shall be no more than six months prior to the date of filing the report.

(d) A report must list separately water and sewer service data

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 16, 1994

TRD-9440842 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 463-8069

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## Subchapter I. Nonsubmetered Master Meter Utilities

**• 30 TAC §§291.131-291.136**

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

The repealed sections are proposed under the Texas Water Code §5 103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

*§291.131 Purpose and Scope*

*§291.132. Definitions.*

*§291 133 Records and Reports.*

*§291 134 Calculation of Costs.*

*§291 135. Billing*

*§291 136 Discontinuance of Service*

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 16, 1994

TRD-9440843 Mary Ruth Holder
Director Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 463-8069

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# TITLE 34. PUBLIC FINANCE

## Part I. Comptroller of Public Accounts

## Chapter 3. Tax Administration

## Subchapter Y. Controlled Substances Tax

**• 34 TAC §3.681**

The Comptroller of Public Accounts proposes an amendment to §3 681, concerning imposition and rate of the Controlled Substances Tax Act, Tax Code, Chapter 159 The amendment provides for the taxation of controlled substances, counterfeit substances, or simulated controlled substances, commonly sold by dosage unit. This amendment is a result of amendments to the Tax Code, §159 001, by the 73rd Legislature, 1993

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government

Mr Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in allowing the comptroller to assess the controlled sub-

stances tax on dealers of certain types of drugs that are sold on a dosage basis rather than by weight. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new section may be submitted to Robert P. Coalter, Inspector General, Office of the Comptroller, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §159.001(3)(B) and (8).

*§3.681. Imposition and Rate of Tax.*

(a) A tax is imposed on the purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which tax previously has not been paid under the Tax Code, Chapter 159.

(b) A taxable substance is a substance consisting of or containing any of the following:

(1) a controlled substance, a counterfeit substance, or marihuana, as those terms are defined by the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.002,

(2) a simulated controlled substance as defined by the Health and Safety Code, §482 001; or

(3) a mixture that contains any of these substances

(c) A dealer is a person who, in violation of the laws of this state, imports into this state or manufactures, produces, acquires, or possesses in this state.

(1) seven grams or more of a taxable substance other than marihuana, [or]

**(2) fifty dosage units or more of a taxable substance not commonly sold by weight, consisting of or containing a controlled substance, counterfeit substance, or simulated substance; or**

(3)[(2)] four ounces or more of a taxable substance consisting of or containing marihuana.

(d) The tax becomes due at the time a dealer imports a taxable substance into this state or manufactures, produces, acquires, or possesses a taxable substance in this state.

(e) The rate of the tax is

(1) for taxable substances other than marihuana, and for taxable substances containing both marihuana and another taxable substance, $200 per gram or part of a gram;

(2) for marihuana, $3.50 per gram or part of a gram; and

(3) for taxable substances not sold by weight, $2,000 on each 50 dosage units, or portion thereof.

(f) Dealers must obtain tax payment certificates from the comptroller before the tax becomes due, and must securely affix the certificate to the substance as proof that the tax has been paid. For information on tax payment certificates, see §3.682 of this title (relating to Tax Payment Certificates) .

(g) Possession of a taxable substance without the possession of the requisite number or amount of tax payment certificates is prima facie evidence that tax has not been paid on that substance as required by the Tax Code, Chapter 159.

(h) The phrase "taxable substances not sold by weight" used in this chapter, shall include substances sold in tablet, capsule, pill, vial, ampule, [or] sheet form , **or other identifiable or separated unit designed or packaged to be used, taken, or ingested at one time** If a taxable substance could be sold either by weight or dosage unit, the comptroller shall assess the taxable substance in the manner which will produce the largest assessment

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 11, 1994

TRD-9440712 Martin E Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 463-4028

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part VI. Texas Department of Criminal Justice

### Chapter 151. General Provisions

### Subchapter B. Ethics

#### • 37 TAC §§151.11-151.16

The Texas Department of Criminal Justice proposes amendments to 37 TAC Chapter 151 by adding new §§151 11-151.16, concerning standards of conduct for agency employees and board members The amendments are permitted by the Government Code, §492.013(a), and in the case of §§151.11-151.14, are mandated by the Texas Ethics Commission.

The effect of the proposed amendments is to: limit the acceptance of benefits from a person who appears before or is regulated by the agency by prohibiting the acceptance of travel or lodging and requiring recusal from participation in any action where the actor has accepted a benefit from the beneficiary of the action; apply a list of basic "should nots" for board members and employees; and require recusal of a board member from participation in a matter in which the member has a personal or private interest.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that there will be no effect on state or local government for the first five-year period of operations.

Mr. McNutt also has determined that compliance with this amendment will not impose any measurable economic costs on individuals, as individuals with a duty to comply will merely be conforming to accepted ethical norms. David P. McNutt has further determined that there will be no generalized benefit to the public for the last four years of the next five-year period. there will be no effect on small businesses.

Comments should be directed to Carl V. Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposed amendment.

The new sections are proposed under the Government Code, §492.013(a), which gives the Board of Criminal Justice authority to adopt rules. Proposed §151.15 is based on the Government Code, §572.051, and proposed §151.16 is based on the Government Code, §572.058.

*§151.11. Definition* In this subchapter, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage to the beneficiary or to any other person in whose welfare the beneficiary has a direct and substantial interest, and includes any gift, award, or memento that is required to be reported under the Government Code, Chapter 305 (relating to Registration of Lobbyists).

*§151.12. Rule Cumulative of Statutory Restrictions.* This subchapter is cumulative of all statutory prohibitions and restrictions on the conduct of public officials and employees

*§151.13. Acceptance of Certain Benefits Restricted* A board member or employee may not solicit or accept, on behalf of any person, any travel or lodging from a person who the board member or employee knows or should know is:

(1) interested in a facility, site, contract, purchase, claim, or other pecuniary transaction that may be substantially affected by the performance or nonperformance of the board member's or employee's official duties; or

(2) subject to regulation, inspection, or investigation by the department.

*§151.14. Recusal.*

(a) A board member who accepts a benefit shall recuse himself or herself from any discussion or action taken by the board with regard to any matter in which the board member knows or should know the donor of the benefit may have a personal or economic interest. If disclosure of the required recusal would not tend to reveal information made confidential by law, the board member must disclose the recusal and the basis for the recusal at the time of the recusal, in a meeting called and held in compliance with the Government Code, Chapter 551 (the Open Meetings Act). The disclosure shall be entered in the minutes of the meeting.

(b) An employee who accepts a benefit shall not participate in the disposition of any matter in which the employee knows or should know the donor of the benefit may have a personal or economic interest.

(c) An employee recused under subsection (b) of this section from participating in the disposition of any matter shall notify his or her immediate supervisor of the recusal and the reason for the recusal.

(d) Recusal under subsection (a) of this section is not required if the matter in question affects an entire profession or class of business entities and the interest that would otherwise require recusal is no different than that of any other member of the affected profession or class.

(e) Recusal under this section is not required if the benefit is an item with a value of less than $20, excluding cash or a negotiable instrument as described by Business and Commerce Code, §3.104 (relating to Form of Negotiable Instruments; "Draft, "Check;" "Certificate of Deposit; " "Note").

*§151.15. Standards of Conduct*

(a) A board member or employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the board member or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in business or professional activity that the board member or employee might reasonably expect would require or induce the board member or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the board member's or employee's independence of judgment in the performance of the board member's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the board member's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's or employee's official powers or performed the board member's or employee's official duties in favor of another

(b) Violation of any provision of this section by an employee of the department is grounds for termination of employment, under procedures established by the department.

*§151.16. Private Interest in Measure or Decision.* A board member who has a personal or private interest in a measure, proposal, or decision pending before the board shall publicly disclose the fact to the board in a meeting called and held in compliance with the Government Code, Chapter 551 (the Open Meetings Act). The board member may not vote or otherwise participate in the decision The disclosure shall be entered in the minutes of the meeting. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

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 16, 1994

TRD-9440927 Carl Reynolds
Board General Counsel
Texas Department of
Criminal Justice

Earliest possible date of adoption June 20, 1994

For further information, please call (512) 463-9693

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

## Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes new §19.1612 and proposes an amendment to §19.1807, concerning Texas Index for Level of Effort (TILE) assessments and rate setting methodology, in its Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter. The purpose for the new section and amendment is to propose corrective actions for unacceptably high error rates on Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) forms submitted by nursing facilities to DHS's Utilization and Assessment Review staff.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal section 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 reduction in errors and improved accountability of nursing facilities for the information submitted on the CARE forms. 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 Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-113, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

## Subchapter Q. Medical Review and Re-evaluation

### • 40 TAC §19.1612

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§32.001-32.042.

*§19.1612 Texas Index for Level of Effort (TILE) Assessments*

(a) Recipient assessment Facility nurse assessors assess recipients for TILE determination by completing Texas Nursing Facility CARE forms These assessments establish TILE classifications as described in paragraphs 1-8 of this subsection Effective January 1, 1995, nurse assessors must have completed a Texas Department of Human Services (DHS) TILE training course and must be registered with the National Heritage Insurance Company (NHIC)

(1) Preadmission assessments (Purpose Code 1 and Purpose Code P) do not establish a TILE classification

(2) Admissions assessments establish TILE classifications as follows

(A) If the resident has not previously attained a permanent medical necessity, the nurse assessor submits an admission assessment (Purpose Code 2) within 20 calendar days of admission, as provided in §19 1603 of this title (relating to Definition of the Review Process) The admission assessment establishes a medical necessity and a TILE classification for 120 days

(B) If the resident has previously attained a permanent medical necessity, the admission assessment is completed on an abbreviated form (Purpose Code 4) which sets TILE only

(3) One medical necessity review (MNR) (Purpose Code 3) is required 120 days after the effective date of the admission assessment (Purpose Code 2) If the MNR indicates a medical necessity for nursing facility care, the MN becomes permanent The MNR may also establish a new TILE classification

(4) After the establishment of permanent MN TILE assessments (Purpose Code 4) are required every 180 days, except on TILE level 211 Residents with a permanent MN and a 211 TILE require no further assessments unless there is a change in their condition

(5) If a recipient's medical condition deteriorates to the extent that he qualifies for a different TILE, the provider may submit an off-cycle assessment (Purpose Code R) if permanent medical necessity has been achieved However, only two off-cycle assessments for any one recipient are permitted per year, one for the period from January through June and one from July through December Purpose Code R must be used for all off-cycle assessments, including those that occur when an individual returns from a hospital The assessment sets a new schedule for submission of forms

(6) A CARE form may be submitted for the purpose of allowing a provider to correct errors previously made in the assessment portion of the forms (Purpose Code U, Items 30,31, and 50-99). This does not change the schedule for submission of forms or necessarily change the TILE group. Purpose Code U corrections must be submitted within 60 days from the date of assessment Request for Purpose Code U changes after the 60 days will not be accepted

(7) If a recipient experiences a significant change related to mental illness, mental retardation, and/or a related condition which indicates that the recipient might benefit from active treatment, an off-cycle request for a recipient PASARR review must be submitted to the DHS Long Term Care Regulatory Department using a CARE form (Purpose Code F)

(8) A facility may submit a request for retroactive payment (Purpose Code E) in the following instances

(A) when a facility provides care for a recipient for a period of time not covered by an effective MN determination at admission or by assessment (CARE) forms between reviews (see §19 1613 of this title (relating to Reconsideration of Medical Necessity Determination and Effective Dates)), or

(B) if a recipient is found to be otherwise eligible for Medicaid for the three months prior to the month of his date of application for Medicaid assistance (see §19 1608 of this title (relating to Retroactive Medical Necessity Determinations))

(b) Review and appeal of case-mix assessments DHS nurse reviewers conduct desk reviews and in-depth, on-site reviews of samples of Texas Nursing Facility CARE forms completed by providers to verify TILE and medical necessity information

(1) When a DHS nurse reviewer determines that the TILE classification or permanent medical necessity determination is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and proposed corrections with facility staff and make appropriate corrections The facility administrator will be notified of TILE changes by certified mail or by FAX

(A) DHS recoups funds previously paid to the provider under incorrect TILE classification DHS pays the nursing facility any increase due to a change in TILE classification

(B) The change in TILE classification and per diem rate is effective retroactively to the "effective date" of the assessment reviewed.

(C) The change in medical necessity determination is effective on the date of the review. If discharge results, the procedures in §19 302 of this title (relating to Transfer and Discharge) must be followed.

(2) If a DHS nurse reviewer and a facility nurse assessor are unable to agree about an assessment, the facility nurse assessor requests an informal review by a DHS nurse supervisor. If the provider disagrees with the findings of the nurse supervisor, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q, of this title (relating to Contract Appeals Process) by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O Box 149030, Austin, Texas 78714-9030 The TILE classification and associated per diem rate specified by the DHS nurse reviewer remain in effect during any period of informal review or formal contract appeal If the informal review or contract appeal process establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively

(3) DHS nurse reviewers notify administrators in advance of their on-site visits regarding the recipients whose medical records will be reviewed, the time period covered by the review, the parts of the record to be reviewed, and the accommodations necessary for the review. If the nurse reviewers are prevented from conducting the review, TILE rates on the recipients chosen for review will be lowered to the default TILE rate until the review can be accomplished

(c) Monitoring. DHS may impose a monitoring period for facilities whose TILE error rates DHS has determined are unacceptable

(1) During the monitoring period, facilities must submit all Texas Nursing Facility CARE Forms to DHS nurse reviewers Forms may not be submitted to the National Heritage Insurance Company (NHIC) either electronically or by mail

(2) The length of the monitoring period is 60 days A one-time, 30-day extension may be added, if errors are not reduced to an acceptable level If forms are not accurate at the end of 90 days, DHS takes action as outlined in §19 2207 of this title (relating to Administrative Contract Violations)

(d) Compliance

(1) DHS may impose a 30-day compliance period, as outlined in §19.2207 of this title (relating to Administrative Contract Violations), on a facility with a high error rate on the current review and one of the following:

(A) an unacceptable level of improvement by the end of a monitoring period;

(B) lack of documentation regarding key assessment items;

(C) a history of noncompliance;

(D) medical records which contain alterations in areas designed to lower the TILE level and increase the payment.

(2) New assessment forms on all recipients not in the original review must be submitted to DHS nurse reviewers. Facilities may not submit forms to NHIC electronically or by mail.

(3) The facility nurse assessor must attend a DHS TILE training course within 60 days of the beginning of the compliance period.

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

**Issued in Austin, Texas, on May 12, 1994.**

TRD-9440789 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

**Proposed date of adoption: September 15, 1994**

**For further information, please call: (512) 450-3765**

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## Subchapter S. Reimbursement Methodology for Nursing Facilities

### • 40 TAC §19.1807

**The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.**

**The amendment implements the Human Resources Code, §§32.001-32.042.**

*§19.1807. Rate Setting Methodology.*

(a) (No change.)

(b) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under provisions of the Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). The Texas Board of Human Services determines reimbursement rates for nursing facilities based on consideration of **Texas Department of Human Services (DHS)** staff recommendations. To develop reimbursement rate recommendations for nursing facilities, DHS staff apply the following procedures.

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

(4) Case-mix classification effective periods. The effective periods of case-mix classifications are defined as follows.

(A) A recipient's case-mix classification and associated per diem rate payment remain in effect until the recipient's next required **assessment** [continued stay review], unless one of the following events **takes** [take] place:

(i) a provider submits an off-cycle assessment (Purpose Code R) as specified in §19.1612(a)(4) **of this title (relating to Texas Index for Level of Effort (TILE) Assessments)** [paragraph (6)(D) of this subsection];

(ii) a DHS nurse reviewer revises the recipient's assessment and TILE classification under the provisions of **§19.1612(b) of this title (relating to Texas Index for Level of Effort (TILE) Assessments** [paragraph (7) of this subsection];

(iii) the recipient is discharged from the Medicaid nursing facility vendor payment system for more than 30 days **prior to receiving a permanent medical necessity determination**.

(B) (No change.)

(5) (No change.)

[(6) Recipient assessment. Facility nurse assessors assess recipients for TILE determination by completing CARE forms. These assessments establish TILE classifications as follows.

[(A) Preadmission assessments (Purpose Code 1 and Purpose Code P) do not establish a TILE classification.

[(B) Admissions assessments establish TILE classifications as follows:

[(i) If the resident has not previously attained a permanent medical necessity, the nurse assessor submits an admission assessment (Purpose Code 2) within 20 calendar days of admission, as provided in §19.1603 (relating to Definition of the Review Process). The admission assessment establishes a medical necessity and a TILE classification for 120 days

[(ii) If the resident has previously attained a permanent medical necessity, the admission assessment is completed on an abbreviated form (Purpose Code 4) which sets TILE only

[(C) One medical necessity review (MNR) (Purpose Code 3) is required 120 days after the effective date of the admission assessment (Purpose Code 2) If the MNR indicates a medical necessity for nursing facility care, the MN becomes permanent. The MNR may also establish a new TILE classification.

[(D) After the establishment of permanent MN, TILE assessments (Purpose Code 4) are required every 180 days, except on TILE level 211 Residents with a permanent MN and a 211 TILE require no further assessments unless there is a change in their condition.

[(E) If a recipient's medical condition deteriorates to the extent that he qualifies for a different TILE, the provider may submit an off-cycle assessment (Purpose Code R) if permanent medical necessity has been achieved. However, only two off-cycle assessments for any one recipient are permitted per year, one for the period from January through June and one from July through December. Purpose Code R must be used for all off-cycle assessments, including those that occur when an individual returns from a hospital. The assessment sets a new schedule for submission of forms.

[(F) A CARE form may be submitted for the purpose of allowing a provider to correct errors previously made in the assessment portion of the forms (Purpose Code U). (Items 30, 31, and 50-99) This does not change the schedule for submission of forms or necessarily change the TILE group. Purpose Code U corrections must be submitted within 60 days from the date of assessment Request for Purpose Code U changes after the 60 days will not be accepted

[(G) If a recipient experiences a significant change related to mental illness, mental retardation, and/or a related condition which indicates that the recipient might benefit from active treatment, an off-

cycle request for a recipient PASARR review must be submitted to the DHS Long Term Care Regulatory Department using a CARE form (Purpose Code F).

[(H) A facility may submit a request for retroactive payment (Purpose Code E) in the following instances

[(i) when a facility provides care for a recipient for a period of time not covered by an effective MN determination at admission or by assessment (CARE) forms between reviews (see §19.1613 of this title (relating to Reconsideration of Medical Necessity Determination and Effective Dates)); or

[(ii) if a recipient is found to be otherwise eligible for Medicaid for the three months prior to the month of his date of application for Medicaid assistance (see §19.1608 of this title (relating to Retroactive Medical Necessity Determinations))

[(7) Review and appeal of case-mix assessments DHS nurse reviewers conduct desk reviews and in-depth, on-site reviews of samples of Texas Nursing Facility CARE forms completed by providers

[(A) When a DHS nurse reviewer identifies an error or an inconsistency on an assessment form, the reviewer will discuss the error with facility staff, and make appropriate corrections. TILE classification changes will be verbally presented at the time the changes are made The facility administrator will be notified of TILE changes by certified mail. If there is a reduction in the amount of Medicaid funds due the nursing facility, as a result of a change in the TILE classification, DHS shall recoup said funds previously paid to the provider under incorrect and/or erroneous TILE classification Similarly, any changes in the TILE classification that increases the amount of Medicaid funds due the nursing facility, DHS shall pay the nursing facility the increase The change in TILE classification and in the associated per diem rate becomes effective with the "effective date" of the assessment under review This change in TILE classification is made when the nurse reviewer determines that the TILE classification is not substantiated and/or does not accurately reflect the recipient's status. Changes can be made no further back than January 1, 1991, and remain in effect until a new assessment is submitted as specified in subsection (b)(6) of this section.

[(B) If a DHS nurse reviewer and a facility nurse assessor are unable to agree about an assessment, the facility nurse assessor requests an informal review by a DHS nurse supervisor If the provider disagrees with the findings of the nurse supervisor, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q, of this title (relating to Contract Appeals Process) by submitting a request to the Associate Commissioner for Legal Services, Mail Code W-615, Texas Department of Human Services, P O Box 149030, Austin, Texas 78714-9030 The TILE classification and associated per diem rate specified by the DHS nurse reviewer remain in effect during any period of informal review or formal contract appeal If the informal review or contract appeal process establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively ]

(c) -(e) (No change )

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

Issued in Austin, Texas, on May 12, 1994

TRD-9440790 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption. September 15, 1994

For further information, please call (512) 450-3765

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## Chapter 90. Nursing Facilities and Related Institutions

The Texas Department of Human Services (DHS) proposes amendments to §§90 11, 90.18, 90 42, 90 191, 90 212, 90 215, 90 232, and 90 233, concerning criteria for licensing, license fees, standards for facilities serving persons with mental retardation or related conditions, procedural requirements, incidents of abuse and neglect reportable to DHS by facilities, investigations of incidents and complaints, suspension, and revocation, in its Nursing Facilities and Related Institutions rule chapter

The purpose of the amendments is to incorporate into rules recent changes to Chapter 242 of the Health and Safety Code The changes include extending the duration of a license to two years, increasing the licensing fees, requiring additional notification to new employees regarding reporting abuse and neglect, and giving DHS discretion in the investigation of abuse and neglect In addition, DHS is changing time frames for requesting appeals from 20 to 15 days This ensures that formal hearing requirements for long term care facilities are the same as those applicable to other DHS formal appeals

Burton F Raiford, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments

Mr Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be compliance with the Health and Safety Code and consistency of DHS policies for formal hearings There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed amendments

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-002, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

### Subchapter B Application Procedures

### • 40 TAC §90.11, §90.18

The amendments are proposed under the Health and Safety Code, Chapter 242 which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services

The amendments implement the Health and Safety Code, §§242 001-242 186

*§90 11 Criteria for Licensing*

(a)-(d) (No change )

(e) A license is [shall be] issued to a facility which meets all requirements of this chapter and is [shall be] valid for **two years** [one year] Each license **specifies** [shall specify] the maximum allowable number of residents to be cared for at any one time No **more** [greater number of] residents **may** [shall] be kept at any one time than is authorized by the license

*§90 18 License Fees*

(a) Basic fees

(1) Initial and renewal license The license fee is [shall be] **$150** [$50] plus $5 [$2] for each unit of capacity or bed space for which a license is sought The fee must be paid with each initial application and [annually] with each application for renewal of the license

(2) Increase in bed space An approved increase in bed space is subject to an additional fee of **$5** [$2 00] for each unit of capacity or bed space

(3) Change of administrator or director A new facility administrator or director **must** [shall] submit an application

and a $20 fee to the Texas Department of Human Services **(DHS)** [(department)].

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, **DHS** [the department] has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D

(2) **DHS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapters 242 and 247, each calendar year if the amount of the nursing and convalescent trust fund is less than $100,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide $100, 000 in the trust fund. In calculating the fee, the amount must be rounded to the next whole cent.** [The trust fund will be established by charging and collecting an annual fee from each facility licensed under Health and Safety Code, Chapters 242 and 247. All facilities licensed as of May 1 of each year will be charged with a fee established by the department. The fee will be based on a monetary amount specified for each unit of capacity or bed space licensed. The initial amount will be calculated so as to establish a fund of $100,000; each subsequent May 1, an annual amount will be determined by the department that will cause the unencumbered balance of the fund to equal $100, 000 based on the licensed facilities as of that May 1. In calculating the fee, the amount will be rounded to the next whole cent.]

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter K of this chapter (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) **must** [shall] pay an annual fee of $100

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 16, 1994.

TRD-9440939 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

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For further information, please call: (512) 450-3765

## Subchapter C. Standards for Licensure

### • 40 TAC §90.42

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

*§90.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.*

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

(e) Additional requirements

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents which involve or affect residents. These policies and procedures **must** [shall] include the following provisions.

(A) An investigation and report **must be** [shall be] completed which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, accidents, or unusual incidents **must** [shall] be reported to the resident's responsible parties and to the department.

(B) Allegations of abuse, neglect, or other mistreatment of residents must [shall] be reported **to the Texas Department of Human Services, PASARR/ICF-MR/RC Department, Long Term Care-Regulatory, at (512) 834-6671, during normal workday hours. Incidents occurring after 5:00 p.m., on weekends, and holidays are reported regardless of day or hour by calling 1-800-292-2065** [in accordance with Subchapter G of this chapter (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations)].

(2) In the area of behavior management, seclusion of residents **may** [shall] not be used. Seclusion is defined as placement of a resident in a room without staff present from which egress is prevented by a locked door

(3) (No change.)

(4) In the area of pharmacy services, the following applies

(A) All pharmacy services **must comply** [shall be in compliance] with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

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

(5) (No change)

(6) In the area of administration of medication, the following applies

(A) (No change.)

(B) Residents who have demonstrated the competency for self-administration of medications **may** [shall] have access to and maintain their own medications. They **may** [shall] have an individual storage space that permits them to store their medications under lock and key.

(C) Residents may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication habilitation training program **must** [shall] have training in coordination with and as part of the resident's total active treatment program. The resident's training plan **must** [shall] be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication habilitation program may be conducted by nonlicensed personnel and is not limited to personnel who have completed an approved training program in medication administration

(7) In the area of communicable diseases, the facility **must** [shall] have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility **must** [shall] report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in §§97 1-97 13 of this title (relating to Control of Communicable Diseases) and §§97.131-97.136 of this title (relating to Sexually Transmitted Diseases) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his [/her] duties The facility **must** [shall] have written policies and procedures for infection

control, which include implementation of universal precautions as recommended by the Centers for Disease Control (CDC).

(8) (No change.)

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

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TRD-9440938 Nancy Murphy
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Texas Department of Human Services

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For further information, please call: (512) 450-3765

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## Subchapter F. Inspections, Surveys, and Visits

### • 40 TAC §90.191

The amendment is proposed under the Health and Safety Code, Chapter 242 which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

*§90.191 Procedural Requirements.*

(a) Texas Department of Human Services **(DHS)** [(department)] inspection and survey personnel **must** [will] perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b)-(c) (No change.)

(d) With respect to being unannounced or announced, inspections, surveys, and other visits **must** [shall] meet the following

(1) All inspections, surveys, and other visits that are routine in nature and that are made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility **must** [will] be unannounced, any exceptions must be justified

(2) Call-back visits **must** [will] be unannounced, although it is recognized that the schedule of a call-back visit often relates to a date of correction made known to or by a facility in advance; any exceptions must be justified.

(3) Any nonroutine or special inspection, survey, and other visit involving that appropriateness of some aspect of resident care **must** [will] be unannounced unless particular circumstances justify otherwise.

(4) Complaint investigations **must** [will] be unannounced.

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

(e) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection **(f)** [(g)] of this section;

(2) representatives of the Texas Department **on** [of] Aging serving as ombudsmen or authorized to attend or participate in inspections;

(3) (No change.)

(4) representatives of **DHS** [the Texas Department of Human Services] whose programs relate to the Medicare/Medicaid long term care program

(f) **DHS must** [The department will] conduct at least two unannounced inspections **each licensing period** [per year] of each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection.

(1) [The 12-month period beginning on October 1 of each year and ending on September 30 of the following year will be considered the annual period during which at least two unannounced inspections will be made of each licensed institution.] A sufficient number of [additional] inspections **must** [will] be conducted between the hours of 5:00 p.m and 8:00 a.m. In randomly selected institutions, a cursory after-hours inspection **must** [will] be conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents **must** [shall] be minimal

(2) For at least two unannounced inspections each **licensing period** [year of an institution other than one that provides maternity care], **DHS must** [the department will] invite to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly **DHS must** [The department will] provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections **must** [shall] follow all **DHS** protocols [of the department]. Advocates **must** [will] provide their own transportation. The schedule of inspections in this category **must** [will] be arranged confidentially in advance with the organizations. Acceptance of the invitation or participation by the advocates is not a condition precedent to conducting the inspection.

(g) The facility **must** [shall] make all of its books, records, and other documents maintained by or on behalf of a facility accessible to **DHS** [the department] upon request.

(1) **DHS** [The department] is authorized to photocopy documents, photograph residents, and use any other available **recording** [recordation] devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that **DHS** [the department] reasonably believes threaten the health and safety of a resident.

(2) (No change.)

(3) When the facility is requested to furnish the copies, the facility may charge DHS [the department] at a [the] rate not to exceed the rate charged by **DHS** [the department] for copies. The procedure of copying is [will be] the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility **is** [will be] expected to accompany the records and assure their order and preservation.

(4) **DHS protects** [The department will protect] the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and **DHS** [department] policy.

(h) **DHS must** [The department shall] provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At **DHS's** [the department's] discretion, based on record review, random sample, or any other determination, **DHS** [the department] may assign a team to conduct a validation survey **DHS** [The department] may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state

(2) Facilities **are** [will be] required to correct any additional deficiencies cited by the validation team but **are not** [will not be] subject to any new or additional punitive action

**This agency hereby certifies that the proposal has been reviewed by legal counsel and**

found to be within the agency's authority to adopt.

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TRD-9440937 Nancy Murphy
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Texas Department of Human Services

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For further information, please call (512) 450-3765

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## Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

### • 40 TAC §90.212, §90. 215

The amendments are proposed under the Health and Safety Code, Chapter 242 which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services

The amendments implement the Health and Safety Code, §§242 001 242 186

*§90.212 Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities*

(a) (No change )

(b) Each employee of a facility must sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuses **and that the employee understands his rights under the Texas Health and Safety Code, §242.133, such as that the employee has a cause of action against a facility, its owner(s), or employees if he is suspended, terminated, disciplined, or discriminated against as a result of reporting abuse or neglect of a resident**. These statements must be available for inspection by the Texas Department of Human Services **(DHS)** [(department)]

(c) **Reports of abuse or neglect are to be made to DHS's state office at (512) 834-6778. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect. A written investigation report must be sent no later than the fifth calendar day after the oral report.** [Oral reports of abuse or neglect must be made immediately to the department No later than five days after the oral report is made, a written report shall be filed with the department ]

*§90 215 Investigations of Incidents and Complaints*

(a) In accordance with the memorandum of understanding which is adopted by reference in **Title 25, Texas Administrative Code** [TAC], **§111.1** of this title (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), the Texas Department of Human Services (department) will receive and investigate report of abuse, neglect, and exploitation of persons **who are elderly and persons with disabilities** [disabled persons] or **other residents living** [residing] in facilities licensed under this chapter.

(b)-(g) (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 16, 1994

TRD-9440936 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption July 1, 1994

For further information, please call (512) 450-3765

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## Subchapter H. Enforcement

### • 40 TAC §90.232, §90.233

The amendments are proposed under the Health and Safety Code, Chapter 242 which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services

The amendments implement the Health and Safety Code, §§242 001 242 186

*§90 232 Suspension*

(a)-(b) (No change )

(c) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to suspend the license The facility shall have **15** [20] days from receiving the certified mail notice within which to request a hearing, in accordance with §90 238 of this title (relating to Administrative Hearings)

(d) (No change )

*§90 233 Revocation*

(a)-(c) (No change )

(d) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to revoke a license. The facility shall have **15** [20] days from receiving the certified mail notice within which to request a hearing, in accordance with §90 238 of this title (relating to Administrative Hearings)

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-9440935 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

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For further information, please call: (512) 450-3765

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# Chapter 92. Personal Care Facilities

## Subchapter C. Standards for Licensure

### • 40 TAC §92.41

The Texas Department of Human Services (DHS) proposes an amendment to §92.41, concerning standards for personal care facilities, in its Personal Care Facilities rule chapter The purpose for the amendment is to clarify staffing requirements on the night shift in personal care facilities

Burton F Raiford, commissioner, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment

Mr Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be clearer rules concerning the availability of staff to care for residents of personal care facilities during the night shift. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed amendment

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-041, 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 Health and Safety Code, Chapter 247 which provides the department with the authority to regulate personal care facilities, Chapter 22

of the Human Resources Code, and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§247.001-247.066

*§92.41 Standards for Personal Care Facilities*

(a) Staffing

(1) (No change.)

(2) Attendants

(A) (No change.)

(B) The [following] staff-resident **ratios** [ratio] **described in this subparagraph must** [shall] be maintained in a Type A or Type B facility. [The shift time designations in this section are for illustration purposes only.] The facility management has the authority to use other shift designations to define day, evening, and night shift start and end times.

(i) **day** [7 a.m.-3 p.m.] = 1 to 15,

(ii) **evening** [3 p.m.-11 p.m.] = 1 to 20, and

(iii) **night** [11 p.m.-7 a.m.] = 1 to 40.[,]

(I) Type A facility. **Night shift** [11 p.m.-7 a.m.] staff in a 40 or **fewer** [less] licensed bed capacity facility **must** [only needs to] be immediately available. In a 41+ licensed bed capacity facility, the staff must be **immediately available and** awake.[, and]

(II) Type B facility. **Night shift** [11 p.m.-7 a.m.] staff must be **immediately available and** awake, regardless of the number of licensed beds.[; and]

[(iv) when the time schedules and staff-resident ratios described in clauses (i)-(iii) of this subparagraph result in all residents being away from the facility, an attendant in the facility is not required.]

(C) (No change.)

(b)-(i) (No change.)

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

Issued in Austin, Texas, on May 16, 1994

TRD 9440930 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

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For further information, please call: (512) 450-3765

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The Texas Department of Human Services (DHS) proposes amendments to §§92.102, 92.105, 92.152, and 92.153, concerning incidents of abuse and neglect reportable to DHS by facilities, investigation of incidents and complaints, and suspension and revocation of licenses, in its Personal Care Facilities rule chapter.

The purpose of the amendments is to clarify the process for reporting abuse and neglect and that DHS is responsible for investigating those reports. In addition, DHS is changing timeframes for requesting appeals from 20 to 15 days. This ensures that formal hearing requirements for long-term care facilities are the same as those applicable to other DHS formal appeals.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be improved reporting and investigating of abuse and neglect and consistency of DHS policies for formal hearings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-002, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## Subchapter F. Abuse, Neglect, and Exploitations; Complaint and Incident Reports and Investigations

### • 40 TAC §92.102, §92.105

The amendments are proposed under the Health and Safety Code, Chapter 247 which provides the department with the authority to regulate personal care facilities, Chapter 22 of the Human Resources Code, and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§247.001-247.066

*§92.102. Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services by Facilities.*

(a) Any facility staff who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person **must** [shall] report the abuse or neglect.

(b) Each employee of a facility must sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuses. These statements must be available for inspection by the Texas Department of Human Services **(DHS)** [(department)].

(c) **Reports of abuse or neglect are to be made to DHS's state office at (512) 834-6778. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect. A written investigation must be sent no later than the fifth calendar day after the oral report.** [Oral reports of abuse or neglect must be made immediately to the department. No later than 5 days after the oral report is made, a written report shall be filed with the department.]

*§92.105 Investigations of Incidents and Complaints*

(a) In accordance with the memorandum of understanding which is adopted by reference in 25 TAC §111.1 (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), the Texas Department of Human Services **(DHS) receives and investigates** [(department) will receive and investigate] reports of abuse, neglect, and exploitation of elderly and disabled persons **or other residents** living [residing] in facilities licensed under this chapter.

(b) **DHS only investigates** [The department will only investigate] complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the [such] licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria **must** [will] be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If **DHS** [the department] determines that, for protection of the resident from further abuse or neglect, the resident should be removed from the facility, **DHS must** [the department will] petition a court for temporary care and protection of the resident

(d) Complaint investigations **may** [shall] include a visit [or visits] to the **resident's** [resident and the] facility and an interview with the resident, **if DHS determines that these actions are appropriate**. If the facility fails to admit **DHS** [department] staff for a **complaint investigation** [such investigations], **DHS** [the department] will seek a probate or county court order for admission

(e) Investigations of reports do not exonerate facilities, **which** [who] may still be subject to the provisions of Subchapter H of this chapter (relating to Enforcement).

(f) (No change.)

(g) In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation by **DHS** [the department], along with its recommendations, **must** [shall] be submitted to the appropriate district attorney and law enforcement agency, as well as to the appropriate state agencies, upon request The investigation **must** [shall] include:

(1) the nature, extent and cause of **the** [such] abuse or neglect,

(2)-(5) (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 16, 1994.

TRD-9440934 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

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For further information, please call: (512) 450-3765

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## Subchapter H. Enforcement

### • 40 TAC §92.152, §92.153

The amendments are proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §242 061

*§92 152 Suspension*

(a) When a serious violation occurs or when a series of violations occur such that the event or series of events may (or could) jeopardize the health and safety of residents, the Texas Department of Human Services (**DHS**) [(department)] may suspend the license

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to **DHS** [the department].

(c) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of TDHS's [the department's] intent to suspend the license. The facility **has 15** [shall have 20] days from receiving the certified mail notice within which to request a hearing, in accordance with §92.156 of this title (relating to Administrative Hearings).

(d) If **DHS** [the department] suspends a license, the suspension **remains** [shall remain] in effect until **DHS** [the department] determines that the reason for suspension no longer exists. **DHS conducts** [The department shall conduct] an on-site investigation prior to making a determination. During the time of suspension, the suspended licensee **must** [shall] return the license to **DHS** [the department].

*§92.153. Revocation.*

(a) When a serious violation occurs, such that the health and safety of residents is jeopardized, the Texas Department of Human Services (**DHS**) [(department)] may revoke the license.

(b) **DHS** [The department] may revoke a license if the licensee:

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

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to **DHS** [the department].

(d) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of **DHS's** [the department's] intent to revoke a license. The facility **has 15** [shall have 20] days from receiving the certified mail notice within which to request a hearing, in accordance with §92.156 of this title (relating to Administrative Hearings).

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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## Chapter 96. Certification of Long-Term Care Facilities

### • 40 TAC §96.7

The Texas Department of Human Services (DHS) proposes an amendment to §96.7, concerning appeals, in its Certification of Long-Term Care Facilities rule chapter. The purpose of the amendment is to state that facilities desiring a formal appeal must make the appeal to DHS in writing within 15 days after the effective date of the action. The amendment also states that the failure to request a formal hearing within the 15 days constitutes a waiver of the right to a hearing. The amendment ensures that formal hearing requirements for long-term care facilities are the same as those applicable to other DHS formal appeals.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be consistency of DHS policies for formal hearings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-002, 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, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

*§96.7. Appeals.*

(a) (No change.)

(b) Formal hearing for all facilities.

(1) (No change.)

(2) A facility desiring a formal hearing **must** [shall] make a request to the department, in writing, within 15 [20] days **after the facility receives the department's official notice** [effective date] of the action. Upon receipt of the request, the department will notify the department's Office of General Counsel to institute formal hearing pro-

cedures. Failure of the facility to request a formal hearing within the **15** [20] days **constitutes** [shall constitute] a waiver of the right to a [such] hearing

(3) (No change.)

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

Issued in Austin, Texas, on May 16, 1994

TRD-9440932 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption July 1, 1994

For further information, please call. (512) 450-3765

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## Chapter 98. Adult Day Care and Adult Day Health Care Facilities

## Subchapter F. Enforcement

### • 40 TAC §98.102, §98.103

The Texas Department of Human Services (DHS) proposes amendments to §98 102 and §98 103, concerning suspension and revocation, in its Adult Day Care and Adult Day Health Care Facilities rule chapter The purpose of the amendments is to state that facilities must request a formal hearing within 15 days from receiving notice of DHS's intent to suspend a license. The amendments ensure that formal hearing requirements for long term-care facilities are the same as those applicable to other DHS formal appeals

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments

Mr Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be consistency of DHS policies for formal hearings There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed amendments

Questions about the content of the proposal may be directed to Susan Syler at (512) 450 3111 in DHS's Institutional Policy Section Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-002, 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 amendments are proposed under the Human Resources Code Chapter 103, which provides the department with the authority to regulate adult day care facilities and under Texas Civil Statutes Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Human Resources Code, §§103 001-103 011

*§98 102. Suspension.*

(a) When a serious violation occurs or when a series of violations occur such that the event or series of events may (or could) jeopardize the health and safety of recipients, the Texas Department of Human Services **(DHS)** [(department)] may suspend the license

(b) The facility will be notified by certified mail of **DHS's** [the department's] intent to suspend the license. The facility **has 15** [shall have 20] days from receiving the certified mail notice within which to request a hearing, in accordance with §98.104 of this title (relating to Administrative Hearings)

(c) If **DHS** [the department] suspends a license, the suspension **remains** [shall remain] in effect until **DHS** [the department] determines that the reason for suspension no longer exists. **DHS conducts** [The department shall conduct] an on-site investigation prior to making a determination. During the time of suspension, the suspended licensee **must** [shall] return the license to **DHS** [the department]

*§98 103 Revocation*

(a) When a serious violation occurs, such that the health and safety of clients is jeopardized, the Texas Department of Human Services **(DHS)** [(department)] may revoke the license

(b) **DHS** [The department] may revoke a license if the licensee

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

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to **DHS** [the department]

(d) The facility will be notified by certified mail of **DHS's** [the department's] intent to revoke a license The facility **has 15** [shall have 20] days from receiving the certified mail notice within which to request a hearing, in accordance with §98 104 of this title (relating to Administrative Hearings)

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 16, 1994

TRD-9440931 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption. July 1, 1994

For further information, please call (512) 450-3765

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# Part IV. Texas Commission for the Blind

## Chapter 163. Vocational Rehabilitation Program

### • 40 TAC §163.30

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

The Texas Commission for the Blind proposes the repeal of §163.30, concerning the order of selection for payment of services during times of limited funding. To meet federal regulations, the agency is eliminating the category within the rule that refers to payment for services to persons who are in imminent danger of blindness. A new rule is being simultaneously proposed that conforms to the agency's federal state plan and assures that those individuals with the most severe disabilities are selected for service before other individuals with disabilities The new rule also contains other editorial changes for clarity.

Pat D Westbrook, Executive Director, has determined that for the first five years the repeal is in effect there will be no fiscal implications for state government as a result of enforcing or administering the repeal. The fiscal implication on local government as a result of the repeal is unknown because of varying local policies and rules for accessing local assistance and varying levels of available community resources.

Mr Westbrook also has determined that for each year of the first five years the repeal as proposed is in effect the public benefits anticipated as a result of the proposed repeal will be a new systematic approach to assuring, in times of limited funding, that persons with the most severe visual disabilities are given priority in receiving services that result in employment and the ability to live independently There will be no effect on small businesses The anticipated economic cost to persons who may be affected by the repeal as proposed will be determined by the availability of comparable resources in the community for medical care of persons who have potentially blinding conditions but who do not as yet have a visual disability Some services may no longer be available to a person if the person falls outside the new order of selection under which the agency will be operating and comparable resources cannot be found

Comments on the proposal may be submitted to Jean Wakefield, Policy and Rules Coordinator, P O Box 12866, Austin, Texas 78711 The closing date for comments is 30 days from the date of this publication

The repeal is proposed under the Human Resources Code, Title 5, Chapter 91, Subchapter B, §90.011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code 701 et seq, §101(a)(5)(A) of the Rehabilitation Act of 1973, as amended, which authorizes the agency to operate with an order of selection in the event that vocational rehabilitation services Commission in the administration of its programs, and 29 United States Code 701 et seq, §101(a)(5)(A) of the Rehabilitation Act of 1973, as amended, which authorizes the agency to operate with an order of selection in the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services.

The Human Resources Code, Chapter 91, Subchapter D, §91 052 and §91 053 are affected by this proposed repeal

*§163.30. Order of Selection for Payment 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 9, 1994

TRD-9440733 Pat D Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption June 20, 1994

For further information, please call. (512) 459-2611

The Texas Commission for the Blind proposes new §163 30, concerning the order of selection for payment of services during times of limited funding. To meet federal regulations, the agency must assure that those individuals with the most severe disabilities are selected for service before other individuals with disabilities. The proposed rule assigns the priority to categories of visual disability for payment of services, specifies the visual acuity for each category, and gives the public a resource to inquire about the level within the order of selection at which the agency is operating during the year

Pat. D. Westbrook, executive director, has determined that for the first five years the rules are in effect there will be no fiscal implications on state government as a result of enforcing or administering the rule Mr Westbrook has determined that the fiscal implication on local government for the first five-year period the rule will be in effect is unknown because of varying local policies and rules for accessing local assistance and varying levels of community resources

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be a systematic approach to assuring, in times of limited funding, that persons with the most severe visual disabilities are given priority in receiving services that result in employment and the ability to live independently There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule. However, some services may not be available to a person if the person falls outside the order of selection level in which the agency will be operating at a given time The anticipated economic effect on persons who fall outside the order of selection will depend on the type of vocational rehabilitation service in question

Comments on the proposal may be submitted to Jean Wakefield, Policy and Rules Coordinator, P O Box 12866, Austin, Texas 78711 The closing date for comments is 30 days from the date of this publication

The new rule is proposed under the Human Resources Code, Title 5, Chapter 91, Subchapter B, §90 011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code 701 et seq, §101(a)(5)(A), of the Rehabilitation Act of 1973, as amended, which authorizes the agency to operate with an order of selection in the event that vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services.

The Human Resources Code, Chapter 91, Subchapter D, §91 052 and §91 053 are affected by this proposed new rule

*§163 30 Order of Selection for Payment of Services*

(a) An order of selection is the priority assigned to categories of visual disability for payment of services and is instituted during periods of limited funding to assure that the most severely visually disabled persons receive all services, or as many as possible, toward accomplishment of their vocational goals Priority categories are determined by the extend of visual loss and its impact on the individual's ability to work and live independently

(b) Eligibility for services is determined before applying the order of selection

(c) A service that can be paid from alternative resources will be provided to the consumer regardless of the order of selection

(d) A public safety officer whose visually disabling condition arises from a disability sustained in the line of duty will receive special consideration Public safety officers who are eligible for services may have them purchased even though they are not permanently totally or legally blind

(e) The expenditure level is established by the executive director and approved by the board based on the amount of funds available for purchase of services

(f) Expenditure categories, by priority from most restrictive to least restrictive, are

Figure: 1 TAC §163.30(f)

| Category | Expenditure | |
|---|---|---|
| A | No expenditure of case funds | |
| B | Expenditure of case service funds only for preliminary diagnostic studies | |
| C | Expenditure of case service funds only for thorough diagnostic studies | |
| D | Expenditure of case service funds authorized for any planned, necessary vocational rehabilitation service, according to specified sublevel by disability category with best corrected vision: | |
| | Priority | Disability Group |
| | 1 - most severely disabled | Totally and legally blind with or without secondary disabilities or functional limitations |
| | 2 - severely disabled | Blind in one eye, visually impaired other eye (between 20/70 and 20/200 or visual field of 30 degrees or less, but greater than 20 degrees) |
| | 3 - severely disabled | Visually impaired in both eyes (between 20/70 and 20/200 in both eyes or visual field of 30 degrees or less, but greater than 20 degrees) |
| | 4 - non-severely disabled | Blind in one eye, other eye good (better than 20/70) |
| | 5 - non-severely disabled | Both eyes good (better than 20/70 in both eyes) |

(g) Information on the order of selection and the expenditure level at which the agency is operating is available by writing the Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711, or by calling its toll-free line, 1-(800)-252-5204 (TDD and voice) between the hours of 8:00 a.m. and 5:00 p.m.

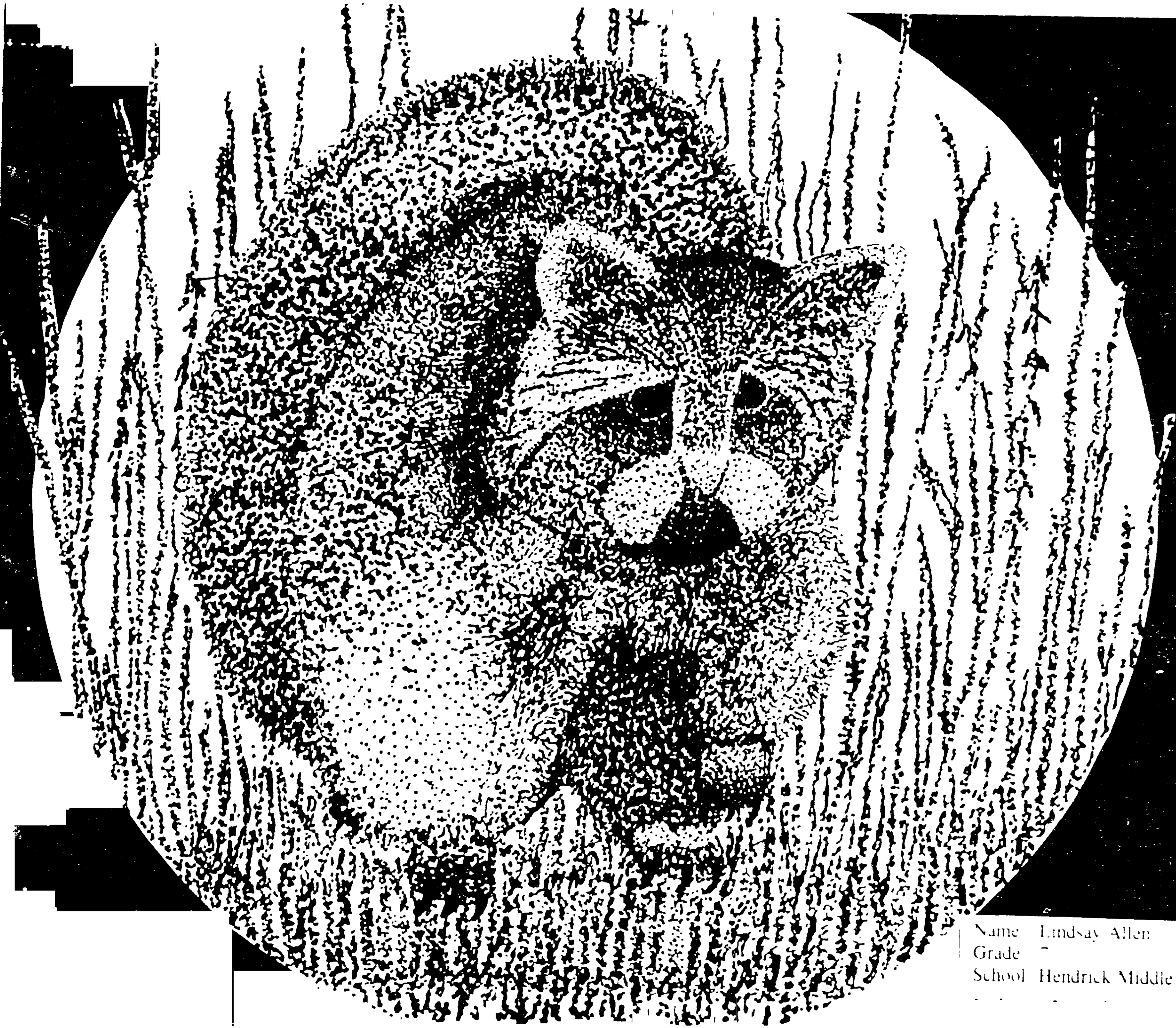
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 9, 1994.

TRD-9440957 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: June 20, 1994

For further information, please call: (512) 459-2611



Name Lindsay Allen
Grade 7
School Hendrick Middle School, Plano IS

# 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 10. COMMUNITY DEVELOPMENT

## Part V. Texas Department of Commerce

### Chapter 190. Procedures of the Board

**• 10 TAC §190.3, §190.8**

The Texas Department of Commerce adopts an amendment to §190.3 and new §190.8, concerning Procedures of the Board, without changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1533)

Section 190.3 clarifies that policy board members may submit items for inclusion in the policy board's meeting agenda

Section 190 8 describes how the public may petition the department for rules as authorized by Texas Government Code, §2001 21 The department is required to provide written notice to the petitioner of its decision to either initiate or deny a rulemaking proceeding

The rules are adopted under the authority of Texas Government Code, §481 0044(a), which authorizes the policy board to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A (as amended by Senate Bill 405, §29, 73rd Legislature), which provides the policy board with the authority to adopt necessary rules for the implementation and management of the job training program The rules are also adopted under the authority of the Administrative Procedure Act (Texas Government Code, Chapter 2001), which mandates the rulemaking procedures for state agencies

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

Issued in Austin, Texas, on May 13, 1994

TRD-9440907 Deborah C Kastrin
Executive Director
Texas Department of Commerce

Effective date June 6, 1994

Proposal publication date March 4, 1994

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

## TITLE 22. EXAMINING BOARDS

## Part XII. Board of Vocational Nurse Examiners

### Chapter 231. Administration

### General Provisions

**• 22 TAC §231.1**

The Board of Vocational Nurse Examiners adopts an amendment to §231.1, concerning Definitions, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2603)

This amendment was adopted to more clearly demonstrate what is considered a complete application.

No comments were received relative to the adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440891 Marjorie A Bronk, R N, M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

### Chapter 233. Education

### Operation of a Vocational Nursing Program

**• 22 TAC §233.21**

The Board of Vocational Nurse Examiners adopts the repeal of §233 21, concerning entitled Operation of a Vocational Nursing Program, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2604).

The adoption of this repeal allows the Board to adopt a new §233.21 in a different format and incorporate portions of another rule.

No comments were received relative to the repeal of this rule

The repeal is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440889 Marjorie A Bronk, R N, M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

The Board of Vocational Nurse Examiners adopts new §233.21, concerning Operation of a Vocational Nursing Program, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2604)

The rule was adopted to make information more clear and concise

One comment was received opposing language that was in the previous rule and being included in the new format

The new section is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440890

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date: June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext. 203

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## Vocational Nurse Education

### • 22 TAC §233.89

The Board of Vocational Nurse Examiners adopts the repeal of §233 89, concerning Vocational Nurse Education Records, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2605).

The rule was incorporated into §233 21.

No comments were received relative to the adoption of this repeal

The repeal is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440888

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date. June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Extension 203

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## Chapter 235. Licensing

## Application for Licensure

### • 22 TAC §§235.4, 235.9, 235.12

The Board of Vocational Nurse Examiners adopts new §§235 4, 235 9, and 235 12, concerning Application for Licensure, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2605)

The rules are adopted to comply with revisions of the Vocational Nurse Act effective September 1, 1993.

No comments were received relative to the adoption of these rules

The new sections are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440892

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

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## Chapter 235. Licensing

## Application for Licensure

### • 22 TAC §§235.7, 235.11, 235.13, 235.15, 235.16, 235.17, 235.18

The Board of Vocational Nurse Examiners adopts the amendments to §§235 7, 235 11 235 13, 235 15, 235 16, 235 17, and 235 18 concerning Application for Licensure Section 235 7 is adopted with changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2605). The section has been changed to read " be allowed to retake the examination within one year of graduation, allowing three opportunities." Sections 235 11, 235 13, 235 15-235 18 are adopted without changes and will not be republished

These rules are adopted to clarify the examination process

No comments were received relative to the adoption of these rules

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law

*§235 7 Graduates of Vocational Nursing Programs* Applicants who fail the national examination must submit reexamination and testing service applications and fees Applicants who fail the national examination will be allowed to retake the examination within one year of graduation, allowing three opportunities Applicants who do not successfully pass the national examination within one year of graduation must repeat the entire curricula

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 May 13, 1994

TRD-9440893

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

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### • [illegible] AC §§235.9, 235.10, 235.12

T[illegible]rd of Vocational Nurse Examiners [illegible]e repeal of §§235 9, 235 10, and [illegible]ncerning Application for Licensure, [illegible]anges to the proposed text as pub[illegible] the April 12, 1994 issue of the [illegible]ister (19 TexReg 2606)

The rules were repealed to allow for adoption of new rules under the[illegible] rule numbers

No comments were received relative to the adoption of these repeals

The repeals are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440894

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

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## Issuance of Licenses

### • 22 TAC §235.47, §235.48

The Board of Vocational Nurse Examiners adopts the repeal of §235 47 and §235 48, concerning Issuance of Licenses, without changes to the proposed text as published in the April 12 1994 issue of the *Texas Register* (19 TexReg 2606)

The adoption of these repeals allows for renumbering of rules and language changes

No comments were received relative to the adoption of these repeals

The repeals are adopted under Texas Civil Statutes, Article 4528c §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440896

Marjorie A Bronk, R N , M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date: June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext. 203

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### • 22 TAC §§235.47-235.49

The Board of Vocational Nurse Examiners adopts new §§235.47-235.49, concerning Issuance of Licenses, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2607)

The rules adopted to incorporate specific guidelines and extensive language changes

No comments were received relative to the adoption of these rules.

The new sections are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994

TRD-9440895 Marjorie A Bronk, R N, M S H P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date April 12, 1994

For further information, please call (512) 835-2071, Ext 203

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## Chapter 237 Continuing Education

## Continuing Education

### • 22 TAC §237.15

The Board of Vocational Nurse Examiners adopts the amendment to §237.15, concerning Continuing Education, without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2607).

The rule is adopted to comply with the revisions of the Vocational Nurse Act effective September 1, 1993

No comments were received relative to the adoption of this rule.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the 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 May 13, 1994.

TRD-9440897 Marjorie A. Bronk, R N, M S H.P
Executive Director
Board of Vocational Nurse Examiners

Effective date June 3, 1994

Proposal publication date: April 12, 1994

For further information, please call: (512) 835-2071, Extension 203

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# Part XV. Texas State Board of Pharmacy

## Chapter 281. General Provision

### • 22 TAC §281.74

The Texas State Board of Pharmacy adopts new §281.74 concerning Charges for Public Records, with one change to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2166) The change is to correct an error in submission and changes to clause (B)(i) of paragraph (1) to read "0.10 per page."

The rules implement the provisions of House Bill 1009 passed by the 73rd Texas Legislature which amended the Texas Open Records Act to require each state agency to specify, by rule, the charges the agency will make for copies of public records. This bill states that a state agency may establish a charge for a copy of a public record that is equal to the full cost to the agency in providing the copy This bill also requires the General Services Commission (GSC) to specify by rule the methods and procedures that a state agency may use in determining the amounts that the agency should charge to recover the full cost to the agency in providing copies of public records This section establishes the charges the agency will assess for copies of public records

No comments were received regarding adoption of the new section

The new section is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §16(a), which gives the Board authority to adopt rules for the proper administration and enforcement of the Texas Pharmacy Act and House Bill 1009-Chapter 428, Acts, 73rd Legislature, Regular Session (1993)

*§281 74 Charges for Public Records* In accordance with the Act, 73rd Legislature, Regular Session (1993), Chapter 428, §5, the following specifies the charges the Texas State Board of Pharmacy will make for copies of public records. These charges are based on the full cost to the agency for providing the copies

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

(A) 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 the paper on which an impression is made is counted as a single copy. A piece of paper printed on both sides is counted as two copies.

(B) Copy charge-A charge for costs incurred in copying standard-size paper copies reproduced by an office machine copier or a computer printer.

(C) Postage and shipping charge-A charge for costs incurred in sending information to a requestor, such as cost of postage, envelope, or long-distance phone call for facsimile transmission.

(D) Personnel Charge-A charge imposed for costs incurred for personnel time expended in processing a request for public information. This charge may include the time any employee spends reading/reviewing the initial request for records, making copies of records, conducting a file search, conducting a computer search, preparing and reviewing the response to the records request (administrative oversight/review), and any other type of personnel time necessary to respond to the request.

(E) Overhead Charge-A charge for direct and indirect costs incurred in addition to the personnel charge. This charge covers such costs as depreciation of capital assets, rent, maintenance and repair, and utilities

(F) Microfiche and microfilm charge-A charge for costs incurred for making a copy of microfiche or microfilm.

(G) Remote document retrieval charge-A charge for costs incurred in obtaining information not in current use in remote storage locations.

(H) Computer Resource Charge-A charge for costs incurred in obtaining information on computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources. This charge may also include programming time if a request requires a programmer to enter data in order to execute an existing program or create a new program so that requested information may be accessed.

(I) Readily Available Information-Information that is readily available may include any information that does not fall under the "Not Readily Available Information" defined as follows.

(J) Not Readily Available Information-Information that is not readily available includes information that requires

personnel to locate and retrieve a specific file, review the file to locate the record, and replace the file after the record has been located. Information that is not readily available also includes information that requires personnel review to determine if the information is what the requestor has asked for, or a review to determine if the records contain information confidential under the Texas Pharmacy Act or other law. Information that is not readily available includes, but is not limited to:

(i) information in pharmacist licensing files;

(ii) information in pharmacy licensing files;

(iii) information in compliance files;

(iv) information in adjudicative files;

(v) information in personnel files; and

(vi) information in the agency's computerized data base system.

(2) Charges.

(A) For one to 50 standard-size copies of readily available information, the charge shall be $0.10 per page.

(B) For 51 pages or more of readily available information, or any quantity of not readily available information, the charge shall be the sum of the following:

(i) $0.10 per page;

(ii) personnel charge in an amount reflecting the average hourly cost for classified state employees as determined from time to time by the General Services Commission;

(iii) overhead charge in an amount to be determined in accordance with the guidelines of the General Services Commission.

(iv) microfiche and microfilm charge (if applicable) in an amount equal to the actual cost to the agency of the reproduction, or in accordance with General Services Commission Guidelines;

(v) remote document retrieval charge (if applicable) in an amount equal to the actual cost to the agency of the retrieval or in accordance with General Services Commission Guidelines;

(vi) computer resource charge (if applicable), including any programming time, in an amount equal to the cost to the agency, or in accordance with General Services Commission Guidelines; and

(vii) actual cost of miscellaneous supplies (if applicable) in an amount equal to the actual cost to the agency.

(C) If a request for information may result in charges exceeding $100, the agency may require the requestor to make a deposit in the anticipated approximate amount of the charges, which may be applied to the costs incurred in responding to the request.

(D) If a particular request may involve considerable time and resources to process, the agency may advise the requesting party of what may be involved and provide an estimate of date of completion and the charges that may result

(E) The agency has the discretion to furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest.

(F) Nothing herein shall prevent the agency from charging for its publications, such as the Texas State Board of Pharmacy Law Reference Manual, or portions thereof

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 May 11, 1994

TRD-9440744 Fred S Brinkley, Jr., R Ph, M B A
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date. June 1, 1994

Proposal publication date March 29, 1994

For further information, please call (512) 832-0661

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## Chapter 283. Licensing Requirements

### • 22 TAC §283.2, §283.4

The Texas State Board of Pharmacy adopts amendments to §283 2 and §283 4 concerning Definitions and Internship Requirements Section 283.4 is adopted with changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2167). The change to §283 4 is the relettering of the subparagraphs under paragraph (1) to eliminate the inclusion of two subparagraphs (C). The subparagraphs should now be relettered (A)-(K). Section 283.2 is adopted without changes and will not be republished.

These rule amendments allow an out-of-state student in an approved out-of-state college of pharmacy program to be designated an intern while they are working in a Texas licensed facility and specify the requirements for an out-of-state college of pharmacy internship program to be an approved internship program in Texas No comments were received on the amendments The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §17(a), which gives the Board the authority to regulate the training, qualifictions, and employment of pharmacist-interns, and §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act

*§283 4 Internship Requirements*

(a)-(b) (No change)

(c) Colleges of Pharmacy Internship Programs

(1) Texas Colleges of Pharmacy Internship Programs

(A) The board shall review for approval Texas colleges of pharmacy internship programs on or before September 1 of each fiscal year The purpose of the board review will be to determine if such internship programs demonstrate that the competencies listed in subsection (a) of this section are capable of being met by each student completing the internship The board reserves the right to set conditions relating to the approval of such programs

(B) The Texas colleges of pharmacy shall determine through examinations that each student completing the college internship program meets the competencies listed in subsection (a) of this section

(C) A maximum of 500 hours of the total 1,500 hours internship experience requirement may be awarded to a student who is registered for and participates in a board-approved internship and who lacks more than 30 credit hours of work towards a professional degree in pharmacy Such student may not perform the duties of a pharmacist-intern as described in §283 5 of this title (relating to Pharmacist-Intern Duties) except in a pharmacy under the operation and control of a university that has a college or school of pharmacy, provided such student is under the direct supervision of a pharmacist licensed and in good standing with the board, who is a member of the faculty or staff of the respective college or school of pharmacy

(D) A student who is registered for and participates in a board-approved internship program at a Texas college of pharmacy and who is lacking no more than 30 credit hours of work towards a professional degree in pharmacy may be designated as a pharmacist-intern and may perform the duties of a pharmacist-intern as

described in §283.5 of this title (relating to Pharmacist-Intern Duties) in the presence of and under the direct supervision of a board-approved preceptor. Pharmacist-interns may perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties) only during times and in sites assigned by the respective colleges of pharmacy.

(E) Internship experience shall be gained under a pharmacist licensed by the board and approved as a preceptor by the board.

(F) All internship sites shall be approved by the board. Externship sites shall be pharmacies licensed and in good standing with the board

(G) Any individual having completed an internship program may no longer be designated a pharmacist-intern, except as provided in subsection (d) of this section.

(H) Prior to taking the licensure examination any applicant participating in a Texas college-based internship shall complete the requirements of such internship

(I) Pharmacist-interns completing a board-approved Texas college-based structured internship divided equitably among community, institutional, and clinical pharmacy practice will be awarded 1,500 hours of internship experience No credit shall be awarded for didactic experience

(J) If a Texas college of pharmacy determines through evaluation and examination that an individual student is competent in institutional practice, the college may petition the board to allow such student to substitute any or all of the institutional practice component of the internship with practical experience substantially related to the practice of pharmacy, such as practical experience in pharmaceutical manufacturing, nuclear pharmacy, or pharmacy administration

(K) If a Texas college of pharmacy determines through evaluation and examination that an individual student is competent in community practice, the college may petition the board to allow such student to substitute any or all of the community practice component of the internship with practical experience substantially related to the practice of pharmacy, such as practical experience in pharmaceutical manufacturing, nuclear pharmacy, or pharmacy administration.

(2) Other Colleges of Pharmacy Internship Programs.

(A) The board may designate as a pharmacist-intern a student enrolled in a College of Pharmacy not located in Texas if

(i) the professional degree program of the college of pharmacy has been accredited by ACPE and meets the requirements of the board

(ii) the board reviews the school-based structured internship program and determines that the program or part of the program to be completed in Texas is substantially equivalent to the Texas colleges of pharmacy internship programs approved by the board under paragraph (1) of this subsection,

(iii) during the time the student is working as a pharmacist-intern, the student is working in a pharmacy licensed in Texas under the supervision of a board approved preceptor, and

(iv) the pharmacist intern complies with the provisions of subsection (e) of this section and §283.5 of this title (relating to Pharmacist-Intern Duties)

(B) Internship experience earned in the program specified in subparagraph (A) of this paragraph shall not be reported to the board but may be reported to the board of pharmacy in the state in which the out-of-state college of pharmacy is located

(C) Internship experience earned in the program described in subparagraph (A) may be applied toward the internship hours requirement specified in subsection (b) of this section only if approved and certified to the board by the board of pharmacy in the state in which the college of pharmacy is located

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

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

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TRD-9440743 Fred S Brinkley, Jr, R Ph, M B A, Executive Director/Secretary, Texas State Board of Pharmacy

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For further information, please call (512) 832-0661

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# Chapter 291. Pharmacies

## Community Pharmacy (Class A)

### • 22 TAC §§291.31-291.36

The Texas State Board of Pharmacy adopts amendments to §§291.31-291.36 concerning Definitions, Personnel, Operational Standards, Records, Triplicate Prescription Requirements, and Class A Pharmacies Compounding Sterile Pharmaceuticals Section 291.33 and §291.35 are adopted with changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2168) The change to §291.33 was the addition of a new subparagraph (F) in 291.33(i)(3) in response to comments received The change to §291.35 was non-substantive change to §291.35(h)(6) to clarify the reference to another section of the rules Sections 291.31, 291.32, 291.34, and 291.36 are adopted without changes and will not be republished

These amendments implement recommendations from the Board's Ad Hoc Advisory Committee on Standards for Pharmacy Compounding which specify minimum standards for the compounding of non-sterile drug products in licensed pharmacies and make changes to the rules necessary to be consistent with changes made to the Texas Pharmacy Act, as amended by Senate Bill 472 passed by the 73rd Legislature

Two letters of comment were received The Texas Federation of Drug Stores (TFDS) suggested that §291.33(i)(3)(E) be amended so that the extensive documentation and recordkeeping required under this paragraph not be required for single simple compounding processes such as mixing two oral liquid cough syrups The Board agrees with this comment and has amended the paragraph by adding a new subparagraph (F) which requires a less extensive record for simple compounding processes

The Texas Pharmaceutical Association (TPA) made two suggestions regarding these rules

They suggested that "some form of clarification (in the regulation or through policy)" be adopted to indicate that the information requested to be placed on the back of the triplicate prescription in §291.35(e)(2)(C) could be placed on a label or some other piece of paper stapled to or affixed to the back of the prescription form" The Board agreed that this was a reasonable request and stated that since the rule requires that the information be recorded on the prescription form, the policy of the Agency is that the information may be written on the actual form or placed on a label or other piece of paper affixed or stapled to the back of the form

TPA also suggested that the words " . . but shall not solicit business by promoting to compound specific drug products," be removed from §291.33(2)(E) The Board disagreed with this comment because if this statement were removed pharmacists may believe that they can promote the compounding of specific products This would be misleading to the pharmacist Federal Policy and

**the Texas Pharmacy Act in the definition of "manufacturing" indicate that the promotion of specific products is a part of the manufacturing process and not a part of compounding within the practice of pharmacy.**

**The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1): §4, which specifies that the purpose of the Texas Pharmacy Act is to protect the public partly through the effective control and regulation of the practice of pharmacy; §5(38), which defines the term "Practice of Pharmacy" to include responsibility for compounding and labeling of drugs and devices; and §16(a), which gives Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.**

*§291.33. Operational Standards.*

(a) Licensing requirements.

(1)-(8) (No change.)

(9) A Class A (Community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.36 of this title (relating to Class A Pharmacies Compounding Sterile Pharmaceuticals).

(b) Environment.

(1) (No change.)

(2) Special Requirements for Non-Sterile Compounding.

(A) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products, including the placement of equipment and materials Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity which is adequate for safe and orderly compounding.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation

(C) A sink with hot and cold running water exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(D) If drug products which require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products, must be utilized in order to prevent cross-contamination.

(3) Security

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

(c) Prescription Dispensing and Delivery.

(1) (No change.)

(2) Prospective Drug Use Review

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

(3) (No change.)

(4) Labeling At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information

(A) -(J) (No change.)

(K) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, §40, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed,

(L) (No change.)

(M) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner

(i) The name shall be either

(I) (No change.)

(II) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label).

(ii) Except as provided in subparagraph (K) of this paragraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(d) Equipment and Supplies.

(1) Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies.

(A) typewriter or comparable equipment;

(B) refrigerator;

(C) adequate supply of child-resistant, light-resistant, and tight containers,

(D) adequate supply of prescription, poison, and other applicable labels,

(E) appropriate equipment necessary for the proper preparation of prescription drug orders, and

(F) metric-apothecary weight and measure conversion charts, and

(2) If the community pharmacy compounds prescription drug orders, the pharmacy shall

(A) have a Class A prescription balance, or analytical balance and weights which shall be properly maintained and inspected at least every three years by the appropriate authority as prescribed by local, state, or federal law or regulations; and

(B) have equipment and utensils necessary for the proper compounding of prescription drug orders Such equipment and utensils used in the compounding process shall be

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits,

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond acceptable stan[illegible],

(iii) cleaned and sanitized immediately prior to each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance

(e) (No change.)

(f) Drugs

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

(4) Drugs, Components, and Materials Used in Non-Sterile Compounding

(A) Drugs used in non-sterile compounding shall

(i) meet official compendia requirements, or

(ii) be of a chemical grade in one of the following categories:

(I) Chemically Pure (CP),

(II) Analytical Reagent (AR), or

(III) American Chemical Society (ACS), or

(iii) in the professional judgement of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources

(B) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures as defined in paragraph (1) of this subsection

(C) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity strength, quality, or purity of the compounded drug product beyond the desired result

(D) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first

(E) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product

(g)-(h) (No change.)

(i) Non-Sterile Compounding

(1) Purpose The purpose of this subsection is to provide standards for the compounding of non-sterile drug products in licensed pharmacies for dispensing and/or administration to humans or animals Licensed pharmacies compounding non-sterile drug products shall comply with the following paragraphs in addition to all other provisions of §§291 31-291 35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Triplicate Prescription Requirements)

(2) General Requirements

(A) Non-sterile drug products may be compounded in licensed pharmacies

(i) when there exists a valid pharmacist/patient/prescriber relationship and upon the presentation of a valid prescription drug order; or

(ii) in anticipation of future prescription drug orders based on routine, regularly observed prescribing patterns.

(B) Non-sterile compounding in anticipation of future prescription drug orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided, that in the pharmacist's professional judgement the quantity prepared is stable for the anticipated shelf time

(i) The pharmacist's professional judgement should be based on criteria such as:

(I) physical and chemical properties of active ingredients,

(II) use of preservatives and/or stabilizing agents,

(III) dosage form,

(IV) storage conditions, and

(V) scientific, laboratory, or reference data

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained with the non-sterile compounding record

(iii) Any product compounded in anticipation of future prescription drug orders shall be labeled Such label shall contain

(I) name and strength of the compounded medication or list of the active ingredients and strengths,

(II) facility's lot number,

(III) "use by" date as determined by the pharmacist using appropriate documented criteria as outlined in subparagraph (B)(i) of this paragraph; and

(IV) quantity or amount in the container.

(C) Commercially available drug products may be compounded for individual patients under the provisions of subparagraph (A) of this paragraph provided the prescribing practitioner has requested that the drug product be compounded;

(D) Drug products may be compounded for the exclusive use of the pharmacy where the products are compounded. Compounded drug products may not be distributed for resale, including distribution to pharmacies under common ownership or control, except that a practitioner may obtain compounded drug products for administration to patients, but not for dispensing. Products compounded for physician administration to patients shall be labeled. Such label shall contain:

(i) the statement: "For Office Use Only;"

(ii) name and strength of the compounded medication or list of the active ingredients and strengths;

(iii) facility's control number,

(iv) "use by" date as determined by the pharmacist using appropriate documented criteria as outlined in subparagraph (B)(i) of this paragraph; and

(v) quantity or amount in the container

(E) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, but shall not solicit business by promoting to compound specific drug products.

(3) Compounding Process.

(A) Any person with an apparent illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, drug product containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected.

(B) Personnel engaged in the compounding of drug products shall wear clean clothing appropriate to the operation being performed. Protective apparel, such as coats/jackets, aprons, hair nets, gowns, hand or arm coverings, or masks shall be worn as necessary to protect personnel from chemical exposure and drug products from contamination.

(C) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdi-

vided as appropriate to conform to the formula being prepared.

(D) The pharmacist shall establish and conduct quality control procedures to monitor the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions Such procedures shall be documented in the non-sterile compounding record.

(E) Compounding records for all drugs compounded in anticipation of future prescription drug orders shall be maintained by the pharmacy electronically or manually as part of the prescription, formula record, formula book or compounding log and shall include:

(i) the date of preparation,

(ii) facility's lot number,

(iii) manufacturer's lot number(s) and expiration date(s) for all components (If the original manufacturer's lot number(s) and expiration date(s) are not known, the pharmacy shall record the source of acquisition of the components ),

(iv) a complete formula, including methodology and necessary equipment,

(v) signature or initials of the pharmacist or supportive person performing the compounding,

(vi) signature or initials of the pharmacist responsible for supervising supportive personnel and conducting in-process and finals checks of compounded products if supportive personnel perform the compounding function,

(vii) the brand name(s) of the raw materials, or if no brand name the generic name(s) and the name(s) of the manufacturer(s) of the raw materials,

(viii) the quantity in units of finished products or grams of raw materials,

(ix) the package size and the number of units prepared,

(x) documentation of performance of quality control procedures; and

(xi) the criteria used to determine the "use by" date.

(F) Compounding records for all drugs compounded pursuant to an individual prescription and not in anticipation of future prescription drug orders shall be maintained by the pharmacy electronically or manually as part of the prescription, formula record, formula book or compounding log and shall include:

(i) the date of preparation;

(ii) a complete formula which includes the brand name(s) of the raw materials, or if no brand name the generic name(s) and name(s) of the manufacturer(s) of the raw materials and the quantities of each;

(iii) signature or initials of the pharmacist or supportive person performing the compounding;

(iv) signature or initials of the pharmacist responsible for supervising supportive personnel and conducting in-process and finals checks of compounded products if supportive personnel perform the compounding function;

(v) the quantity in units of finished products or grams of raw materials,

(vi) the package size and the number of units prepared; and

(vii) documentation of performance of quality control procedures. Documentation of the performance of quality control procedures is not required if the compounding process involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use

*§291.35. Triplicate Prescription Requirement*

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

(e) Partial dispensing of Schedule II controlled substances.

(1) If unable to supply the full quantity called for in a written or emergency oral prescription for a Schedule II controlled substance, the pharmacist may partially dispense the prescription and complete the prescription under the following conditions

(A) The pharmacist notes the initial partial quantity dispensed on the face of the written prescription or emergency oral prescription.

(B) The remaining portion of the prescription is dispensed within 72 hours of the first partial dispensing. No further quantity may be dispensed beyond 72 hours without a new prescription.

(C) If the remaining portion of the prescription is not or cannot be dispensed within the 72-hour period, the pharmacist shall notify the prescribing practitioner.

(2) A pharmacist may dispense a prescription for a Schedule II controlled substance in partial quantities to include individual dosage units, for a patient in a long-term facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness under the following conditions.

(A) The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the Texas Controlled Substances Act.

(B) If there is any question about whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient.

(C) For each partial dispensing, the dispensing pharmacist shall record on the back of Copy 1 and Copy 2 of the prescription the:

(i) date of the partial dispensing;

(ii) quantity dispensed;

(iii) remaining quantity authorized to be dispensed; and

(iv) identification of the dispensing pharmacist.

(D) Prior to any subsequent partial dispensing the pharmacist must determine that the additional partial dispensing is necessary.

(E) The total quantity of the Schedule II controlled substances dispensed in all partial dispensings must not exceed the total quantity prescribed.

(F) Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 30 days from the issue date unless sooner terminated by discontinuance of the medication.

(f) Exceptions to use of triplicate prescriptions.

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

(g) Pharmacist responsibilities.

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

(4) Within 30 days from the date a pharmacist fills a triplicate prescrip-

tion or no later than the 30th day after completion of a prescription dispensed under subsection (e)(2) of the section, the pharmacy is required to mail copy 1 of the form to the Texas Department of Public Safety, Triplicate Prescription Section, P.O Box 4087, Austin, Texas 78773

(5) (No change.)

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

Issued in Austin, Texas, on May 11, 1994

TRD-9440742 Fred S Brinkley, Jr, R Ph, M B A
Executive Director/Secretary
Texas State Board of Pharmacy

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For further information, please call (512) 832-0661

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## Home and Community Service Support Agency Pharmacy (Class F)

**• 22 TAC §§291.111-291.115**

The Texas State Board of Pharmacy adopts new §§291 111-291 115, concerning purpose, definitions, personnel, operational standards, and records in a Class F pharmacy, with changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* These rules provide standards in the conduct and practice activities of a Class F pharmacy and implement the provisions of Senate Bill 472, passed by the 73rd Legislative Session, which created a new class of pharmacy, a Class F pharmacy

A public hearing for the purpose of receiving comment on the proposed rules was as held at 9 00 a m on May 3, 1993, at 1812 Centre Creek Drive, Room 203, Austin, Texas 78754 Six persons presented oral testimony at the public hearing and the Agency received five letters of written comment

The comments and the Board s response to these comments may be summarized as follows

The Texas Association of Home Care, Visiting Nurses Association, and three individuals commented that the rules as published do not fulfill the intent of the law because they limit the provision of the authorized drugs to nurses for "emergency administration" to patients All of these individuals suggested that language regarding patient specific provision, which was originally submitted to the Board at their February 15, 1994, meeting, be added to the rules. The Texas Pharmaceutical Association, and one individual disagreed with these comments and suggested that the Board adopt the rules as proposed. The Board agreed with the comments that wanted patient specific provision allowed and has added language to the rules which allows the Class F Pharmacy to provide drugs to patients in accordance with a system of control and accountability supervised by the pharmacist-in-charge of the facility

The Texas Society of Hospital Pharmacists and one individual suggested that the Board should allow a Class A or Class C Pharmacy to operate as a Class F Pharmacy under the existing Pharmacy license and not require these entities to obtain a separate Class F license. The Board agrees with this concept and has asked staff to research the legality of the issue and if possible bring language back to the Board to amend the Class A and Class C Rules to allow these licensees to operate a Class F Pharmacy without obtaining an additional license

One individual disagreed with the requirement that a pharmacy license should be required for these few drugs The Board disagreed with this comment The Class F License was created by the 73rd Legislature to allow a home and community support services agency to be able to possess these drugs

One individual suggested that the Board should consider adding more drugs to the list of drugs this type of pharmacy can possess The Board disagrees with this comment since the legislation which created the Class F license specifically limited the license to the drugs listed in the rules

One individual suggested that the rules should require a Class F Pharmacy to post the pharmacy license The Board disagreed with this comment The purpose for the posting of the pharmacy license is to notify the general public that the pharmacy is properly licensed It is anticipated that the general public will not enter a Class F Pharmacy and that virtually all of the drugs provided by this type of pharmacy will be delivered to the patient's residence

The rules are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §17(b)(2), which gives the Board the authority to specify minimum standards for professional environment, technical equipment, and security in the prescription dispensing area, §17(b)(3), which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, and providing of prescription drugs or devices, §29(b)(6), which established the Class F pharmacy, Section 29(c)(6) which establishes the requirements for pharmacist supervision in a Class F pharmacy; §29(d), which gives the Board the authority to establish the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification; and §16(a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act

*§291 111 Purpose* The purpose of these sections is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a facility that is licensed under the Health and Safety Code, Chapter 142, as a Home and Community Support Services Agency A Class F Pharmacy license is issued for the purpose of dispensing, distributing, or administering to agency patients under physicians' orders the following dangerous drugs, sterile water for injection and irrigation, sterile saline for injection and irrigation, and heparin flush kits for intravenous flushes

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

Act-The Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, as amended

Agency-A home and community support services agency that is licensed under Health and Safety Code, Chapter 142

Administer The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by

(A) a practitioner or an authorized agent under his supervision or other person authorized by law, or

(B) the patient at the direction of a practitioner

Authorized dangerous drug Any of the following dangerous drugs which are required to bear the legend "Caution federal law prohibits dispensing without prescription"

(A) sterile water for injection or irrigation,

(B) sterile saline for injection or irrigation, and

(C) heparin flush kits for intravenous flushes

Board The Texas State Board of Pharmacy

Continuous supervision Supervision provided by the pharmacist-in-charge and/or another designated pharmacist and consists of on-site and telephone supervision, routine inspection, and a policy and procedure manual

Controlled substance-A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended or a drug, immediate precursor, or other substance included in Schedule I-V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513)

Dangerous drug-Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and

that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription, or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

Deliver or delivery-The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

Dispense-Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

Distribute-The delivery of a prescription drug or device other than by administering or dispensing.

Pharmacist-A person licensed by the board to practice pharmacy.

Pharmacist-in-charge-The pharmacist designated on a pharmacy license as the pharmacist who is responsible for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

Practitioner-

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state,

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II-V controlled substances in such other state, or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Act.

Provide-To supply one or more unit doses of an authorized dangerous drug to a patient.

Standing delegation order-Written orders from a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms, which provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient.

Standing medical order-Written orders, from a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical and/or surgical procedures.

Supportive personnel-Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

Texas Controlled Substances Act-The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

*§291.113. Personnel.*

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class F pharmacy shall have one pharmacist-in-charge who is employed or under written agreement, at least on a consulting or part-time basis, but may be employed on a full time basis, if desired and who may be pharmacist-in-charge of more than one Class F pharmacy.

(B) A written agreement shall exist between the agency and the pharmacist-in-charge, and a copy of the written agreement shall be made available to the board upon request.

(2) Responsibilities. The pharmacist-in-charge shall have at a minimum, the responsibility for the following:

(A) continuous supervision of registered nurses, licensed vocational nurses, physician assistants, supportive personnel, and assistants when such persons are carrying out the pharmacy related aspects of distribution,

(B) documented periodic onsite visits to the Class F Pharmacy as specified in the rules either personally or by another designated pharmacist, to insure that the Class F Pharmacy is following set policies and procedures;

(C) procurement and storage of drugs but he/she may receive input from other appropriate staff of the agency;

(D) determining specifications of all drugs procured by the Class F Pharmacy;

(E) maintenance of records of all transactions of the pharmacy as may be required by applicable law, and as may be necessary to maintain accurate control over and accountability for all authorized dangerous drugs;

(F) development and periodic review of a policy and procedure manual for the pharmacy in conjunction with appropriate agency staff, and

(G) meeting inspection and other requirements of the Texas Pharmacy Act and these sections.

(b) Pharmacists.

(1) The pharmacist-in-charge may be assisted by a sufficient number of additional pharmacists as may be required to operate the Class F pharmacy competently, safely, and adequately to meet the needs of the patients of the agency.

(2) Such pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in subsection (a) of this section and in ordering, supervising, and accounting for authorized dangerous drugs.

(3) All pharmacists shall be responsible for any delegated act performed by supportive personnel under his or her supervision.

(c) Supportive personnel.

(1) Qualifications.

(A) Supportive personnel shall possess education and training necessary to carry out their responsibilities.

(B) Supportive personnel shall be qualified to perform the pharmacy tasks assigned to them.

(2) Duties. Duties include:

(A) provision of authorized dangerous drugs to patients of the agency under the continuous supervision of a pharmacist according to standing delegation orders or standing medical orders and in accordance with written policies and procedures and completion of the label as specified in the rules;

(B) distribution of authorized dangerous drugs to licensed nurses of the agency for administration to agency patients

in accordance with written policies and procedures;

(C) pre-labeling authorized dangerous drugs in original manufacturer containers under the supervision of a pharmacist with the pharmacist conducting the final check and affixing his or her signature to the appropriate quality control records; and

(D) maintaining inventories of authorized dangerous drugs;

(E) maintaining pharmacy records

(3) Absence of the pharmacist The pharmacist-in-charge shall designate from among the supportive personnel a person acting within the scope of §§291 111-291.115 of this title (relating to Purpose, Definitions, Personnel, Operational Standards, and Records) to supervise the day to day pharmacy related operations of the Class F Pharmacy

*§291 114. Operational Standards*

(a) Licensing.

(1) All Class F pharmacies shall be licensed by the board and renew such license annually with the board on a form provided by the board, following the procedures specified in §291 1 of this title (relating to Pharmacy License Application)

(2) All Class F pharmacies shall provide a copy of their policy and procedure manual to the board with the initial license application

(3) The license form shall be signed by the pharmacist-in-charge of the Class F pharmacy.

(4) The owner or managing officer of the agency shall sign the license form and shall agree to comply with the rules adopted by the board governing Class F pharmacies.

(5) The license form shall be certified and state whether the Class F pharmacy is a sole ownership and give the name of the owner, or if a partnership, name all the managing partners, or if a corporation, name of all the managing officers

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a new license and for each renewal.

(7) When a Class F pharmacy changes ownership, a new and separate license application must be filed with the board and the old license returned to the board's office.

(8) A separate license is required for each principle place of business and only one pharmacy license may be issued to a specific location.

(9) A Class F pharmacy shall notify the board in writing of any change in name or location within ten days.

(10) A Class F pharmacy shall notify the board in writing within ten days of a change of the pharmacist-in-charge.

(11) A Class F pharmacy shall notify the board in writing within ten days of permanent closing.

(b) Environment.

(1) General Requirements

(A) The Class F pharmacy shall have a designated area(s) for the storage of authorized dangerous drugs

(B) No person may operate a pharmacy which is unclean, unsanitary, or under any condition which endangers the health, safety, or welfare of the public

(C) The pharmacy shall comply with all federal, state, and local health laws and ordinances.

(2) Security

(A) Only authorized personnel may have access to storage areas for authorized dangerous drugs

(B) All storage areas for authorized dangerous drugs shall be locked by key or combination, so as to prevent access by unauthorized personnel

(C) The pharmacist-in-charge shall be responsible for the security of all storage areas for authorized dangerous drugs including provisions for adequate safeguards against theft or diversion of authorized dangerous drugs, and records for such drugs

(D) The pharmacist-in-charge shall consult with agency personnel with respect to security of the pharmacy, including provisions for adequate safeguards against theft or diversion of authorized dangerous drugs, and records for such authorized dangerous drugs.

(c) Equipment. If the Class F pharmacy pre-labels authorized dangerous drugs in original manufacturer container, the pharmacy shall maintain:

(1) a typewriter or comparable equipment, and

(2) an adequate supply of agency labels.

(d) Library. A reference library shall be maintained which includes:

(1) current copies of the following laws

(A) Texas Pharmacy Act and Rules, and

(B) Texas Dangerous Drug Act and Rules, and

(2) current patient information reference text or leaflets which provide patient information concerning the heparin or heparin flush kits

(e) Drugs

(1) Formulary

(A) The formulary shall be limited to the following dangerous drugs

(i) sterile water for injection or irrigation,

(ii) sterile saline for injection or irrigation, and

(iii) heparin flush kits

(B) The formulary shall not contain any other dangerous drugs or Schedule I-V controlled substances

(2) Storage

(A) Authorized dangerous drugs which bear the words "Caution, federal law prohibits dispensing without prescription," shall be stored in secured storage areas

(B) All drugs shall be stored at the proper temperatures, as defined by the following terms

(i) cold Any temperature not exceeding 8 degrees Celsius (46 degrees Fahrenheit) A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit),

(ii) cool Any temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator, unless otherwise specified in the individual monograph,

(iii) room temperature The temperature prevailing in a working area Controlled room temperature is a tem-

perature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

(iv) warm Any temperature between 30 degrees and 40 degrees Celsius (86 degrees and 104 degrees Fahrenheit);

(v) excessive heat Temperature above 40 degrees Celsius (104 degrees Fahrenheit),

(vi) protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing

(C) Any drug bearing an expiration date may not be distributed or administered beyond the expiration date of the drug

(D) Outdated drugs shall be removed from stock and shall be quarantined together until such drugs are disposed

(E) Controlled substances and dangerous drugs other than authorized dangerous drugs may not be stored at the Class F pharmacy

(3) Pre-Labeling of authorized dangerous drugs in original manufacturer's container

(A) Authorized dangerous drugs in an original manufacturer's container may be pre-labeled by

(i) a pharmacist in a pharmacy licensed by the board, or

(ii) supportive personnel in a Class F Pharmacy, provided the authorized dangerous drugs and control records required by §291 115 of this title (relating to Records) are quarantined together until checked and released by a pharmacist

(B) The label shall bear.

(i) the name and address of the agency,

(ii) directions for use,

(iii) name and strength of the drug(s)-if generic name, the name of the manufacturer or distributor of the drug(s),

(iv) quantity,

(v) lot number and expiration date, and

(vi) appropriate ancillary label(s)

(C) Records of pre-labeling shall be maintained according to §291.115 of this title (relating to Records) .

(4) Distribution for Administration

(A) Patient Specific Provision Authorized dangerous drugs may be provided to patients of the agency if

(i) authorized dangerous drugs are only provided to patients of the agency in accordance with the system of control and accountability for drugs which is developed and supervised by the pharmacist-in-charge,

(ii) only authorized dangerous drugs are provided,

(iii) authorized dangerous drugs are only provided in original manufacturer's containers that are appropriately pre-labeled as set out in paragraph (3) of this section,

(iv) authorized drugs are only provided in accordance with standing delegation orders or standing medical orders,

(v) the patient is provided with written information about heparin or heparin flush kits,

(vi) records of provision are maintained according to §291 115 of this title (relating to Records), and

(vii) at the time of provision, a licensed nurse or supportive person places the following information on the label

(I) patients name,

(II) date of provision, and

(III) practitioners name

(B) Distribution for Emergency Administration. Authorized dangerous drugs may be distributed to licensed nurses of the agency for emergency administration to patients of the agency provided

(i) authorized dangerous drugs are distributed in accordance with the system of control and accountability for drugs distributed by agency which is developed and supervised by the pharmacist-in-charge;

(ii) only authorized dangerous drugs are distributed;

(iii) authorized dangerous drugs are only distributed in original manufacturer's containers,

(iv) such drugs are only distributed according to standing delegation orders or standing medical orders; if a quantity of the drug remains with the patient, a licensed nurse shall print on the label the following information·

(I) patients name,

(II) date of administration, and

(III) practitioners name,

(v) such drugs are stored under proper conditions as specified in the policy and procedure manual,

(vi) the patient is provided with written information about heparin or heparin flush kits, and

(vii) records of distribution for administration are maintained according to §291 115 of this title (relating to Records)

(e) Policies and Procedures

(1) Written policies and procedures shall be developed and updated annually by the pharmacist-in-charge in conjunction with appropriate agency staff and implemented by the pharmacist in charge

(2) The policy and procedure manual shall include, but not be limited to, the following

(A) a current list of the names and addresses of the pharmacist-in-charge, pharmacist(s), supportive personnel designated to distribute authorized dangerous drugs, and the supportive personnel designated to supervise the day-to-day pharmacy related operations of the agency in the absence of the pharmacist,

(B) functions of the pharmacist-in-charge, pharmacist(s) and supportive personnel,

(C) a copy of written agreement between the pharmacist-in-charge and the agency,

(D) date of last review/revision of policy and procedure manual, and

(E) policies and procedures for·

(i) security,

(ii) sanitation,

(iii) licensing,

(iv) storage of drugs;

(v) pre-labeling;

(vi) distribution;

(vii) patient information/training for heparin or heparin flush kits;

(viii) supervision;

(ix) drug destruction and returns;

(x) drug procuring;

(xi) receiving of drugs;

(xii) delivery of authorized dangerous drugs;

(xiii) record keeping; and

(xiv) inspection.

(f) Supervision.

(1) The pharmacist-in-charge or other designated pharmacist shall be in contact with the agency on at least a monthly basis, either through written memos, documented telephonic conferences or on-site visits of the Class F Pharmacy.

(2) The pharmacist-in-charge or other designated pharmacist shall personally visit the agency at least every six months to ensure that the agency is following set policies and procedures.

*§291.115. Records.*

(a) On-site Visits. A record of on-site visits of the Class F Pharmacy by the pharmacist-in-charge or other designated pharmacist shall be maintained and include the following information:

(1) date of the visit;

(2) pharmacist's evaluation of findings;

(3) signature of the appropriate agency personnel receiving the pharmacist's evaluation of findings;

(4) signature of the visiting pharmacist.

(b) Invoices or Records of Receipt.

(1) Each Class F Pharmacy shall maintain invoices and/or records of procurement in accordance with the requirements of the Texas Dangerous Drug Act and Rules and the Texas Pharmacy Act and Rules.

(2) Invoices and records of receipt may be kept at a location other than the pharmacy. Any such records not kept at the pharmacy shall be available for inspection, upon request, within two business days.

(c) Pre-Labeling. Records of pre-labeling of drugs in original manufacturer's containers shall include the following:

(1) name of strength of the drug pre-labeled;

(2) name of the manufacturer;

(3) manufacturer's lot number;

(4) manufacturer's expiration date;

(5) quantity per package and number of packages;

(6) date pre-labeled;

(7) name of the supportive personnel affixing the label; and

(8) the signature of the pharmacist who checks and releases the drug and the date of signing.

(d) Patient Specific Provision. Records of authorized dangerous drugs provided to patients of the agency shall include;

(1) patient name;

(2) name of the person who provides the authorized dangerous drug;

(3) date provided;

(4) the name of the authorized dangerous drug and quantity provided; and

(5) signature of the licensed nurse who received the drug for delivery to the patient.

(e) Distribution for Emergency Administration. Records of authorized dangerous drugs distributed to licensed nurses of the agency for emergency administration to patients of the agency shall be maintained as follows.

(1) Sign-out Record of Distribution to Licensed nurse. The record of distribution of an authorized dangerous drug to a licensed nurse shall include the following:

(A) name of licensed nurse;

(B) name of the person who distributed the authorized dangerous drug if different from the person listed in subparagraph (A) of this paragraph;

(C) date distributed; and

(D) the name of the authorized drug or device and quantity distributed.

(2) Record of Emergency Administration to an Agency Patient. At the time of administration, the licensed nurse shall record the following information:

(A) patient name;

(B) name of the practitioner who ordered the drug;

(C) name of the drug and strength;

(D) date of administration and quantity administered;

(E) signature of the individual administering the drug; and

(F) quantity left at the patient's residence.

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 May 11, 1994.

TRD-9440741 Fred S Brinkley, Jr., R.Ph., M.B.A Executive Director/Secretary Texas State Board of Pharmacy

Effective date: June 1, 1994

Proposal publication date: March 29, 1994

For further information, please call: (512) 832-0661

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## Chapter 309. Generic Substitution

### • 22 TAC §309.3, §309.5

The Texas State Board of Pharmacy adopts amendments to §309.3 and §309.5, concerning Prescription Drug Orders and Labeling Requirements, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register*. These amendments make changes to the rules necessary to be consistent with changes made to the Texas Pharmacy Act, as amended by Senate Bill 472 passed by the 73rd Legislature.

One letter of comment was received from Leo Houser, representing the Pharmaceutical Manufacturers Association. Mr. Houser expressed the concerns of PMA regarding the provisions of §309.3(a)(2)(B) which allow a pharmacist to dispense, with the patient's consent and notification to the practitioner, a dosage form different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets. PMA believes that adoption of the proposed rule would pose a potential danger to the patient; raise significant legal questions, and has the potential to increase the cost of medical care services to Texas consumers.

The Board disagrees with the comments of PMA and believes that adoption of this rule would not cause the problems expressed by Mr. Houser because of the limitations placed upon this substitution. In fact, the language in this rule is simply a repeat of a provision already allowed by law in §40(d) of the Texas Pharmacy Act (Texas Civil Statutes, Article

4542a-1). The Pharmacy Act was amended to include this provision during the 73rd Legislative Session. Section 40(g) and this Act and this rule outline the following very stringent criteria which must be met before a pharmacist may substitute a dosage form:

the dosage form must be of the same drug product, i.e., made by the same manufacturer;

the patient must agree or consent to the substitution;

the product substituted must contain the identical amount of the active ingredient as the dosage prescribed for the patient and not alter the desired clinical outcomes;

the pharmacist may not substitute if the product prescribed is an enteric-coated or time-release product; and

the physician must be notified of the substitution of the dosage form. The intent of this legislation was to allow the pharmacist to change the dosage form in cases where a prescription was issued for a dosage form which the patient could not use, e.g., a prescription written for a tablet when the patient cannot swallow a tablet.

The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §16(a), which gives Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.

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 May 11, 1994.

TRD-9440740 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: June 1, 1994

Proposal publication date: March 29, 1994

For further information, please call: (512) 832-0661

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# Part XVII. Texas State Board of Plumbing Examiners

## Chapter 361. Administration

## General Provisions

### • 22 TAC §361.9

The Texas State Board of Plumbing Examiners adopts new §361.9, concerning charges for copies of public records, without changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2257).

The rule is justified to recover the costs for providing copies of public records in circumstances where such a practice would provide the most benefit to the state.

The rule provides the following with regard to charges for copies of public records: that the Board may charge the amounts set forth in the General Services Commission's rules, that it may charge actual costs for particular items set forth in the proposed new section, or that the Administrator may waive or reduce these charges if he determines that the waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

No comments were received regarding adoption of the rule.

The new rule is adopted under Texas Civil Statutes, Article 6252-17a, as amended by House Bill 1009, 73rd Legislature, which require agencies to adopt rules specifying charges for copies of open records.

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 May 9, 1994.

TRD-9440785 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Effective date: June 2, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-2145

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## Chapter 363. Examinations

### • 22 TAC §363.11

The Texas State Board of Plumbing Examiners adopts an amendment to §363. 11, concerning requirements for providers of medical gas piping installation training programs, with changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2258). The changes make the training requirements more general and change the program from a two-year to a four-year program.

The rule is justified to enhance public health, safety, and welfare by ensuring medical gas systems have been installed in such a manner as to prevent infection and/or to prevent an unintended cross-connection of breathable and lethal gases because the installers of medical gas piping have undergone quality medical gas training programs.

The rule sets forth the following requirements for providers of medical gas piping installation training programs: approval criteria for instructors, the required course outline and minimum hours of training for prospective instructors, provider's notification to the Board of the time(s) and place(s) where medical gas piping training will occur, and self-monitoring by the approved providers.

No comments were received regarding adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

*§363.11. Endorsement Training Programs.* Medical gas piping installation training programs.

(1) Any person wishing to offer a training program in medical gas piping installation to the public must meet criteria as prescribed by the board. Instructors shall be employed by a program that meets certification requirements of the Central Education Agency or is exempted from the Central Education Agency certification requirements under Texas Education Code (Proprietary Schools and Veterans Education), §32.12(a)(5). Such persons shall provide to the administrator lesson plans and instructor credentials. The Board shall provide a course outline and the required minimum hours.

(2) Training programs in medical gas piping installation shall be reviewed at least annually by the board to ensure that programs have been provided equitably across the State of Texas.

(3) Periodically, the board shall review training programs in medical gas piping installation for quality in content and instruction. The board shall also respond to complaints regarding approved programs.

(4) Prior to the effective date of the law, September 1, 1993, the board shall accept as certification those training and testing programs in medical gas piping installation that meet board criteria.

(5) Instructors in medical gas piping installation will be required to successfully complete a board approved program. Instructors will be required to pass the board examination as well as successfully complete a board approved program of 160 clock hours which meets the following generic criteria. The Board will allow credit for approved courses.

(A) 40 hours to provide the instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs;

(B) 40 hours to provide the instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(C) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community;

(D) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media; and

(E) to maintain his/her status as an approved instructor of medical gas piping installation training, the instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(6) Each approved provider must notify the Board 30 days before conducting classes; the notice shall contain the time(s) and place(s) where the classes will occur.

(7) Each approved provider will perform self-monitoring and reporting as required by the Board.

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 May 9, 1994.

TRD-9440786 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Effective date: June 2, 1994

Proposal publication date: April 1, 1994

For further information, please call. (512) 458-2145

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## Chapter 365. Licensing

### • 22 TAC §365.14

The Texas State Board of Plumbing Examiners adopts an amendment to §365 14, concerning requirements for providers of continuing education programs, with changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2259). The changes make the training requirements more general and change the program from a two-year to a four-year program.

The rule is justified to enhance public health, safety, and welfare by ensuring each person has access to clean water because of plumbing installed and maintained by well-trained and competent plumbers who have undergone continuing education programs

The rule sets forth the following for providers of continuing education programs: approval criteria for instructors, the required course outline and minimum hours of training for prospective instructors, provider's notification to the Board of the time(s) and place(s) where continuing education programs will occur, and self-monitoring by the approved providers.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

*§365.14. Continuing Education Programs.*

(a) Any person wishing to offer continuing education in plumbing to the public must meet criteria as prescribed by the board. Such persons shall provide to the board instructor credentials for board approval. The board will approve a course and textbook. The board shall provide a course outline and the required minimum hours.

(b) Instructors must be licensees of the board, attend an instructor certification each year conducted by the board, be certified by the Central Education Agency, and be employed by a program that meets certification requirements of the Central Education Agency or is exempted from the Central Education Agency certification requirements under Texas Education Code (Proprietary Schools and Veterans Education, §32.12(a)(5).

(c) Instructors will be required to successfully complete a board approved program of 160 clock hours which meets the following generic criteria. The board will allow credit for approved courses.

(1) 40 hours to provide the instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs,

(2) 40 hours to provide the instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(3) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community;

(4) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media; and

(5) to maintain his/her status as an approved instructor of continuing education, the instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(d) Continuing education program shall be reviewed annually by the board to ensure that programs have been provided equitably across the State of Texas.

(e) Periodically, the board shall review continuing education programs for quality in content and instruction. The board shall also respond to complaints regarding approved programs.

(f) Each approved provider must notify the Board 30 days before conducting classes; the notice shall contain the time(s) and place(s) where the classes will occur.

(g) Each approved provider will perform self-monitoring and reporting as required by the Board.

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 May 9, 1994.

TRD-9440787 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Effective date: June 2, 1994

Proposal publication date. April 1, 1994

For further information, please call: (512) 458-2145

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## Chapter 367. Enforcement

### • 22 TAC §367.2

The Texas State Board of Plumbing Examiners adopts an amendment to §367. 2, concerning licensed plumbers' standards of conduct, without changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2260).

The rule is justified to enhance public health, safety, and welfare by ensuring each person has access to clean water because of plumbing installed and maintained by well-trained and competent plumbers as a result of their compliance with the Board's rules, regulations, and orders.

The rule requires that a licensed plumber shall comply fully with all orders of the Texas State Board of Plumbing Examiners.

No comments were received regarding adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License 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 May 9, 1994.

TRD-9440784 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Effective date: June 2, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-2145

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## • 22 TAC §367.3

The Texas State Board of Plumbing Examiners adopts an amendment to §367. 3, concerning the use of a master plumber's license in contracting for plumbing work, with changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2260) The change clarifies that if the other conditions are met, a master plumber may use his/her license for more than one entity.

The rule will enhance public assurance that contracted plumbing work is performed with the direct participation of a master plumber The requirement that licensed plumbers be continuously on the job to supervise non-licensed personnel is not a new requirement.

The rule delineates what a master plumber and a firm, company, or corporation may and may not do with regard to using the master plumber's license in conjunction with contracting for plumbing work by the master plumber and the firm, company, or corporation.

One comment was received from Don Nelson, Chief Examiner/Field Department (Texas State Board of Plumbing Examiners). He supported the rule as proposed and noted that since the Board was created, the Board has required that non-licensed personnel who are doing work for licensed plumbers must be continually supervised on the job site by licensed plumbers.

The rule is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

*§367.3. Requirement for Plumbing Companies.* A company offering to do plumbing work must secure the services of at least one person holding a current master plumber's license. The master plumber shall not allow any person, firm, company, or corporation to use his or her master plumber's license for any purpose unless the master plumber is a bona fide employee of the person, firm, company, or corporation or is the owner of or has a substantial financial interest in the firm, company, or corporation that will use the master plumber's license. The master plumber's license shall be used only by such a person, company, firm, or corporation. The master plumber shall be knowledgeable of and responsible for all permits, contracts, and agreements to perform plumbing work secured and plumbing work performed under his or her master plumber's license. All work performed under the master plumber's license shall be within the sight of and under the direct control and on-the-job supervision of a licensed plumber that is a bona fide employee of the person, or bona fide employee, owner of or has a substantial financial interest in the firm, company, or corporation using the master plumber's license.

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 May 9, 1994.

TRD-9440788 Gilbert Kissling
Administrator
Texas State Board of Plumbing Examiners

Effective date. June 2, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-2145

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# TITLE 25. HEALTH SERVICES

## Part II. Texas Department of Mental Health and Mental Retardation

## Chapter 401. System Administration

## Subchapter B. Interagency Agreements

## • 25 TAC §401.57

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §401.57 without changes to the proposed text as published in the *Texas Register* on January 7, 1994 (19 TexReg 144-150). The memorandum of understanding (MOU) that is adopted by reference as Exhibit N is adopted with changes

The MOU outlines training requirements for identifying and reporting abuse, neglect, and unprofessional or unethical conduct in health care facilities. Senate Bill 210 (73rd Texas Legislature) requires TXMHMR, the Texas Commission on Alcohol and Drug Abuse (TCADA), and the Texas Department of Health (TDH) to adopt the memorandum by rule

Section I of the MOU is revised to use the term "health care facility" to refer to the entities to which the MOU applies.

New Section II of the MOU incorporates definitions for the terms used throughout the document. Section III (formerly Section II) is revised to delete terms specific to types of training that may be utilized (e.g., instruction, information, etc.). The section is further revised to clarify that in addition to the minimum requirements for information included in the training program, additional training concerning patient care and the prevention of abuse or neglect or illegal, unprofessional, and unethical conduct may be used to fulfill the eight-hour requirement. The section is also revised to clarify that although full-time employees are subject to the eight-hour requirement, administrators may vary the amount and type of training required for part-time employees, provided that the minimum information requirements of the training program are met.

The requirement that facilities maintain training records for ten years is reduced to five years in Section IV of the MOU (formerly Section III). The section is also revised to delete the provision that training curriculum be included with each individual training record. The provision is replaced by a requirement that a copy of the curriculum be maintained by the facility. Language is also added concerning training on the Code of Ethics for various disciplines.

Written comment on the proposal was received from eight organizations, including: Texas Mental Health Association, Austin; Advocacy, Inc., Austin; Shoal Creek Hospital, Austin; Woods Psychiatric Institute, Abilene; Tri-County Mental Health and Mental Retardation Services, Conroe; CPC Oak Bend Hospital, Fort Worth; Timberlawn Mental Health System, Dallas; and Bexar County Hospital District, San Antonio. All commenters offered recommendations for changes.

A commenter noted that when considered in terms of all psychiatric inpatient settings, the inservice requirement creates a tremendous health care cost. The commenter requested that the department utilize the minimum standards of training to get maximum results. The department responds that changes made in response to comment received concerning the proposed training requirements have enhanced efforts to attain the goal of maximum results.

A commenter recommended that the training address what is required if incidents do occur, including reporting and investigating requirements. The department responds that the minimum requirements for the training program include training on requirements and procedures for reporting such incidents.

A commenter recommended that the training emphasis needed to be on teaching staff how to provide a therapeutic environment, which is likely to prevent the occurrence of abuse or neglect. Another commenter noted that the eight topics specified are necessary, but seem to ignore issues leading to patient abuse or neglect. The department responds that language has been added to clarify that in addition to the eight required topics, the eight-hour requirement can be met through training in a variety of areas designed to improve patient care or prevent abuse or neglect or illegal, unprofessional, and unethical conduct. These include, but are not limited to, courses related to the prevention of aggressive behavior, crisis intervention, CEU, CNE, and CME courses, some aspects of employee orientation, and sensitivity training.

A commenter asked whether the requirements of the memorandum applied to outpatient services. Another commenter recommended that the term "health care facility" be used throughout the document to reference the entities to which the MOU applies, with definitions provided for those entities.

The department responds that the provisions of Senate Bill 210 apply only to the specified categories of inpatient facilities. As requested, the term "health care facilities" has been used throughout the document, with appropriate definitions added as requested

A number of commenters expressed concern about the requirement that each employee or health care professional associated with a health care facility receive eight hours of training in the required topics Several commenters suggested that the amount was excessive Others suggested that the amount of training required should be allowed to vary depending on the responsibilities of the employee. Most questioned the application of the training requirement to consultant or temporary health care professionals who serve at the health care facility on a limited basis (e g., one or two days a week, courtesy consults).

The department responds that as mandated by the 73rd Legislature, each full-time employee or health care professional associated with a health care facility is required to receive eight hours of training Revisions to Section III of the MOU clarify that the requirement may be met utilizing a variety of types of training, and also clarify that the training may include a variety of topics in addition to the eight specified in the MOU. Realistically, the eight hour figure shouldn't be difficult to achieve since so many topics can be used to meet it

In response to concerns regarding the need for such extensive training for certain part-time employees, such as pool employees, consultants, and physicians providing courtesy consults, the agencies developing the MOU offer language allowing administrators to reduce the amount of time spent in training for part-time employees. The MOU includes criteria administrators should consider in determining whether or not eight hours of training is necessary The MOU also specifies that regardless of the amount of training provided, the required topics must be addressed in any training program The department notes, however, that all full- time employees are required to receive eight hours of training.

Several commenters questioned the need for eight hours of training on an annual basis, noting that refresher training could be accomplished just as effectively in six, four, or two hours. The department responds that although refresher training in the eight required topics may be accomplished in fewer than eight hours, additional training in topics designed to improve patient care or prevent abuse or neglect or illegal, unprofessional, or unethical conduct should be used to complete the eight hours. The intention is that employees continue to learn about topics that will help prevent incidents from occurring

Concerning the subject of sexual exploitation, a commenter noted that standards are needed that require health care professionals to learn about boundaries The department agrees, and recommends that health care facilities developing curricula for their training programs consider including this as part of the program

A commenter asked whether the portion of training on the prevention and management of aggressive behavior (PMAB) concerning patients rights/patient abuse could be utilized to meet some of the training requirements. The department responds that language has been revised in Section III of the MOU to clarify that this type of training may be utilized to meet the training requirement.

A commenter noted that part of training should focus on how to prevent abuse and neglect, including training on how to interact in a therapeutic manner. The commenter also recommended that the training focus on identifying systemic problems and situations in which the staffing ratio, program or work environment is not therapeutic and therefore contributes to the occurrence of abuse, neglect, and unethical conduct. The department agrees and has included language in Section III of the MOU concerning training for employees in the prevention of abuse or neglect. The department encourages health care facilities to include training concerning a variety of topics, including, but not limited to, systemic issues and sensitivity training.

Another commenter recommended including sensitivity training and awareness of the importance of reporting abuse and neglect in the training program. The commenter also suggested including training in the importance of preventive measures. Again, the department agrees, and has included language in Section III of the MOU concerning training for employees in the prevention of abuse or neglect.

Concerning reporting requirements, a commenter noted that training should be provided through an interactive process. The commenter suggested that there should be measurable outcomes which are more substantive than a signature on an attendance sheet. The commenter noted that the accountability should not come through a signed document but through the demonstration of behaviors and concepts that indicate the message of the training has been integrated. The department agrees. Clearly, the intent of the training requirement is to ensure that employees and associated health care professionals of health care facilities are aware of issues related to abuse and neglect and illegal, unprofessional, and unethical conduct, and act and react in a way that avoids such incidents. The signed document is merely a concrete means of determining whether the training was provided.

Several commenters noted that the requirement that training records be maintained for ten years seemed a bit excessive. The department agrees, and has reduced the length of time to five years.

These sections are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

*§401.57 Training Requirements for Identifying Abuse, Neglect, and Unprofessional or Unethical Conduct in Health Care Facilities.*

(a) TDMHMR adopts by reference as Exhibit N a joint memorandum of understanding (MOU) with TDH and TCADA concerning training requirements for identifying abuse, neglect, and unprofessional or unethical conduct in health care facilities.

(b) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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 May 13, 1994.

TRD-9440874 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: ?

Proposal publication date: January 7, 1994

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

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## Subchapter I. Certification of Community Residential Programs–Mental Retardation

### • 25 TAC §§401.551-401.565

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§401.551-401.565, concerning certification of community residential programs–mental retardation, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2182). The repeal of the sections is adopted contemporaneously with the adoption of the new sections which replace them, new Chapter 401, Subchapter I, also concerning certification of community residential programs–mental retardation.

When originally adopted in 1988, the subchapter established a new certification process for community residential programs. As a result, a number of provisions dealt with programs which were in operation prior to the effective date of the subchapter; others included specific target dates for compliance. The new subchapter deletes those "grandfather" provisions and target dates and updates the process.

No public comment was received concerning adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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

Issued in Austin, Texas, on May 13, 1994.

TRD-9440876 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: June 3, 1994

Proposal publication date: March 29, 1994

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

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The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§401.551-401.565, concerning Certification of Community Residential Programs-Mental Retardation. Sections 401.551, 401.553, 401.556, 401.558, and 401.561 are adopted with changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2183). Sections 401.552, 401.554, 401.555, 401.557, 401.559, 401.560, and 401. 562-401.565 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the adoption of the repeal of the subchapter they would replace, also known as Chapter 401, Subchapter I, relating to certification of community residential programs-mental retardation.

When originally adopted in 1988, the subchapter established a new certification process for community residential programs. As a result, a number of provisions dealt with programs which were in operation prior to the effective date of the subchapter; others included specific target dates for compliance. The new subchapter deletes those "grandfather" provisions and target dates and updates the process.

The term "alternate certification" is replaced with "alternative certification" throughout the subchapter. Section 401.551 is revised to delete reference to supported living programs. The definition of community residential programs is revised in §401.553 to include reference to programs which have overnight staff on the premises and to delete reference to boarding homes. The definition of supported living is deleted.

Section 401.556 is revised to clarify that the determination of whether or not a program is "qualified" is based on compliance with criteria outlined in the "Provisional Checklist" (Exhibit B).

Section 401.588 is revised to clarify actions to be taken when a program which has alternative certification status irrevocably loses the alternate certification. Language addressing the need for notification no later than two working days following such a loss is added.

Section 401.561(c) is revised to delete reference to a plan for re-attaining the conditions of an alternative certification. Language addressing the possibility of additional requirements imposed by the TXMHMR Assistant Deputy Commissioner is added. Section 401.561(e) is revised to clarify that the parent of a minor or legal guardian of an adult should be notified and to clarify the conditions which would require such notification.

Written comments on the proposed subchapter were received from four organizations: The ARC of Texas, Austin; Parent Association for the Retarded of Texas (PART), Dallas; Mental Health and Mental Retardation Authority of Harris County, Houston; and Dallas County Mental Health and Mental Retardation, Dallas.

A commenter noted that the Texas Department of Mental Health and Mental Retardation should certify or license every facility (from state schools to foster homes) in which people with mental retardation live because of the unique needs of people with mental retardation. The commenter noted that while a foster home might be a perfectly good setting for "normal" children, it might be totally incapable of meeting the unique needs of a child with mental retardation. The department responds that the legislature gives certain agencies the authority to license/certify particular facilities, and this legislative mandate precludes TXMHMR from imposing a dual certification situation. However, the MRA serves as an additional check and balance by appraising the appropriateness of the location prior to placement and monitoring the appropriateness on an ongoing basis.

Concerning the definition of "community residential program," a commenter wondered whether the reference to the exclusion of boarding homes meant that they were licensed by another agency. The department responds that boarding homes (now referred to as "personal care nomes") are licensed by the Texas Department of Human Services. Reference to boarding homes has been deleted from the definition for purposes of clarity.

Two commenters took issue with the definition of supported living, noting that most supported living programs offer services and supports that enable the individual to live in his own home or apartment. One commenter suggested that it seems unnecessary and impractical for the state to certify an individual's home. Another commenter stated that it seemed questionable to automatically require certification in supervised apartments where consumers are generally independent and receive decreasing habilitative services and increasing support services.

The department responds that the intent of including certain supported living situations in the certification process was to capture those programs which have overnight staff on the premises. It was not intended to require certification for more independent living situations. However, the addition has proved more confusing than clarifying, and the definition has been deleted. Reference to programs which have overnight staff on the premises is added to the definition of community residential programs. In addition, the purpose of the subchapter is revised to delete reference to supported living programs.

Another commenter recommended a revision to the first sentence of the definition of supported living. The department appreciates the recommendation, but the definition has been deleted.

A commenter suggested that the term "client" in several references in §401.555 be replaced with the term "consumer." The department responds in several cases, the term "client" is part of the specific title of a subchapter of the Texas Administrative Code and cannot be changed. The general principle is to eliminate use of the term "client" as the subchapters are revised.

Concerning §401.556(1), a commenter recommended requiring submission of the initial application form no later than 30 days prior to the date on which the program will begin serving individuals. The commenter suggested the new 7 day timeline did not provide adequate time to ensure the program is in compliance. The department responds that the change was made in response to a request from the field, and is a workable timeframe. The subchapter offers 7 days before the targeted opening date as the absolute latest the application may be submitted–but programs are encouraged to submit their applications earlier if at all possible.

Also concerning §401.556(1), a commenter requested the addition of specific timelines on the part of the TXMHMR Certification Section upon receipt of the provisional application packet. The commenter noted that without such timelines, there is the potential for unnecessary time delays or rushed corrections in order to complete the process without delaying admissions. The department responds that seven days prior to scheduled opening is the absolute latest an application should be submitted. Staff of the Certification Section will work with those who wait until the last minute to avoid delays, but encourage submission prior to that point.

The same commenter wondered when the training referenced in §401.556(1) would be provided, and wondered who would provide it. The department responds that training is provided on an annual basis, and is provided by the local MRA.

A commenter asked that the terms "suitable" and "qualified" as used in §401.556(2) be defined. The department responds that language referring to compliance with criteria outlined in the "Provisional Checklist" (Exhibit B) is included as clarification.

The same commenter requested clarification of the term, "not substantially comply" as used in §401.557(2) The department responds that the phrase refers to the compliance requirements outlined in §401.557(1).

Concerning §401.558(b), a commenter noted that the section could be interpreted to imply that if a community residential program with alternative certification is not certified "onsite" by the certifying agency, then the plan of improvement must be submitted to TXMHMR. The commenter noted that this didn't seem appropriate, and suggested rewording. The department responds that the language was intended to apply to irrevocable loss of the alternative certification. Language is added clarifying the intent.

The same commenter suggested that four working days would be a more appropriate timeframe for the notification referred to in §401.558(b). The department responds that in the event of irrevocable loss of alternative certification, the situation might be potentially dangerous for the persons served. Notification should occur no later than two working days following the loss, and language has been added to clarify the need for notification sooner, if possible.

A commenter asked for information concerning the frequency of on-site visits by the Certification Section during the provisional certification. The department responds that one on-site visit is generally made, although more may be merited by conditions found at the site

Concerning §401 559(a), a commenter wondered whether an applicant had to apply for certification renewal with a new application or simply a letter indicating intent to renew The department responds that as outlined in §401 559(b), the applicant submits a current application and the items described on the "Renewal Checklist"

A commenter noted that while other timeframe requirements within the rule were reduced, the requirement in §401 559(a) concerning applications for renewal of certifications extended the timeframe from 45 days prior to the anniversary date to 60 The commenter questioned the justification for this change The department responds that the additional time is required to allow sufficient time for the advance scheduling of an on-site visit and other administrative duties The 60 day lead time has been standard procedure for the last several years, this change simply brings the rule into line with what actually happens

A commenter suggested inclusion of a clause for emergency situations in §401 560 The commenter cited a situation where a consumer has to be moved to or from a foster home because of extenuating circumstances The department responds that the certification process relates to the program, not the individual Unless the situation relates to the opening or closing of a residential program, it does not affect the certification process A clause for emergency situations is not necessary.

Regarding §401 561(c), a commenter noted that as written, the section seemed to require that plans of improvement generated in response to surveys done by entities providing alternative certification be submitted to and approved by TXMHMR The commenter recommended that the section be revised to specify the intent of the rule The department responds that the section has been revised to clarify actions to be taken

Concerning §401 561(e), a commenter asked whether a program which fails to obtain or maintain certification would be required to close. The department responds that the decision would be made by Mental Retardation program staff

The same commenter asked what the MRA's responsibility to parents, guardians, and consumers would be in the event a program were forced to close The department responds that the MRA would have the responsibilities outlined in Chapter 402, Subchapter I (concerning Movement of Individuals with Mental Retardation from Department Facilities)

Another commenter suggested the conditions which would require notification of the parent/guardian were not clearly defined in §401.561(e) The department responds that the paragraph is revised to clarify intent

The same commenter also recommended that the rule specify that parents of consumers who are legally competent adults should only be notified if the adult has given informed consent The department responds that language has been added clarifying that only the parent of a minor or the legal guardian of an adult will receive automatic notification

These sections are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers

*§401 551 Purpose* The purpose of this subchapter is to provide the procedures by which community residential programs serving individuals with mental retardation are certified by the Texas Department of Mental Health and Mental Retardation

*§401 553 Definitions* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise

Alternative certification status-The certification status which is accorded community residential programs operating under auspices of a TXMHMR facility or CMHMRC which are certified, licensed, or accredited as designated in §401.588 of this title (relating to Alternative Certification Status)

Applicant-A person or organization that completes the application and application packet for certification.

Assistant deputy commissioner-The assistant deputy commissioner for mental retardation services assigned to the mental retardation authority

Certification officer-The staff person designated by the mental retardation authority to assist the department in the certification of community residential programs in the local service area.

Certification section-The section within the Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, which is designated as the authority on the certification of community residential programs for individuals with mental retardation, and which reviews programs, determines compliance with certification requirements, and approves, denies, suspends, or revokes certification

Community center-A community mental health and mental retardation center as established in the Texas Health and Safety Code, §534 001, et seq (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203)

Community residential program-Any residence in the community providing supervision and habilitation services for one to 15 individuals with mental retardation and which is funded by the Texas Department of Mental Health and Mental Retardation. The term includes programs with overnight staff on the premises.

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

Designee-The entity or entities designated by the department to perform the monitoring and evaluation requirements of this subchapter, which may be staff of the mental retardation authority serving the local service area.

Exceptions process-The process whereby the timeframe in completing the plan of improvement is extended.

Extension process-The process whereby the anniversary date is extended for a period of time, up to two months.

Facility-Any state school or state center providing mental retardation services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation

Mental retardation authority (MRA)-The entity designated by the department to plan, facilitate, coordinate, and provide such services to individuals with mental retardation as are required to be performed at the local level by state law and by the department.

Operator-The agency, organization, or individual directly responsible for the overall management of the facility.

Service provider-A person who provides direct services to individuals in a residential setting.

Substantial compliance-90% compliance with each standard.

*§401.556. Initial Application Process and Provisional Certification.* Initial application process. All correspondence with reference to certification to operate a community residential program for individuals with mental retardation should be directed to the CMRS/Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) All applicants for new community residential programs shall make application for certification using the forms referred to in §401.563 of this title (relating to Exhibits) as Exhibits A and B. Application should be made at the earliest time feasible, but in no case later than seven days prior to the date on which the program begins serving individuals with mental retardation. Upon completing the requirements described on the provisional checklist, the applicant shall submit the fully completed application and provisional checklist materials to the certification officer of the MRA serving the local service area, who shall forward a copy of the materials to the Certification Section. Training

for new providers regarding the certification process will be provided by the local MRA.

(2) If the certification officer finds that the premises are suitable and the applicant is qualified (in keeping with requirements outlined in the "Provisional Checklist," which is referred to in §401.563 of this title (concerning Exhibits) as Exhibit B) to operate a community residential program in accordance with the requirements of this subchapter, the certification officer shall recommend provisional certification. A recommendation by the certification officer must include the signature endorsement of the director of quality assurance of the MRA that the program meets provisional certification requirements. The application, supplementary materials, and endorsements shall be forwarded to the Certification Section.

(3) The application and supplementary materials shall be reviewed by the Certification Section. If provisional certification is granted, it shall issue to the applicant a letter granting provisional certification for a period not to exceed nine months. A copy of the letter shall be sent to the certification officer, the assistant deputy commissioner, and the MRA director of quality assurance.

(4) If provisional certification is not granted, the Certification Section shall send the applicant a letter stating the reason(s) that the application has been denied. A copy of the letter shall be sent to the certification officer of the MRA, the assistant deputy commissioner, and the MRA director of quality assurance.

(5) During the nine month period of provisional certification, the Certification Section shall make on-site visit(s) to the premises to determine whether full certification should be granted.

*§401.588. Alternative Certification Status.*

(a) Community residential programs under auspices of the TXMHMR facility or CMHMRC which are certified, licensed, or accredited by other agencies do not require additional certification by the department if the certification, licensure, or accreditation is:

(1) licensure by the Department of Human Services as a foster family home for children;

(2) certification by the Texas Department of Human Services as an ICF/MR program;

(3) certification by the Texas Department of Mental Health and Mental Retardation as a Home and Community-Based Services 1915(c) waiver program; or

(4) accreditation by the Accreditation Council on Services for People with Disabilities.

(b) The community residential program provider must notify the certification officer within two working days of irrevocable loss of the certification, licensure, or accreditation on which the alternative certification status is based. Upon notification, the certification officer shall be responsible for reporting the change to the department within two working days. If the program provider desires to receive or continue receiving funds from TXMHMR, an application for certification must be made to initiate the certification process unless the MRA is directed otherwise by the assigned assistant deputy commissioner and the alternate plan is approved by the Certification Section.

*§401.561. Denial, Suspension, and Revocation of Certification.*

(a) The department shall have the authority to immediately deny, suspend, or revoke the certification of a community residential program if the department finds that the program:

(1) violates or continues to violate applicable laws, rules, or standards; or

(2) operates the program in a way that is harmful to the health, safety, care, or rights of one or more individuals.

(b) When denial, suspension, or revocation of a certification occurs:

(1) because a program does not substantially comply with each of the requisite standards, a plan of improvement shall be submitted for approval to the Certification Section and deficiencies corrected within 30 days of the date on the letter accompanying finalized deficiencies, unless an exception has been granted. Review by the Certification Section or designee, including on-site inspection, as appropriate, will occur in order to determine compliance with the plan of improvement; or

(2) because a program does not meet at least 75% of the program standards, a plan of improvement shall be submitted for approval to the Certification Section and shall be implemented within 60 days, as described above, unless an exception has been granted. Review by the Certification Section or designee, including on-site inspection, as appropriate, will occur in order to determine compliance with the plan of improvement.

(c) In the event that a program that has alternative certification loses the certification, licensure, or accreditation on which the alternative certification is based, an application for certification will be submitted unless the MRA is otherwise directed by the assistant deputy commissioner, and the alternate plan is approved by the Certification Section.

(d) The denial, suspension, or revocation of a certification maintained pursuant to a contract for services may be appealed following the procedures described in Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases).

(e) The MRA shall notify the parent of minors served or the legal guardian of adults served if all approved plans of improvement have failed to bring the program into compliance and, as a result, the program fails to obtain or maintain certifi cation.

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 May 13, 1994

TRD-9440875 Ann K Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: June 3, 1994

Proposal publication date: March 29, 1994

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

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## Chapter 405. Client (Patient) Care

## Subchapter FF. Consent to Treatment with Psychoactive Medication

### • 25 TAC §405.803, §405.808

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts amendments to §405.803 and §405.808, concerning Consent to Treatment with Psychoactive Medication, with changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8855).

The amendments clarify the process for administering psychoactive medication to patients committed to state hospitals and state centers under provisions other than those found in the Texas Mental Health Code (i.e., Code of Criminal Procedure, Family Code).

The definition of "mental health facility" is revised in §405.803 to clarify that the subchapter does not apply to state schools but does apply to the mental health component of state centers. The term "TXMHMR facility" is redesignated as "TXMHMR mental health facility." Corresponding changes are made throughout §405.808.

Also throughout §405.808, the term "objects" is replaced with the term "refuses" to reflect language utilized throughout the subchapter. The term "client" is replaced with "patient." The term "clinical director" is replaced with "chief physician."

Section 405.808(b)(6) is revised to clarify that the consultant psychiatrist's examination must take place within six days of the physician's determination.

Section 405.808(b)(8) is revised to clarify that psychoactive medication which is initiated during the first 14 days of an individual's commitment but which is refused by the individual or the individual's legally authorized representative after the 14-day period may continue to be administered until the appropriate review processes have been conducted. If medication is then determined not to be the most appropriate treatment, it shall be discontinued in keeping with procedures outlined in the subchapter. Section 405.808(b)(9) is added to address situations in which an individual (or an individual's legally authorized representative) who consented to administration of medication later withdraws that consent.

A reference to the Code of Criminal Procedure is deleted from §405.808(b) (9) and replaced with the phrase, "provisions other than the Texas Mental Health Code" to reflect that these provisions may also apply to patients committed under other law, including the Family Code.

Public comment was received from Michael J. Churgin, Raybourne Thompson Centennial Professor of Law, University of Texas at Austin.

The commenter suggested that the proposed amendments reflected a lack of respect for the autonomy of individuals not committed under the Mental Health Code. The commenter also suggested the amendments were contrary to developments in the last decade under Texas law and the United States Constitution, and recommended they not be adopted.

The department responds that Senate Bill 207 established a procedure for petitioning the court for an order to administer medication to an individual regardless of the individual's refusal. However, the procedure is available only for patients committed under the Texas Mental Health Code. Until legislation is enacted which creates a process for judicial review of the administration of medication to patients committed under other provisions, the amendments are necessary.

The amendments are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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

Mental health facility-All state hospitals, the mental health component of state centers, and other facilities which provide inpatient mental health services.

TXMHMR mental health facilities-All state hospitals and state centers.

*§405.808. Patients Committed Under Texas Statutes.*

(a) Patients Committed to Mental Health Facilities Under Provisions of the Texas Mental Health Code. Psychoactive medications will not be administered to patients committed to a mental health facility under a temporary or extended order for mental health services without the informed consent of the patient except:

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

(b) Patients Committed to TXMHMR Mental Health Facilities Under Provisions Other Than Those Found in the Texas Mental Health Code (i.e., Code of Criminal Procedures, Family Code). The decision to administer medications to a patient committed to a TXMHMR mental health facility under provisions other than those found in the Texas Mental Health Code is within the discretion of the treating physician during the first 14 days of the patient's commitment. If, following the initial 14-day period, a committed patient or the patient's legally authorized representative refuses the administration of psychoactive medication, the following review procedure will be initiated.

(1) The chief physician of the facility or chief physician designee who does not work on the patient's unit will, within six calendar days of the patient's refusal or that of his or her legally authorized representative, personally examine the patient; interview the patient and the patient's legally authorized representative, if the representative is available; review the patient's records; discuss the case with the treating physician; and make a determination concerning the appropriateness of treatment with psychoactive medication.

(2) Except as limited by paragraphs (6) and (7) of this subsection, psychoactive medications may be administered if the chief physician or chief physician designee determines that the administration of such medication is medically appropriate treatment. In making this determination, the chief physician or chief physician designee will consider the following factors:

(A) the accuracy of the diagnosis;

(B) indications for the medication;

(C) probable benefits and risks of the medication; and

(D) the existence and value of alternative forms of treatment, if any.

(3) In addition, the chief physician or chief physician designee will make a determination as to whether the patient's ability to understand the consequences of the decision to refuse the administration of such medication is impaired as a result of the patient's mental illness.

(4) If, at any time, the chief physician or chief physician designee determines that the administration of a psychoactive medication is not medically appropriate treatment, the administration of such medication will be discontinued within a reasonable period of time following that determination if the patient or his legally authorized representative continues to refuse the medication. The period of time within which the medication must be discontinued will be based on the condition of the patient and the type and dosage of medication being administered.

(5) If psychoactive medication is administered pursuant to a determination under paragraph (2) of this subsection, the chief physician or chief physician designee will personally monitor the patient's progress on a monthly basis to determine whether the administration of psychoactive medication continues to be medically appropriate treatment.

(6) If the chief physician or chief physician designee determines that the administration of psychoactive medication is medically appropriate treatment but also determines that the patient's ability to understand the consequences of the decision to refuse the administration of such medication has not been impaired as a result of the patient's mental illness, the head of the facility will ensure that a consultant psychiatrist not employed by the TXMHMR will, within six calendar days of the physician's determination, personally examine the patient; interview the patient and the patient's legally authorized representative, if the representative is available; review the patient's records; discuss the case with the treating physician and with the chief physician or chief physician designee; and make a determination concerning the appropriateness of treatment with psychoactive medication. The provisions of this section will also apply to those situations in which the decision to refuse the medication was made by the committed patient's legally authorized representative.

(7) If the consultant psychiatrist determines that treatment with psychoactive medication is medically appropriate treatment, such medication may be administered, and the chief physician or chief physician designee will monitor the patient's progress as described in paragraph (5) of this section.

(8) After the first 14 days of a commitment under provisions other than

those found in the Texas Mental Health Code, psychoactive medication shall not be initiated without consent of the individual or the individual's legally authorized representative until the appropriate review procedures set out in this section have been completed and documented. If psychoactive medication was initiated during the first 14 days, and the individual or the individual's legally authorized representative refuses the medication after the first 14 days, the medication may be continued until the review process set out in paragraphs (1)-(6) of this subsection has been conducted.

(9) If psychoactive medication has been administered to a patient with consent and the patient or the patient's legal guardian later refuses the medication, administration of the medication may be continued until the review process set out in paragraphs (1)-(6) of this subsection has been conducted.

(10) Nothing in this section is intended to preclude the administration of psychoactive medication to any patient in an emergency situation as provided for in §405.812 of this title (relating to Emergencies).

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 May 13, 1994.

TRD-9440877 Ann K Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date. June 3, 1994

Proposal publication date. December 3, 1993

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

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## Chapter 409. Medicaid Programs

### Subchapter I. Rehabilitative Services for Persons with Mental Illness

**• 25 TAC §409.356**

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts an amendment to §409.356, concerning rehabilitative services for persons with mental illness, without changes to the proposed text as published in the March 22, 1994, issue of the *Texas Register* (19 TexReg 2048).

The amendment keeps reimbursement rates for rehabilitation services consistent with amendments to the State Medicaid Plan. The rules and state plan remove the 62.5% limitation of allowable expenses on reimbursement for rehabilitation services.

The proposed amendments were approved by the Medical Care Advisory Committee on March 10, 1994. A public hearing was held on April 11, 1994. No comments were received concerning adoption of the rule.

The rule is adopted under the Texas Health and Safety Code, Title 7, §532. 015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 May 13, 1994.

TRD-9440871 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: June 3, 1994

Proposal publication date: March 22, 1994

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

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# TITLE 28. INSURANCE

## Part I. Texas Department of Insurance

## Chapter 3. Life, Accident and Health Insurance and Annuities

### Subchapter V. Order of Benefit Determination for Insured Dependent Children in a Coordination of Benefits Provision

**• 28 TAC §3.3501, §3.3502**

The Texas Department of Insurance adopts the repeal of §3.3501 and §3.3502, concerning an order of benefit determination for dependent children, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8758).

The repeal of these sections is necessary in order to allow for the adoption of a new Subchapter V, which will provide for uniformity of coordination of benefits determinations for group and group-type policies, contracts, certificates and forms filed in accordance with Insurance Code, Article 3.42, and establish guidelines for coordination of benefit provisions for small-employer health benefit plans in accordance with Insurance Code, Article 26.08. Provision for the order of benefit determination for insured dependent children, authorized and required by Insurance Code, Article 3.42(i), is included in the newly adopted sections.

The repealed sections will remain in effect for the purpose of their applicability to policies issued prior to January 15, 1994.

No comments were received regarding adoption of the repeal.

The repeal of the sections is adopted under the Insurance Code, Articles 3. 42, 26.08, and I.03A, and the Government Code, §2001.004, et seq. Insurance Code, Article 3.42, contains filing requirements for policies, contracts, certificates and forms subject to that statute and specifically authorizes the board to adopt reasonable rules and regulations as necessary to implement and accomplish the provisions of that statute. Article 3.42(i) requires that any coordination of benefits provisions approved for use in this state must provide for the order of benefit determination for insured dependent children. The sections to be repealed contained that order of benefit determination and the new sections adopted to replace these existing sections will also contain that order of benefit determination. Article 26.08 provides that small employer health benefit plan coordination of benefit provisions must follow guidelines established by the commissioner. The repeal of these rules is necessary, in part, to allow for the adoption of those guidelines in the new sections. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §2001.004 et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on May 13, 1994

TRD-9440900 D.J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Effective date: June 3, 1994

Proposal publication date: November 26, 1993

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

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### Subchapter V. Group Coordination of Benefits

**• 28 TAC §§3.3501-3.3511**

The Texas Department of Insurance adopts new §§3.3501-3.3511, concerning group coordination of benefits. Sections 3.3504, 3.3507, 3.3509, 3. 3510 and 3.3511 are adopted with changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8759). Sections 3.3501-3.3503, 3.3505, 3.3506 and 3.3508 are adopted without changes, and will not be republished.

The new sections are necessary to provide for uniformity of coordination of benefits determinations for group and group-type policies, contracts, certificates and forms filed under Insurance Code, Article 3.42, and establish guidelines for coordination of benefit provisions for small-employer health benefit plans in accordance with Insurance Code, Article 26.08. Provision for the order of benefit determination for insured dependent children, authorized and required by Insurance Code, Article 3.42(i), is included in these new sections. Section 3.3504(a) has been changed by adding quotation marks to the term "allowable expense" to maintain consistentcy throughout the subchapter. The second sentence of §3.3507(a) has been changed to correct an inadvertent error by changing "(a)" to "(b)." The first sentence of §3.3509(a) has been changed to correct an inadvertent error to read "a plan" instead of "this plan." Section 3.3509(b) has been changed to correct an inadvertent error by changing "this COB provision" to "a COB provision" and "this COB provision" to "the COB provision." Section 3.3509(b) (1) has been changed to clarify the subsection by changing "this plan" to "a secondary plan" in the first sentence and "this plan" to "the plan" in the second sentence. Section 3.3509(b)(2) has been changed by deleting the words "may be omitted" to "does not apply" to clarify the intended meaning of the subsection The second sentence of §3.3510(b)(1) has been changed to correct an inadvertent error by changing "subsection" to "subchapter." Section 3.3511(a) has been changed by changing the applicability date of the subchapter to June 15, 1994.

The sections will function to establish an order in which plans pay their claims; provide the authority for the orderly transfer of information needed to pay claims promptly, reduce duplication of benefits by permitting a reduction of the benefits paid by a plan when the plan, pursuant to rules established by these sections, does not have to pay its benefits first; reduce claims payment delays; and make all contracts that contain a coordination of benefits provision consistent with these rules.

A commenter stated that school accident-only plans, which are normally "At school" or "24-hour" coverage plans, should be applicable to coordination of benefits. The commenter expressed that it is bad public policy for insureds to be able to profit from their childrens' accidents and, that if it is not possible to make such benefits applicable, then at least school insurance should be made secondary The department does not agree that school accident-only plans should be applicable to coordination of benefits and does not believe that, in the absence of coordination of benefits, insureds would be able to profit from their childrens' accidents. School accident-only type coverages do not provide major medical type coverage or comprehensive health benefits; most commonly pay benefits only for injuries resulting from accidents which occur at school-sponsored functions; typically pay benefits which are "excess" or "always secondary" to any and all other plans; and currently provide a low-cost option for schools and families. Therefore, coordination of benefits for school accident-only type coverages is unnecessary.

Golden Rule Life Insurance Company made comments neither in favor of or opposed to the adoption of the rules..

The new sections are adopted under the Insurance Code, Articles 3.42, 26.08, and 1.03A. The Insurance Code, Article 3.42 contains filing requirements for policies, contracts, certificates and forms subject to that statute and specifically authorizes the board to adopt reasonable rules and regulations as necessary to implement and accomplish the provisions of that statute. Article 3 42(i) requires that any coordination of benefits provisions approved for use in this state must provide for the order of benefit determination for insured dependent children. These adopted sections include the required order of benefit determination for insured dependent children. Article 26 08 provides that small-employer health benefit plan coordination of benefit provisions must follow guidelines established by the commissioner. The Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department

*§3 3504. Allowable Expenses.*

(a) If an insurer chooses to include a coordination of benefits (COB) provision, "allowable expense" shall have the definition given in §3.3503 of this title (relating to Definitions)

(b) Notwithstanding the definition of "allowable expense," items of expense under coverages such as dental care, vision care, prescription drug or hearing-aid programs may be excluded from the definition of "allowable expense " A plan which provides benefits only for any such items of expense may limit its definition of "allowable expenses" to like items of expense

(c) When a plan provides benefits in the form of service, the reasonable cash value of each service will be considered as both an "allowable expense" and a benefit paid

(d) The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an "allowable expense" under this section unless the covered person's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

(e) When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "allowable expense" must include the corresponding expenses or services to which COB applies

(f) When benefits are reduced under a primary plan because a covered person does not comply with the plan provisions, the amount of such reduction will not be considered an "allowable expense." Examples of such provisions are those related to second surgical opinions or precertification of admissions or services

(1) Only benefit reductions based upon provisions similar in purpose to those described in this subsection and which are contained in the primary plan may be excluded from "allowable expenses."

(2) This provision shall not be used by a secondary plan to refuse to pay benefits because an HMO member has elected to have health care services provided by a non-HMO provider and the HMO, pursuant to its contract, is not obligated to pay for providing those services

(3) This section does not allow a secondary plan to exclude expenses that are applied towards the satisfaction of the deductible, copayments or coinsurance amounts required by the primary plan, except for the benefit reductions expressly described in this section

*§3.3507 Prototype COB Contract Provisions and Prohibited Provisions*

(a) Form COB TX incorporated by reference in these rules contains a prototype form of coordination of benefits provision for use in group or group-type contracts The use of this prototype and its provisions is subject to the provisions of subsections (b)-(d) of this section and the provisions of §3 3508 of this title (relating to Rules for Coordination of Benefits and the Order of Benefits)

(b) A group or group-type contract's COB provision does not have to use the words and format shown in the prototype Form No. COB TX Changes may be made to fit the language and style of the rest of the group or group-type contract or to reflect the difference among plans which provide services, which pay benefits for expenses incurred, and which indemnify No other substantive changes are allowed

(c) A group or group-type contract may not reduce benefits on the basis that

(1) another plan exists,

(2) a person is or could have been covered under another plan, or

(3) a person has elected an option under another plan providing a lower level of benefits than another option which could have been elected

(d) No contract may contain a provision that its benefits are "excess" or "always secondary" to any plan as defined in this regulation, except in accord with the rules permitted by this regulation

*§3.3509. Procedure to be Followed by Secondary Plan.*

(a) When it is determined, pursuant to §3.3508 of this title (relating to Rules for Coordination of Benefits and Order of Benefits), that a plan is a secondary plan, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

(b) The benefits of the secondary plan will be reduced when the sum of the benefits that would be payable for the allowable expenses under the secondary plan in the absence of a COB provision and the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of the COB provision, whether or not claim is made, exceeds those allowable expenses in a claim determination period. In that case, the benefits of the secondary plan will be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

(1) When the benefits of a secondary plan are reduced as described in this subsection, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of the plan.

(2) Paragraph (1) of this subsection does not apply if the plan provides only one benefit, or may be altered to suit the coverage provided.

*§3.3510. Miscellaneous Provisions.*

(a) A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

(b) This subsection concerns excess and other nonconforming provisions.

(1) Some plans have order of benefit determination rules not consistent with this subchapter which declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because certain plans may not be subject to insurance regulation, or because some group or group-type contracts have not yet been conformed with this subchapter.

(2) A plan with order of benefit determination rules which comply with this subchapter (complying plan) may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this regulation (noncomplying plan) on the following basis:

(A) If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis;

(B) If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, such payment shall be the limit of the complying plan's liability; and

(C) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

(3) If the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the coordination of benefits occurred in compliance with the provisions of this subchapter, then the complying plan shall advance to or on behalf of the employee, subscriber or member an amount equal to such difference. However, in no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber or member against the noncomplying plan, in accordance with applicable subrogation provisions. Such advance by the complying plan shall also be without prejudice to any claim it may have against the noncomplying plan in the absence of such subrogation.

(c) With respect to allowable expenses, a term such as "usual and customary," "usual and prevailing," or "reasonable and customary, " may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provisions apply.

(d) The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

*§3.3511. Effective Date; Compliance by Existing Contracts.*

(a) This subchapter is applicable to every group or group-type contract which provides health care benefits and which is issued on or after June 15, 1994.

(b) A group or group-type contract which provides health care benefits and was issued before the effective date of this subchapter shall be brought into compliance with this subchapter on the next anniversary date or renewal date of the group contract, or the expiration of any applicable collective bargaining contract pursuant to which it was written.

(c) A group contract that was delivered, issued for delivery, or renewed before the effective date of this subchapter is governed by the law including the prior regulations which were found at §3.3501 and §3.3502 of this title (relating to the Order of Benefit Determination for Insured Dependent Children in a Coordination of Benefits Provision) in effect immediately before the effective date of this subchapter, and that law is continued in effect for this purpose.

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 May 13, 1994

TRD-9440899 D.J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

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Proposal publication date: November 26, 1993

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

# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter 325. Certificate of Competency

#### • 30 TAC §§325.2, 325.3, 325.5, 325.6, 325.11, 325.15

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§325.2, 325.3, 325.5, 325.6, 325.11, and 325.15. Section 325 5 and §325.11 with changes to the proposed text as published in the January 7, 1994, issue of the *Texas Register* (19 TexReg 162). Sections 325.2, 325.3, 325.6, and 325.15 are adopted without changes and will not be republished. The amendments concern the evaluation of work experience towards wastewater operator certification, the payment of an application fee instead of an issuance fee for certification, options for enforcement actions taken by the executive director and commission, and the payment of an application fee for perpetual certification. The amendments are adopted in order to implement certain provisions of §26.0301 the Texas Water Code, §26.0301, which went into effect September 1, 1987.

The amendments are adopted in order to delineate eligibility requirements and procedures for those applying for wastewater operator certificates of competency.

Five different groups and individuals submitted comments on the proposed rules. These commenters reflected Water Utilities Associations. Most of the comments were favorable to the proposed amendments. All suggested changes to the proposed amendments have been considered and have been incorporated into the rules where appropriate.

There were two categories of comment: those who felt that the proposed amendments did not properly address the importance of personnel involved in the area of wastewater collection; and those who would like §325.11(e) clarified. Additionally, staff commented on the effective date of §325.5(c).

Commenters included: The Armadillo Country Water Utility Association, The Southwest Texas Regional Short School of the Texas Water Utilities Association, The Hot Wells District of the Texas Water Utilities Association, Water and Wastewater Treatment, and The Texas Water Utilities Association.

Three commenters expressed concern that the commission did not indicate in §325.2 the importance of wastewater collection operators by neither creating a third level of collection system operator certification nor establishing a wastewater collection system operator certification program parallel to the water distribution certification. The commission agrees that these statements have merit; however, it is not yet prepared to create this level of certification for wastewater collection system operators.

Commission staff expressed concern that §325.5(c) should have an effective date of September 1, 1994. The commission agrees, and adopts September 1, 1994 as the effective date.

Two commenters expressed concern that §325.11(e) was too vague and needed very specific language. The commission agrees that more specific language is needed and adopts the proposed changes of the commenters.

The amended sections are adopted under the Texas Water Code, §5.103 and §5.105, which provide authorization for the Commission to adopt any rules necessary to carry out its powers and duties and to establish policies of the Commission.

*§325.5. Applications and Fees.*

(a) Applications for certificates of competency for wastewater treatment plant and collection system operators shall be made to the executive director, who is authorized by the commission to issue the certificates of competency for the commission. Applications shall be completed in full, and the applicant shall be mailed notification of any deficiencies by the executive director. All deficiencies shall be corrected within 60 days of notification, or the examination will be considered invalid and must be repeated.

(b) (No change.)

(c) Effective September 1, 1994, applications for new, renewed, or upgraded certificates shall be accompanied by a fee in the form of a personal check, cashier's check, or money order. Cash cannot be accepted for payment of fees. All fees shall be made payable to the Texas Natural Resource Conservation Commission and are nonrefundable.

(d) Fees are $20 annually, and the fee for the entire term of the certificate must be paid prior to issuance. A two-year certificate requires a fee of $40, a three-year certificate requires a fee of $60, a five-year certificate requires a fee of $100, and an eight-year certificate requires a fee of $160.

(e) Applications for new and upgraded certificates are valid for a period of one year from their date of receipt at the commission. After an initial failure, examinations may be repeated two times without payment of another fee. Another application and fee must be submitted after a third failure or after one year of submission of the application, whichever occurs first.

*§325.11. Sanctions.*

(a) If the executive director believes that good cause exists to bring enforcement action against an operator or wastewater treatment facility operations company, he may initiate any of the following corrective measures.

(1) Reprimand-If after a thorough investigation of the circumstances surrounding the violations, the executive director finds that the operator or wastewater treatment facility operations company was responsible for contributing to the severity of the violations but that formal suspension or revocation proceedings are not warranted, he may reprimand the operator or company in writing by certified mail. The operator or company has an opportunity to consult with the executive director and his staff and present evidence which might refute the allegations.

(2) Probation-Alternatively, the executive director may place the operator or company on probation for a period of time not longer than one year, if after investigation, he finds that the operator or company committed an offense that does not warrant suspension or revocation of the certificate but was more serious in nature than an offense deserving of a reprimand. Such probationary status shall serve as a warning to the operator or company and any further violations or offenses shall warrant suspension or revocation proceedings. Notification and rebuttal procedures shall be the same as for suspension or revocation, but the commission shall not be required to hold a formal hearing.

(3) The commission may suspend or revoke the certificate of competency if the commission finds that the holder of the certificate was responsible for causing, allowing or permitting a substantial violation of any disposal permit for a wastewater treatment facility, or for falsifying reports or laboratory test results, or for falsifying any information in documents submitted under this chapter, or for other good cause.

(b) (No change.)

(c) A certificate of competency shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be decreased or increased. Suspension means that the certificate is no longer valid and that the operator is no longer authorized to operate any treatment or collection facilities until the period of suspension is complete. No re-testing is required. A certificate is revoked automatically upon a second suspension. At the request of the certificate holder, or for good cause shown, the certificate may be suspended indefinitely by the commission.

(d) The holder of a certificate of competency which has been revoked may reapply for a certificate of competency pursuant to this chapter as if applying for the first time, after a period of at least one year from the date of revocation. If a certificate is revoked a second time, the revocation will be permanent. Re-testing is

required in order to become re- certified after revocation.

(e) Operators are responsible for performing adequate process control of wastewater treatment facilities as described in commission approved operator training manuals and according to commission guidance documents. Operator performance that results in permit violations may subject the operator to administrative penalties or other sanctions as described in this section.

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

Issued in Austin, Texas, on May 13, 1994.

TRD-9440910 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: June 6, 1994

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For further information, please call: (512) 463-8069

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 65. Wildlife

### Subchapter H. Public Hunting Lands Hunting and Fishing Proclamation

#### • 31 TAC §§65.190-65.194, 65.198

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing on March 24, 1994, adopted §§65.190-65.194 and §65.198 concerning Public Hunting Lands Hunting. Section 65.193 was adopted with changes to the proposed text as published in the February 18, 1994, issue of the *Texas Register* (19 TexReg 1195). Sections 65.190-65.192, 65.194, and 65.198 were adopted without changes and will not be republished. The changes to §65.193 were as follows:

Section 65.193(s)(1)(B)(ii) was changed to establish a general season for taking exotic mammals on the Alazan Bayou Wildlife Management area; §65. 193(s)(1)(L)(ii) specifies that muzzleloading firearms are the only type of firearm which may be possessed when hunting during the general season for exotic mammals on the Alazan Bayou Wildlife Management Area; §65.193(s)(27) (A)(i) was changed to alter the method of conducting archery deer hunts from an annual public hunting permit to specially drawn permits; and §65.193(s) (34)(A) was changed to withdraw a proposal to establish a season for alligators on the Sheldon Wildlife Management Area.

The amendments were necessary to add new areas, add new definitions and revise existing definitions, enhance public-use provisions, provide for more effective enforcement of regulations, and better assure the proper management of wildlife resources.

The rules provide harvest of wildlife resources consistent with recognized wildlife management areas.

Public hearings regarding proposed changes in the Public Hunting Lands Proclamation were held in 68 counties. In addition, the agency received telephone calls and letters concerning these proposals. A total of 217 respondents commented regarding the proposed reinstatement of trapping activities. All of those commenting were in favor of reinstatement; however, 95% were opposed to the accompanying restrictions on trapping.

A total of 52 persons commented on the proposed change in requirements for the wearing of hunter orange, with 87% expressing opposition. Those opposed were primarily archery deer hunters who would be required to wear hunter orange during October in areas where firearm hunts for squirrel were concurrently being conducted.

A total of 30 people commented on the provision to allow existing duck blinds on Caddo Lake State Park and Wildlife Management Area to continue to be repaired and maintained. Most of the comments expressed a desire to maintain preferential rights to the use of permanent blinds.

The agency disagrees with the comments and no changes were made as a result of the comments.

The Texas Trappers and Fur Hunters and National Audubon Society spoke in opposition to adoption of the proposed rules. No groups or associations commented in favor of adoption of the rules.

The amendments are adopted under the Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas; with respect to designated state parks, the Commission is acting under the authority of the Parks and Wildlife Code, Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the Department if the Commission determines that multiple use is the best utilization of the land's resources, and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

*§65.193. Open Seasons, Bag and Possession Limits, and Means and Methods; General Rules.*

(a) It is unlawful to take wildlife resources at any time other than during the open seasons provided in this subchapter, by means or methods not prescribed in these rules, or to take more than the daily bag limits, or to have in possession more than the possession limits, as provided in this subchapter.

(b) Open seasons are given by their opening and closing dates, both days inclusive, and include all days between the opening and closing dates unless otherwise specified.

(c) Specific days, times, and compartments for taking wildlife resources within the open seasons, as provided, will be established by the Executive Director in the interest of sound conservation practices.

(d) It is an offense to remove a wildlife resource, or any portion thereof, from public hunting lands, except during the specific days and time period provided for taking the specified wildlife resource. A wounded or lost animal must be recovered and taken into possession during the authorized hunt period in order for any portion thereof to be claimed by the hunter.

(e) Except for hunting predators and furbearers and fishing, it is an offense to hunt wildlife resources during the hours between one-half hour after sunset and one-half hour before sunrise.

(f) The Executive Director may close to public use an area or a portion of an area to protect sensitive sites, or may restrict bag limits, cancel hunts or close the season on specific species in certain areas to avoid depletion of wildlife resources.

(g) The Executive Director may adjust hunt dates and bag limits within the framework established by the Commission to promote the proper management of wildlife resources.

(h) The Executive Director may designate units of public hunting lands acquired under short-term lease agreement, for application of Commission approved regulations governing hunting, fishing, and other public use.

(i) The Executive Director may designate an area or a portion of an area as a limited-use zone in which hunting and the use of firearms and archery equipment is either prohibited, restricted to specified means and methods, or limited to certain periods of time.

(j) The Executive Director may establish additional restrictions on camping consistent with the type of public use activity authorized and the environmental protection of the area.

(k) The Executive Director may permit recreational activities on public hunting lands which are compatible with sound resource management practices and public health and safety.

(l) Open seasons, shooting hours, means and methods, and bag and possession limits for taking deer, javelina, pronghorn antelope, desert bighorn sheep, squirrel, turkey, pheasant, and quail and fishing when listed as a legal species or activity are as provided for that county by the Statewide Hunting and Fishing Proclamation, except as otherwise specified for a specific area.

(m) Open season, shooting hours, and means and methods for taking exotic mammals when listed as a legal species are as provided for taking deer within that county by the Statewide Hunting and Fishing Proclamation, except as otherwise specified for a specific area. Exotic mammals of either sex may be taken and there is no bag or possession limit, except as otherwise established for designated exotic mammals.

(n) Open seasons, shooting hours, means, methods, special requirements, and bag and possession limits for taking mourning dove, white-winged dove, rail, gallinule, and teal duck during the Early Teal Season when listed as a legal species are as provided for that locale by the Early Season Migratory Game Bird Proclamation, except as further restricted for a specific area.

(o) Open seasons, shooting hours, means, methods, special requirements, and bag and possession limits for taking waterfowl (outside of the Early Teal Season), sandhill crane, woodcock, and snipe when listed as a legal species are as provided for that locale by the Late Season Migratory Game Bird Proclamation, except as further restricted for a specific area.

(p) Open seasons, means and methods, and bag and possession limits for taking furbearing animals when listed as a legal species are as provided by the Statewide Furbearing Animal and Trapping Proclamation, except as otherwise specified for a specific area.

(q) Open seasons, shooting hours, and means and methods for taking predatory animals when listed as additional legal species on special or regular hunting permits correspond to the open season, shooting hours, and means and methods provided for taking the featured hunt species. Predatory animal of either sex may be taken and there is no bag or possession limit.

(r) Open seasons, general rules, license requirements, means and methods, hide tag requirements, and bag limits for taking alligator when listed as a legal species are as provided by the Alligator Proclamation, except as further restricted for a specific area.

(s) Open Seasons, Bag and Possession Limits, Means and Methods, and Special Regulations for Legal Species and Legal Activities on Specific Areas.

(1) Alazan Bayou Wildlife Management Area.

(A) Deer: Archery-during the periods of October 1-October 31 and from the first Saturday in November through the first Sunday in January; one deer (either sex during October and the first full weekend in November and buck-only thereafter) ; by annual public hunting permit.

(B) Exotic mammal:

(i) Archery-during the period from October 1-January 15; no bag or possession limit; by annual public hunting permit.

(ii) General-during the period from January 16-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Quail-by annual public hunting permit.

(E) Mourning doves-by annual public hunting permit.

(F) Waterfowl-shooting hours end at noon; by annual public hunting permit.

(G) Woodcock-by annual public hunting permit.

(H) Gallinules-by annual public hunting permit.

(I) Snipe-by annual public hunting permit.

(J) Rabbits and Hares-to correspond with dates and shooting hours and means and methods designated for game animal, game bird or exotic mammal hunts; no bag or possession limits; by annual public hunting permit.

(K) Fishing-during the period from March 1-August 31; by annual public hunting permit.

(L) Special regulations:

(i) It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(ii) It is an offense to possess a firearm other than a muzzleloading firearm while hunting during the general season designated for exotic mammals.

(2) Aquilla Wildlife Management Area.

(A) Deer: Archery-to correspond with hunt dates established by the Statewide Hunting and Fishing Proclamation for taking deer in Hill County during the archery-only season and the general season; one deer (buck-only); by annual public hunting permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for taking deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Turkey-during the spring season established by the Statewide Hunting and Fishing Proclamation for taking turkey in Hill County; one turkey (gobbler only); by annual public hunting permit.

(E) Quail-by annual public hunting permit.

(F) Mourning dove-by annual public hunting permit.

(G) Sandhill crane-by annual public hunting permit.

(H) Waterfowl-season closed within that portion of the area designated by signs as a waterfowl sanctuary; by annual public hunting permit.

(I) Snipe-by annual public hunting permit.

(J) Rabbits and hares-no bag or possession limits; by annual public hunting permit.

(K) Fishing-no permit required.

(L) Special regulations-It is an offense to use any device other than shotguns with non-toxic shot or no larger than #4 lead shot or bow and arrow for hunting (Non-toxic shot requirements for hunting waterfowl remain in effect.)

(3) Atkinson Island Wildlife Management Area-Special Regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to park a boat on the area in any place except the nonvegetated beach zone.

(C) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

(4) Black Gap Wildlife Management Area.

(A) Deer:

(i) Archery-on designated days during the period from September 1-January 31; one deer (buck-only); by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Javelina:

(i) Archery: Concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by annual public hunting permit.

(ii) General-during the period from September 1-March 31; one javelina (either-sex); by special permit.

(C) Quail-on designated days; by annual public hunting permit.

(D) Mourning dove-on designated days; by annual public hunting permit.

(E) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(F) Fishing and river related public use. Impoundments are closed to fishing. Fishing in and public access to the Rio Grande River is permitted year-round, except on days when hunts are being conducted by special permit; annual public hunting permit required, except public users who enter and exit the area by boat are not required to possess an annual public hunting permit. Public users are required to use Maravillas Canyon and Horse Canyon roads only while going to and from the Rio Grande River. From the point where the Maravillas Canyon Road enters the Rio Grande Valley downstream to the area boundary, a river-related public-user who does not possess an annual public hunting permit commits an offense if the public user does not stay within the area between the road and the river or within 300 yards of the river from the aforementioned point upstream to the area boundary.

(G) Special regulations-It is an offense if a public user fails to perform on-site registration at the area headquarters, except fishermen who enter and exit the area by boat are not required to perform on-site registration.

(5) Caddo Lake State Park and Wildlife Management Area.

(A) Seasons and bag limits for taking wildlife resources are as provided for Marion and Harrison counties.

(B) Special regulations:

(i) The requirement of an Annual Public Hunting Permit or a Limited Public Use Permit is waived.

(ii) Existing permanent duck blinds which were in place on October 16, 1992, may be repaired and maintained; however it is a violation to construct a new permanent duck blind or to repair or maintain a permanent duck blind which was initially constructed after October 16, 1992.

(iii) It is an offense to establish a temporary duck blind less than 300 yards from an existing duck blind.

(iv) It is an offense to discharge a firearm within that portion of the area designated by signs as a Limited Use Zone.

(6) Candy Abshier Wildlife Management Area-Special Regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to park or operate motor vehicles in an area other than the designated parking area.

(C) It is an offense to enter a restricted area, except as authorized in writing by the Department.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

(7) Cedar Creek Islands Wildlife Management Area (Big Island, Bird Island, and Telfair Island Units)-Special Regulations:

(A) It is an offense to take wildlife resources other than fish.

(B) It is an offense to enter a restricted zone, except as authorized in writing by the Department.

(C) It is an offense to park a boat on the area in any place except the nonvegetated beach zone.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

(8) Chaparral Wildlife Management Area.

(A) Deer:

(i) Archery-during the period from September 1-January 31; one deer (either-sex); by special permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements for taking deer, javelina, and coyote; no bag or possession limit.

(C) Javelina:

(i) Archery: Concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(ii) General-during the period of September 1-March 31; one javelina (either-sex); by special permit.

(D) Quail-on designated days during the period from October-February; by regular permit.

(E) Mourning dove-on designated days by regular permit.

(F) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by regular permit.

(G) Coyote-during the period from September 1-August 31; no bag or possession limit; by regular permit.

(H) Fishing–no open season.

(9) Cooper Wildlife Management Area.

(A) Deer:

(i) Archery–on designated days, one deer (either sex during the archery-only deer season established for Delta and Hopkins counties and buck-only otherwise); by annual public hunting permit.

(ii) General–during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons–to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limits.

(C) Squirrel–on designated days; by annual public hunting permit.

(D) Quail–on designated days; by annual public hunting permit.

(E) Mourning dove–on designated days; by annual public hunting permit.

(F) Waterfowl–on designated days during the waterfowl seasons established for Delta and Hopkins counties; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock–on designated days; by annual public hunting permit.

(H) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares–on designated days; by annual public hunting permit.

(J) Fishing–no permit required.

(K) Special regulations–It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearm for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(10) Dam B Wildlife Management Area.

(A) Deer:

(i) Archery–one deer (either-sex); by annual public hunting permit.

(ii) General–one deer (buck-only); by annual public hunting permit.

(B) Exotic mammal: Concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel–by annual public hunting permit.

(D) Quail–by annual public hunting permit.

(E) Mourning doves–by annual public hunting permit.

(F) Waterfowl–by annual public hunting permit.

(G) Woodcock–by annual public hunting permit.

(H) King and clapper rail–by annual public hunting permit.

(I) Sora and Virginia rails–by annual public hunting permit.

(J) Gallinules–by annual public hunting permit.

(K) Snipe–by annual public hunting permit.

(L) Rabbits and hares–no closed season; no bag or possession limits; by annual public hunting permit.

(M) Furbearing Animals–during the period from September 1-March 31; by annual public hunting permit.

(N) Coyotes–during the period from September 1-March 31; no bag or possession limit; by annual public hunting permit.

(O) Fishing–no permit required.

(P) Special regulations:

(i) Camping is by permit only; permits may be obtained at the U.S. Corps of Engineers office at the reservoir site.

(ii) The use of airboats is an offense.

(iii) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(iv) Dogs may be used in hunting coyotes and furbearers.

(11) Designated Units of the Las Palomas Wildlife Management Area.

(A) Chachalaca–on designated days by annual public hunting permit.

(B) Mourning dove–on designated days by annual public hunting permit.

(C) White-winged dove–on designated days by regular permit, except on the Ocotillo Unit where an annual public hunting permit is required.

(D) Fishing–no open season, except on the Ocotillo Unit where an annual public hunting permit is required.

(E) Special regulations:

(i) It is an offense to park other than in designated parking areas, except on the Ocotillo Unit where parking is also permitted immediately adjacent to designated roads and on the shoulder of Farm Road 170 provided that the vehicle is pulled completely off of the road so as not to block traffic or create a safety hazard.

(ii) It is an offense if a person hunting on the Ocotillo Unit fails to perform on-site registration.

(iii) The taking of wildlife resources on the Kiskadee Unit is an offense.

(iv) It is an offense for a person to enter the Kiskadee Unit during the period from May 1-August 31 unless authorized in writing by the Department.

(v) It is an offense for a person to allow a dog, cat, or other animal to enter the Kiskadee Unit unleashed and not under the person's physical control.

(12) Designated Units of Public Hunting Lands under Short-Term Lease.

(A) Deer:

(i) Archery:

(I) During the period from September 1-January 31; one deer as specified on the permit; by special permit.

(II) On designated days during the period from September 1-January 31; one deer as specified by permit; by annual hunting permit.

(ii) General:

(I) During the period from October 1-February 15; one deer as specified on the permit; by special permit.

(II) On designated days during the period from October 1-February 15; one deer as specified on the permit; by annual public hunting permit.

(B) Exotic animals:

(i) Archery:

(I) During the period from September 1-August 31; no bag or possession limit; by special permit

(II) On designated days during the period from September 1-August 31; no bag or possession limit; by annual hunting permit.

(ii) General:

(I) During the period from September 1-August 31; no bag or possession limit; by special permit.

(II) On designated days during the period from September 1-August 31; no bag or possession limit; by annual public hunting permit.

(C) Javelina:

(i) Archery:

(I) During the period from September 1-March 31; one javelina (either sex); by special permit.

(II) On designated days during the period from September 1-March 31; one javelina (either sex); by annual public hunting permit.

(ii) General:

(I) During the period from September 1-March 31; one javelina (either sex); by special permit.

(II) On designated days during the period from September 1-March 31; one javelina (either sex); by annual public hunting permit.

(D) Squirrel:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(E) Turkey-during the months of April and May; one gobbler; by special permit.

(F) Quail:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(G) Mourning dove:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(H) White-winged dove:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(I) Waterfowl:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(J) Sandhill crane:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(K) Snipe:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(L) Rails:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(M) Gallinule:

(i) On designated days by regular permit; shooting hours end at noon.

(ii) On designated days by annual public hunting permit; shooting hours end at noon.

(N) Woodcock:

(i) On designated days by regular permit.

(ii) On designated days by annual public hunting permit.

(O) Fishing-on designated days by annual public hunting permit; restricted to daylight hours.

(P) Special regulations:

(i) It is an offense if a public user fails to perform on-site registration.

(ii) The use of airboats is an offense.

(iii) It is an offense to use any device other than shotguns with nontoxic shot no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (nontoxic shot requirements for hunting waterfowl remain in effect).

(iv) It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(v) The use or possession of dogs is an offense, except one dog per permit-holding hunter is permitted for hunting migratory game birds, quail, pheasant or squirrel.

(vi) It is an offense to park in other than designated parking areas.

(13) Designated Units of the Playa Lakes Wildlife Management Area.

(A) Pheasant–on designated days; by annual public hunting permit.

(B) Quail–on designated days; by annual public hunting permit.

(C) Mourning dove–on designated days; by annual public hunting permit.

(D) Waterfowl–on designated days during designated shooting hours; by annual public hunting permit.

(E) Sandhill crane–on designated days during designated shooting hours; by annual public hunting permit.

(F) Snipe–on designated days during designated shooting hours; by annual public hunting permit.

(G) Rabbits and hares–on designated days; no bag or possession limits; by annual public hunting permit.

(H) Fishing–on designated days; by annual public hunting permit

(14) Designated Units of the State Park System.

(A) Deer:

(i) Archery–during the period from September 1-January 31; one deer (either sex); by special permit.

(ii) General–during the period from October 1-February 15; two deer as specified on the permit; by special permit.

(B) Exotic mammals:

(i) Concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by special permit.

(ii) General–during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Designated exotic mammal–during the period from September 1-August 31; designated exotic mammals of the type and number as specified on the permit; by special permit.

(D) Javelina–during the period of September 1-March 31; one javelina (either sex); by special permit.

(E) Squirrel–on designated days by regular permit.

(F) Turkey–during the months of April and May; one gobbler; by special permit.

(G) Quail–on designated days during the period from October-February; by regular permit.

(H) Mourning dove–on designated days by regular permit.

(I) White-winged dove–on designated days by regular permit.

(J) Waterfowl–on designated days; shooting hours end at noon; by regular permit.

(K) King and clapper rails–on dates and shooting hours which correspond to those designates for waterfowl hunts; by regular permit.

(L) Sora and Virginia rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(M) Gallinule–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(N) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(O) Alligator–one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(P) Special regulations:

(i) The use of airboats is an offense, except that airboats having a motor of no greater than 10 horsepower may be used on Sea Rim State Park.

(ii) The use or possession of dogs is an offense, except one dog per permit-holding hunter is permitted for hunting migratory game birds, quail or squirrel.

(15) Elephant Mountain Wildlife Management Area.

(A) Deer:

(i) Archery–during the period from September 1-January 31; one deer (buck-only); by special permit.

(ii) General–during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Javelina:

(i) Archery: Concurrent seasons–to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(ii) General–during the period from September 1-March 31; one javelina (either-sex); by special permit.

(C) Pronghorn antelope–during the period from September 1-October 31; one antelope as specified on the permit; by special permit.

(D) Desert bighorn sheep–during the period from September 1-August 31; one desert bighorn sheep ram as specified on the permit; by special permit.

(E) Quail–on designated days during the period from October-February; by annual public hunting permit.

(F) Mourning dove–on designated days by annual public hunting permit.

(G) Rabbits and hares–to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(H) Fishing–no open season.

(I) Special regulations:

(i) The possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted in accordance with written authorization of the Department.

(ii) It is an offense if a public user fails to perform on-site registration.

(16) Gene Howe Wildlife Management Area.

(A) Deer:

(i) Archery–on designated days during the period from September

1-January 31; one deer (either-sex); by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods and permit requirements for deer; no bag or possession limit.

(C) Turkey-during the months of April and May; one gobbler; by special permit.

(D) Quail-on designated days during the period from October-February; by annual public hunting permit.

(E) Mourning dove-on designated days by annual public hunting permit.

(F) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(G) Fishing-season closed on days when hunts are conducted by special permit; annual public hunting permit required.

(H) Special regulations-It is an offense if a public user fails to perform on-site registration.

(17) Granger Wildlife Management Area.

(A) Exotic mammal: Archery-during the period from October 1-May 31; no bag or possession limit; by annual public hunting permit.

(B) Squirrel-by annual public hunting permit.

(C) Quail-by annual public hunting permit.

(D) Mourning doves-by annual public hunting permit.

(E) Waterfowl-by annual public hunting permit.

(F) Woodcock-by annual public hunting permit.

(G) Gallinules-by annual public hunting permit.

(H) Snipe-by annual public hunting permit.

(I) Rabbits and hares-no closed season; no bag or possession limits; by annual public hunting permit.

(J) Furbearing animals-during daylight hours only from September 1-March 31; by annual public hunting permit.

(K) Coyotes-during daylight hours only from September 1-March 31; no bag or possession limit; by annual public hunting permit.

(L) Fishing-no permit required.

(M) Special regulations:

(i) It is an offense to park other than in designated areas.

(ii) It is a violation to use any type of device other than a shotgun with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting (Non-toxic shot requirements for hunting waterfowl remain in effect).

(iii) Dogs may be used in hunting coyotes and furbearers.

(18) Guadalupe Delta Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Alligator-one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(19) Gus Engeling Wildlife Management Area.

(A) Deer:

(i) Archery-on designated days during the period from September 1-January 31; one deer (either-sex); by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) Archery: Concurrent seasons-to correspond with hunt dates and shooting hours designated for archery-only deer hunts; no bag or possession limits; by annual public hunting permit.

(ii) General-during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Squirrel-on designated days; by annual public hunting permit.

(D) Turkey-during the months of April and May; one gobbler; by special permit.

(E) Waterfowl-on designated days; shooting hours end at noon; by annual public hunting permit.

(F) Woodcock-on dates and shooting hours which correspond with those designated for waterfowl hunts; by annual public hunting permit.

(G) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(H) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares-to correspond with dates and shooting hours designated for squirrel hunts; no bag or possession limits; by annual public hunting permit.

(J) Fishing-season is closed on dates designated for hunts by special or regular permit; by annual public hunting permit.

(K) Special regulations:

(i) It is an offense if a public user fails to perform on-site registration.

(ii) It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(iii) Individuals who participate only in the self guided driving tour and designated nature trails need not possess a Texas Conservation Passport.

(iv) Horses, mules, burros and other types of riding stock or pack animals may be possessed and used in accordance with written authorization of the Department for educational events sanctioned by the Department.

(20) James Daughtrey Wildlife Management Area.

(A) Deer:

(i) Archery-during the period from September 1-January 31; one deer (either-sex); by special permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods established for deer hunts; no bag or possession limit; by special permit.

(C) Javelina:

(i) Archery: Concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(ii) General-during the period of September 1-March 31; one javelina (either-sex); by special permit.

(D) Turkey-during the months of April and May; one gobbler; by special permit.

(E) Quail-on designated days during the period from October-February; by annual public hunting permit.

(F) Mourning dove-on designated days by annual public hunting permit.

(G) Waterfowl-by annual public hunting permit.

(H) Sandhill crane-by annual public hunting permit.

(I) Snipe-by annual public hunting permit.

(J) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limit; by annual public hunting permit.

(K) Coyote-on designated days during the period from September 1-August 31; no bag or possession limit; by regular permit.

(L) Fishing-no permit required.

(M) Special regulations-during times when hunting by special permit is being conducted on the area, it is an offense if a person without a valid special hunting permit ventures inland farther than a distance of 100 yards from the shoreline of Choke Canyon Reservoir.

(21) J. D. Murphree Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Fishing-no permit required.

(i) In that portion of Keith Lake which lies within the confines of the J. D. Murphree Wildlife Management Area, fishing is permitted year-round with no daylight restrictions.

(ii) It is an offense to fish in that portion of Big Hill Bayou which lies within the J. D. Murphree Area, except during the period from the Monday following the closing of waterfowl season through October 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset.

(iii) In the remainder of the area, it is an offense to fish except during the period from March 1-August 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the department for the proper management of waterfowl resources, leveed wetland compartments or outside borrow ditches may be temporarily closed to fishing.

(iv) Powered skiffs, powered boats, or powered floating craft of any type with motor not to exceed 35 horsepower shall be permitted within leveed wetland compartments during the period from March 1-August 31.

(v) The use of boats, skiffs, or floating craft of any type in the ditches along the west boundary of Wetland Compartments 5, 6, 7, 8, and 9, and the north boundary of Wetland Compartment 11 is an offense, except for travel by permitted hunters.

(vi) It is an offense to take fish within leveed wetland compartments and borrow ditch areas other than by means of pole and line, except that gar may be taken by means of bowfishing utilizing an arrow securely attached to the bow with a line.

(vii) It is an offense for a person to leave a fishing line unattended at any time within a leveed compartment or borrow ditch.

(viii) In that portion of Big Hill Bayou and Keith Lake which lies within the J. D. Murphree Area, the use of jug lines and seines and nets other than 20-foot minnow seines is an offense

(G) Alligator-one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(H) Special regulations:

(i) The use of airboats is an offense, except in Big Hill Bayou, Blind Bayou, and Keith Lake.

(ii) The use or possession of dogs is an offense except one dog per permit-holding hunter is permitted to retrieve dead or wounded waterfowl.

(22) Keechi Creek Wildlife Management Area.

(A) Deer:

(i) Archery–during the period from September 1-January 31; one deer (either-sex); by special permit.

(ii) General–during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) Concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer hunts; no bag or possession limits; by special permit.

(ii) General–during the period from September 1-August 31; no bag or possession limits; by special permit.

(C) Squirrel–on designated days; by regular permit.

(D) Turkey–during the months of April and May; one gobbler; by special permit.

(E) Waterfowl–on designated days; shooting hours end at noon; by regular permit.

(F) Woodcock–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(G) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(H) Snipe–on dates and shooting hours which correspond to those established for waterfowl hunts; by regular permit.

(I) Rabbits and hares–to correspond with dates and shooting hours designated for squirrel hunts; no bag or possession limits; by regular permit.

(J) Fishing–no open season.

(K) Special regulations–It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(23) Kerr Wildlife Management Area.

(A) Deer:

(i) Archery–during the period from September 1-January 31; one deer (either-sex); by special permit.

(ii) General–during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammals:

(i) Concurrent seasons–to correspond with hunt dates, shooting hours, and means and methods designated for deer hunts; no bag or possession limit; by special permit.

(ii) General–during the period from September 1-August 31; no bag or possession limit; means and methods as specified on the permit; by special permit.

(C) Javelina: Archery: Concurrent seasons–to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(D) Turkey–during the months of April and May; one gobbler; by special permit.

(E) Mourning dove–on designated days; by annual public hunting permit.

(F) Rabbits and hares–to correspond with hunt dates and shooting hours established for mourning dove; no bag or possession limit; by annual public hunting permit.

(G) Fishing–no permit required; on-site registration required.

(H) Individuals who participate only in the self guided driving tour need not possess a Texas Conservation Passport or perform on-site registration.

(24) Lands within a desert bighorn sheep Cooperative Unit.

(A) Desert bighorn sheep–during the period from September 1-August 31; one desert bighorn sheep ram as specified on the permit; by special permit.

(B) Special regulations–the possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted on departmental lands in accordance with written authorization of the Department.

(25) Lower Neches Wildlife Management Area.

(A) Waterfowl–on designated days; shooting hours end at noon; by annual public hunting permit.

(B) King and clapper rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(C) Sora and Virginia rails–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(D) Gallinules–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(E) Snipe–on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(F) Fishing–no permit required.

(i) It is an offense to take fish within the area other than by means of pole and line, except that gar may be taken by means of bowfishing utilizing an arrow securely attached to the bow with a line.

(ii) It is an offense for a person to leave a fishing line unattended at any time within the area.

(iii) It is an offense to use trotlines and juglines.

(iv) It is an offense to use crab traps in that portion of the area east of State Highway 87.

(v) In the Nelda Stark Unit and in that portion of the Old River Unit that includes the Old River Cove, the Gulf States Utilities (G.S.U.) intake canal, and 150 feet on either side of Lake Street and State Highway 87, fishing is permitted year-round without daylight restrictions.

(vi) In the portion (1437 acres) of The Old River Unit leased from Gulf States Utilities, west of Hwy 87, it is

an offense to fish except during the period from Monday following the close of waterfowl season through October 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the Department for the proper management of waterfowl resources, portions of the Area may be closed to fishing for temporary periods of time.

(vii) In the remainder of the Old River Unit, it is an offense to fish except during the period from March 1-August 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, but when required by the Department for the proper management of waterfowl resources, portions of the area may be closed to fishing for temporary periods of time.

(G) Alligator-one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(H) Special regulations: The use of airboats is an offense in the Old River Unit.

(26) Mad Island Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(B) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(C) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Alligator-one alligator as specified on the permit; means and methods as specified on the permit or attachments; by special permit.

(27) Matador Wildlife Management Area.

(A) Deer:

(i) Archery-during the period from September 1-January 31; one deer (buck-only); by special permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammals: Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer hunts; no bag or possession limit.

(C) Turkey-during the months of April and May; one gobbler; by special permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl-on designated days; by annual public hunting permit.

(G) Rabbits and hares-to correspond with hunt dates and shooting hours designated for quail and mourning dove; no bag or possession limits; by annual public hunting permit.

(H) Fishing-fishing is permitted year-round, except on days when hunts are being conducted by special permit; annual public hunting permit required.

(I) Special regulations-It is an offense if a public user fails to perform on-site registration.

(28) Matagorda Island Wildlife Management Area.

(A) Deer: General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammals:

(i) Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods established for deer hunts; no bag or possession limit; by special permit.

(ii) General-during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) Quail-on designated days; by regular permit.

(D) Mourning dove-on designated days; by regular permit.

(E) Waterfowl-on designated days; shooting hours end at noon; by regular permit, except within the designated marsh unit no permit is required, there is no restriction to designated hunt days, and shooting hours do not end at noon.

(F) King and clapper rails-on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(G) Sora and Virginia rails-on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(H) Gallinules-on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(I) Snipe-on dates and shooting hours and permit requirements which correspond to those designated for waterfowl hunts.

(29) M. O. Neasloney Wildlife Management Area.

(A) Fishing-no open season.

(B) Special regulations-access for non-consumptive use is only through prior arrangement with the Department.

(30) Old Tunnel Wildlife Management Area-Special regulations:

(A) It is an offense to take wildlife resources.

(B) It is an offense to park or operate motor vehicles in an area other than the designated parking area.

(C) It is an offense to disturb roosting bats.

(D) It is an offense for a person to allow a dog, cat, or any animal to enter the area unleashed and not under the person's physical control.

(E) It is an offense for a person to enter that portion of the railroad bed located between the steep excavated walls of the former railroad right-of-way or into the excavated tunnel.

(31) Pat Mayse Wildlife Management Area.

(A) Deer:

(i) Archery-one deer (either-sex); no annual public hunting permit required.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(C) Squirrel-closed on days designated for hunts by special permit; no annual public hunting permit required.

(D) Quail-closed on days designated for hunts by special permit; no annual public hunting permit required.

(E) Mourning dove-closed on days designated for hunts by special permit; no annual public hunting permit required.

(F) Waterfowl-no annual public hunting permit required.

(G) Woodcock-closed on days designated for hunts by special permit; no annual public hunting permit required.

(H) Gallinules-no annual public hunting permit required.

(I) Snipe-no annual public hunting permit required.

(J) Rabbits and hares-no closed season, except no hunting for rabbits or hares on days designated for hunts by special permit; no bag or possession limit; no annual public hunting permit required.

(K) Furbearing animals-during the period from September 1-March 31, except season closed on days designated for hunts by special permit; no annual public hunting permit required.

(L) Coyote-during the period from September 1-March 31, except season closed on days designated for hunts by special permit; no bag or possession limit; no annual public hunting permit required.

(M) Fishing-no permit required.

(N) Special regulations:

(i) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(ii) Dogs may be used in hunting coyotes and furbearers.

(iii) It is an offense if a public user fails to perform on-site registration.

(32) Peach Point Wildlife Management Area.

(A) Waterfowl-on designated days; shooting hours end at noon; by regular permit.

(B) Exotic mammal: General-during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) King and clapper rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(D) Sora and Virginia rails-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(E) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(F) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by regular permit.

(33) Richland Creek Wildlife Management Area.

(A) Deer:

(i) Archery-on designated days during the period from September 1-January 31; one deer (either-sex); by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(C) Squirrel-on designated days; by annual public hunting permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl-on designated days; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock-on dates and shooting hours which correspond with those designated for waterfowl hunts; by annual public hunting permit.

(H) Gallinules-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(J) Rabbits and hares-on designated days; no bag or possession limits; by annual public hunting permit.

(K) Fishing-closed on dates designated for hunts by special permit; by annual public hunting permit, except that fishermen who enter and exit the area by boat are not required to possess an annual public hunting permit.

(L) Special regulations-It is an offense to possess a rifle or handgun of greater size than .22-caliber rimfire while hunting during the season designated for squirrel.

(34) Sheldon Wildlife Management Area. Fishing-no permit required.

(A) It is an offense to fish except during the period from 5:00 a.m. to 9:30 p.m. each day.

(B) It is an offense to use handlines and trotlines.

(C) It is an offense to wade fish and use boats during the period November 1-February 28, both days inclusive.

(D) It is an offense to use boat motors over 10 horsepower.

(35) Sierra Diablo Wildlife Management Area.

(A) Deer:

(i) Archery-during the period from September 1-January 31; one deer (buck-only); by special permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Javelina. Archery: Concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(C) Desert bighorn sheep-during the period from September 1-August 31; one desert bighorn sheep ram as specified on the permit; by special permit.

(D) Fishing-no open season.

(E) Special regulation-the possession and use of horses, mules, burros and other types of riding stock or pack animals during public hunts for desert bighorn sheep may be permitted in accordance with written authorization of the Department.

(36) Somerville Wildlife Management Area.

(A) Deer:

(i) Archery-one deer (either-sex); by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for deer; no bag or possession limit.

(ii) Archery-during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-closed on days designated for hunts by special permit; by annual public hunting permit.

(D) Quail-closed on days designated for hunts by special permit; by annual public hunting permit.

(E) Mourning dove-closed on days designated for hunts by special permit; by annual public hunting permit.

(F) Waterfowl-closed on days designated for hunts by special permit; by annual public hunting permit.

(G) Woodcock-closed on days designated for hunts by special permit; by annual public hunting permit.

(H) Gallinules-closed on days designated for hunts by special permit; by annual public hunting permit.

(I) Snipe-closed on days designated for hunts by special permit; by annual public hunting permit.

(J) Rabbits and hares-no closed season, except no hunting for rabbits or hares on days designated for hunts by special permit; no bag or possession limit; by annual public hunting permit.

(K) Fishing-no permit required.

(L) Special regulations:

(i) It is an offense to park other than in designated areas.

(ii) It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearms for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(37) Walter Buck Wildlife Management Area.

(A) Deer:

(i) Archery-during the period from September 1-January 31; one deer (either-sex); by special permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by special permit.

(C) Javelina. Archery: Concurrent seasons-to correspond with dates and shooting hours designated for archery-only deer hunts; one javelina (either-sex); by special permit.

(D) Turkey-during the months of April and May; one gobbler; by special permit.

(E) Fishing-no open season.

(38) White Oak Creek Wildlife Management Area.

(A) Deer:

(i) Archery-one deer (either sex); on designated days; by annual public hunting permit.

(ii) General-during the period from October 1-February 15; one deer as specified on the permit; by special permit.

(B) Exotic mammal:

(i) Concurrent seasons-to correspond with hunt dates, shooting hours, means and methods, and permit requirements designated for taking deer; no bag or possession limits.

(ii) General-during the period from September 1-August 31; no bag or possession limit; by special permit.

(C) Squirrel-on designated days ; by annual public hunting permit.

(D) Quail-on designated days; by annual public hunting permit.

(E) Mourning dove-on designated days; by annual public hunting permit.

(F) Waterfowl-on designated days during the waterfowl seasons established for Bowie, Cass, Morris, and Titus counties; shooting hours end at noon; by annual public hunting permit.

(G) Woodcock-on designated days; by annual public hunting permit.

(H) Snipe-on dates and shooting hours which correspond to those designated for waterfowl hunts; by annual public hunting permit.

(I) Rabbits and hares-on designated days; no bag or possession limits; by annual public hunting permit.

(J) Fishing-no permit required.

(K) Special regulations-It is an offense to use any device other than shotguns with non-toxic shot or no larger than size #4 lead shot or bow and arrow for hunting, except that lawful firearms, including shotguns using only slugs, are the only legal firearm for taking deer or exotic mammals during the general season (Non-toxic shot requirements for hunting waterfowl remain in effect).

(39) Units 102, 103, 104, 106, 136, 137, 142, 152, 154, 155, 159, 902 (Moore Plantation Wildlife Management Area) and 903 (Bannister Wildlife Management Area).

(A) Deer:

(i) Archery-either sex; by annual public hunting permit.

(ii) General-either sex during the first two days of the general season and buck-only thereafter; by annual public hunting permit.

(B) Exotic mammal:

(i) Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(ii) General-only on Units 902 and 903 during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Game birds (other than turkey)-by annual public hunting permit.

(E) Furbearers-by annual public hunting permit.

(F) Predatory animals-no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares-no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish-by annual public hunting permit on areas other than Units 902 and 903.

(I) Special regulations-On Units 902 and 903, during seasons other than the Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours in the a.m. until noon each day during the regular seasons.

(40) Units 109, 113, 114, 115, 116, 117, 119, 120, 121, 122, 125, 129, 130, 133, 143, 144, 145, 146, 147, 150, 151, 156, 157, 158, 160, 204, 210, 211, 213, 217, 218, 223, 301, 615 (North Toledo Bend Wildlife Management Area), 616, 712 (Blue Elbow Swamp Wildlife Management Area), 630, 801, 803, 904 (Alabama Creek Wildlife Management Area), and 905 (Sam Houston National Forest) .

(A) Deer:

(i) Archery-either sex; by annual public hunting permit.

(ii) General-buck only; by annual public hunting permit.

(B) Exotic mammal:

(i) Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(ii) General-only on Units 615, 630, 904, and 905 during the period from January 15-March 15; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Game birds (other than turkey)-by annual public hunting permit.

(E) Furbearer-by annual public hunting permit.

(F) Predatory animals-no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares-no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish-by annual public hunting permit on areas other than 904 and 905.

(I) Special regulations-

(i) On Units 615, 904 and 905 during seasons other than the Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours of 30 minutes before sunrise until noon each day during the regular season.

(ii) On the Sam Houston National Forest Wildlife Management Area (Unit 905) the use of a dog or dogs to hunt, pursue, or take feral hogs is permitted only during the period from January 15-March 15.

(41) Units 135, 224, 607, and 901 (Caddo Wildlife Management Area).

(A) Deer:

(i) Archery-buck-only; by annual public hunting permit.

(ii) General-buck-only; by annual public hunting permit.

(B) Exotic mammal: Concurrent seasons-to correspond with hunt dates, shooting hours, and means and methods designated for deer; no bag or possession limit; by annual public hunting permit.

(C) Squirrel-by annual public hunting permit.

(D) Game birds (other than turkey)-by annual public hunting permit.

(E) Furbearers-by annual public hunting permit.

(F) Predatory animals-no closed season and no bag or possession limit; by annual public hunting permit.

(G) Rabbits and hares-no closed season and no bag or possession limit; by annual public hunting permit.

(H) Fishing, frogs and crayfish-by annual public hunting permit on areas other than Unit 901.

(I) Special regulations-On Unit 901, during seasons other than the

Early Teal Season, it is an offense to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours of 30 minutes before sunrise until noon each day during the regular seasons.

(42) Unit 501 (Lake Ray Roberts Wildlife Management Area)

(A) Squirrel-by annual public hunting permit.

(B) Game birds (other than turkey)-by annual public hunting permit.

(C) Rabbits and hares-no bag or possession limit; by annual public hunting permit.

(D) Frogs-by annual public hunting permit.

(E) Fishing-no permit required.

(F) Special regulations:

(i) It is an offense to possess firearms and ammunition other than shotguns with shotshells containing non-toxic shot or no larger than size #4 lead shot. (Non-toxic shot requirements for hunting waterfowl remain in effect.)

(ii) It is an offense to discharge firearms except while hunting.

(iii) It is an offense to camp overnight.

(iv) It is an offense to hunt waterfowl in that portion of the Unit located north of FM Road 3002, which is designated as a waterfowl sanctuary.

(v) It is an offense to hunt on the land or water within 100 yards of State Park boundaries.

(43) Unit 617 (Cleavinger Tract).

(A) Pheasant-by annual public hunting permit.

(B) Rabbits and hares-concurrent with shooting hours and seasons for taking pheasant; no bag or possession limit; by annual public hunting permit.

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 May 16, 1994.

TRD-9440908 Paul M Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Effective date: June 6, 1994

Proposal publication date: February 18, 1994

For further information, please call: 1-800-792-1112, Ext. 4433 or (512) 389-4433

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 18. Native American Restitutionary Program

#### Subchapter A. Program Requirements

#### • 40 TAC §§18.1-18.5

The Texas Department of Human Services (DHS) adopts the repeal of §§18. 1-18.5 concerning program requirements without changes to the proposed text as published in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2704).

Justification for the repeal is to have a rulebase free of obsolete rules.

The repeals will function by deleting the rules from DHS's rulebase, because the program is now administered by the Texas Department of Housing and Community Affairs.

The department received no comments regarding the adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on May 13, 1994

TRD-9440845 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: June 15, 1994

Proposal publication date: April 12, 1994

For further information, please call: (512) 450-3765

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### Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) adopts the repeal of §19. 218 and adopts an amendment to §19.219, concerning incompetency and documentation for the delegation of long term care resident's rights, in its Long Term Care Nursing Facility Requirements rule chapter, without changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2378).

The justification for the repeal and new section is to comply with Senate Bill 332 which provides a surrogate decision-making process for incompetent adults residing in nursing facilities.

The repeal and amendment will function by enhancing the rights of nursing facility residents.

No comments were received regarding adoption of the repeal and amendment.

#### • 40 TAC §19.218

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§32.001-32.042.

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 May 16, 1994

TRD-9440928 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: July 15, 1994

Proposal publication date: April 5, 1994

For further information, please call: (512) 450-3765

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#### • 40 TAC §19.219

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

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 May 16, 1994

TRD-9440942 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: July 15, 1994

Proposal publication date: April 5, 1994

tance and Support Services. Protective supervision is provided when the primary caregiver is out of the home for short periods of respite and there are not specific tasks to occupy the attendant's time

Comment: The Texas Health Care Association (THCA) commented in reference to §48 6034 that the assisted living/residential care services proposal should be changed to allow for creativity and consumer choice to shape the market rather than applying artificial limitations on the appearance of the structure to try to assure quality. THCA stated that Texas should want to encourage, where appropriate, the conversion of nursing home space to personal care. The January 1, 1994, residential care apartment construction deadline should be eliminated.

Response. In the interest of promoting the availability of different kinds of Assisted Living/Residential Care providers for the Nursing Facility Waiver program, the January 1, 1994, requirement for construction has been deleted from §48.6034(b) The deletion resulted in the renumbering of subparagraphs (A) and (B) to paragraphs (1) and (2). All other portions of §48.6034 remain the same.

Comment: Educare commented that the requirement for providers of Personal Assistance and Support Services to be licensed as CLASS A Home Health agencies referenced in §48.6030 of the proposed rules may reduce the number of qualified providers. Educare recommended that providers be licensed as either Class A or B Home Health agencies until House Bill 1551 is implemented.

Response: The requirement for a Class A Home Health agency license was proposed in order to facilitate the utilization and coordination of benefits available to waiver participants through Medicare. Utilization of Medicare benefits will improve the cost-effectiveness of the waiver program. In order currently to participate in Medicare, a Home Health agency must have a Class A license. Implementation of changes to the Home Health licensure requirements specified in House Bill 1551 will change this requirement Effective June 1, 1994, in order to participate in Medicare under House Bill 1551, the home health agency will have to meet the Standards for Licensed and Certified Home Health Services in 25 TAC §115.23. DHS is changing the proposed language in §48.6030 to be consistent with the Medicare requirements under House Bill 1551.

Comment: Living Centers of America recommended in reference to §48 6034 that to ensure quality patient care across the continuum of services that Assisted Living and Residential Care programs and providers should be treated the same as nursing facility programs and providers. Rules, regulations, and standards should be the same across the board to protect those persons who need care regardless of where they receive that care.

Response: The waiver program is designed to be an alternative to institutional care in a ... lities and waiver participants would not have options for less restrictive environments. Assisted Living/Residential Care providers will be subject to the rules, regulations, and standards for personal care facilities.

Comment: Living Centers of America recommended that the 80-hour minimum nurse aide training requirements placed on nursing facilities should also apply to Adult Foster Care Providers in §48.6032. This would ensure that persons needing care are treated by trained direct care staff and would be the standard across the board, regardless as to the setting in which that care is received.

Response: According to the rules promulgated by the Board of Nurse Examiners, §218, Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel, an "unlicensed person" is defined as: "An individual who is not licensed as a health care provider, who functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions." Nurse Aide status is not required for delegation. Skilled tasks needed by NFW participants in Adult Foster Care will be subject to delegation by a registered nurse to the Adult Foster Care provider. If delegation is not an option, in the opinion of the registered nurse, according to the scope of her licensure, other options for the participant to receive the necessary care will be evaluated. Such options could include direct delivery of the skilled care by a licensed nurse.

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new sections implement the Human Resources Code, §§22. 001-22.024 and §§32.001-32.042.

*§48.6034. Housing Options in Assisted Living/Residential Care Services.*

(a) An Assisted Living apartment setting is defined as an apartment for single occupancy that is a private space with individual living and sleeping areas, a kitchen, bathroom, and adequate storage space, as specified in the following.

(1) The apartment must have a minimum of 220 square feet, not including the bathroom. Apartments in pre-existing structures being remodeled must have a minimum of 160 square feet, not including the bathroom.

(2) The kitchen is an area equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils

## Chapter 48. Community Care for Aged and Disabled

### 1915(c) Medicaid Home and Community-Based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

**• 40 TAC §§48.6003, 48.6009, 48.6030-48.6034**

The Texas Department of Human Services (DHS) adopts amendments to §§48. 6003 and 48.6009 and adopts new §§48.6030-48.6033 without changes to the proposed text as published in the February 22, 1994, issue of the *Texas Register* (19 TexReg 1318) Section 48.6034 is adopted with a change to the proposed text.

The justification for the amendments is to establish consistent policies and make more housing options available to Nursing Facility Waiver clients.

The amendments and new sections will function by establishing general contracting requirements for Nursing Facility Waiver providers; defining the housing options available to Nursing Facility Waiver clients in personal care facilities; including maximum service ceilings for adaptive aids and medical supplies, minor home modifications, respite care, and the protective supervision component of the personal assistance service category; and making the copayment requirements for couples consistent with the one for individuals.

The department received comments from Living Centers of America, Texas Health Care Association, and Educare Community Living Corporation. The following are comments and DHS's responses.

Comment: Representatives from the Texas Health Care Association and Living Centers of America commented in reference to §48.6003 that it was not financially prudent to raise the service caps on adaptive aids, medical supplies and minor home modifications since a transfer of funds was necessary to implement the waiver program.

Response: No change was proposed to the cap on Minor Home Modifications The increase in the cap on Adaptive Aids was proposed in response to recommendations from the ADAC subcommittee on Services to Persons with Disabilities. This increase will allow individuals to utilize a greater percentage of their annual cost cap on expenditures for Adaptive Aids. Increasing the cap on Adaptive aids will not change the annual cost limit for each waiver participant.

Comment: The Texas Health Care Association asked for an explanation of protective supervision in §48.6003(a)(8)(D).

and supplies. A cooking appliance may be a stove, microwave, or built-in surface unit.

(3) The bathroom must be a separate room in the individual's living area with a toilet, sink, and an accessible bath.

(4) The bedroom must be single-occupancy except when double occupancy is requested by the participant.

(b) A Residential Care apartment must be a double occupancy apartment with a connected bedroom, kitchen, and bathroom area that provides a minimum of 350 square feet of space per client, and meet the following specifications.

(1) Indoor common areas used by waiver clients may be included in computing the minimum square footage. The portion of the common area allocated must not exceed usable square footage divided by the maximum number of individuals who have access to the common areas.

(2) The kitchen must be equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils and supplies. A cooking appliance may be a stove, microwave, or built-in surface unit.

(c) The Assisted Living/Residential Care apartment may be an efficiency or one or two bedroom apartment, and each apartment must have a private bath and cooking facilities.

(d) A Residential Care non-apartment setting is defined as a Licensed Personal Care facility which has living units that do not meet either the definition of an Assisted Living apartment or a Residential Care apartment, may be double occupancy, and must:

(1) be freestanding; and

(2) be licensed for 16 or fewer beds.

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 May 16, 1994

TRD-9440940 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: June 15, 1994

Proposal publication date: February 22, 1994

For further information, please call: (512) 450-3765

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## Subchapter C. Standards for Licensure

### • 40 TAC §90.41

The Texas Department of Human Services (DHS) adopts an amendment to §90. 41, concerning standards for nursing facilities, in its Nursing Facilities and Related Institutions rule chapter. The amendment is adopted without changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2379).

The justification for the amendment is to comply with Senate Bill 332, which provides a surrogate decision-making process for incompetent adults residing in nursing facilities.

The amendment will function by enhancing the rights of nursing facility residents.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, Chapter 242 which provides the department with the authority to license long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

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 May 16, 1994.

TRD-9440941 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: July 15, 1994

Proposal publication date: April 5, 1994

For further information, please call: (512) 450-3765

## Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's Note: As required by the Insurance Code, Article 5 96 and 5. 97, the Texas Register publishes notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.*

*These actions become effective 15 days after the date of publication or on a later specified date*

*The text of the material being adopted will not be published, but may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe, Austin.)*

The Commissioner of Insurance of the Texas Department of Insurance, at a meeting held at 8:30 a m., May 2, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted an amendment proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 42, Texas Automobile Insurance Plan. Staff's petition (Reference Number A-0394-06-I) was published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1990).

Other alternatives for amending Rule 42 were proposed in a petition filed by Sidney P. Childress (Reference Number A-1193-06) and in comments filed by others. However, only one suggested change to Staff's proposal is adopted herein, and the other proposals are to be considered by department staff who will later make its recommendations to the Commissioner. The one change that is made to Staff's proposal is deletion of the word "wilful" from the exception being added to Rule 42.B. Therefore, Rule 42.B.'s list of non-surchargeable convictions is expanded by the following language:

"4. convictions for violations of written promises to appear in court."

The amendment as adopted by the Commissioner of Insurance is shown in an exhibit on file with the Chief Clerk under Reference Number A-0394-06-I, which is incorporated by reference into Commissioner's Order Number 94-0512.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.96, 5.98, and 5.01.

Consistent with the Texas Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

Issued in Austin, Texas, on May 13, 1994.

TRD-9440901 D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Effective date: June 4, 1994

For further information, please call: (512) 463-6328

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The Commissioner of Insurance at a public meeting held at 9:00 a.m., May 2, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted a staff proposal of a new amendatory endorsement (Number FRO-530) to the Farm and Ranch Owner's Policy and a new amendatory endorsement (Number HO-230) to the Homeowner's Policy when the Farmer's Comprehensive Liability Endorsement Number HO-210 is attached to the Homeowner's Policy. The purpose of the two endorsements is to provide liability coverage for bodily injury and property damage arising out of the rental or holding for rental of any part of any premises by an insured if an insured location is shown on the declaration as farm premises rented to others. Notice of the proposed endorsements (Reference Number P-0394-07-I) was published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1860).

The Commissioner has determined that these endorsements are necessary because the exception for an insured location shown on the declaration as farm premises rented to others to the exclusion of liability coverage for bodily injury and property arising out of the rental or holding for rental of any part of any premises by an insured was inadvertently omitted from the Farm and Ranch Owner's Policy and the Farmer's Comprehensive Liability Endorsement Number HO-210 when these forms were rewritten and adopted by the State Board of Insurance in 1992. Prior to the 1992 rewrite and adoption, the original exclusions contained in the Farm and Ranch Owner's Policy and the Farmer's Comprehensive Liability Endorsement Number HO-210 excluded coverage for bodily injury or property damage arising out of the rental or holding for rental of any part of any premises by an insured, with certain exceptions to the exclusion, including if an insured location is shown on the declaration as farm premises rented to others. The two proposed amendatory endorsements restore the inadvertently omitted exceptions to the exclusions.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.98, and 5.96.

The two endorsements are on file in the Office of Legal Counsel to the Commissioner under Reference Number P-0394-07-I and are incorporated by reference by Commissioner Order Number 94-0511.

Consistent with the Insurance Code, Article 5.96(h), prior to June 4, 1994, the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance of the Texas Department of Insurance that Endorsement Number FRO-530 to the Farm and Ranch Owners Policy and Endorsement Number HO-230 to the Homeowner's Policy when the Farmer's Comprehensive Liability Endorsement Number HO-210 is attached to the Homeowner's Policy, relating to the provision of liability coverage for bodily injury and property damage arising out of the rental or holding for rental of any part of any premises by an insured if an insured location is shown on the declaration as farm premises rented to others, are adopted to be effective for all applicable policies issued on and after June 4, 1994

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Texas Government, Code Title 10, Chapter 2001)).

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

Issued in Austin, Texas, on May 13, 1994.

TRD-9440902

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

Effective date: June 4, 1994

For further information, please call: (512) 463-6328

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# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

**Tuesday, May 24, 1994, 8:00 a.m.**

Radisson Resort South Padre

South Padre Island

According to the complete agenda, the Texas Corn Producers Board will call to order; action: minutes of previous meeting, financial statements; overview of biennial election; swearing in of directors; nomination and election of officers; update on state ASCS activities; The Kernal newsletter update; discussion and action: Clean Fuels Coalition membership; TALL membership; activity reports; date and location of next meeting; and adjourn.

**Contact:** Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

**Filed:** May 12, 1994, 1:27 p.m.

TRD-9440779

**Wednesday, May 25, 1994, 9:30 a.m.**

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

According to the agenda summary, the Texas Agricultural Finance Authority will call to order; discussion and action on: minutes of last meeting; applications to Loan Guaranty Program; outstanding guaranty to Living Christmas Tree, Inc.; renewal of loan guaranty to M W Carrot, Inc; credit policy and procedure for Loan Guaranty Program and Loan Guaranty Program rules; Young Farmer Loan Guarantee Credit policy and procedures, program rules, and guarantee applications; credit facility provided by Morgan Guaranty Trust Company of New York for Commercial Paper Program of the Agricultural Finance Authority; request for proposal for senior managing underwriter for Farm and Ranch Finance Program; Morales Industries Project, and Revenue Bond Program. Discussion on: Young Farmer Loan Guarantee Program survey; demand survey and next meeting date; and adjourn.

**Contact:** Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

**Filed:** May 16, 1994, 4:27 p.m.

TRD-9440973

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## State Aircraft Pooling Board

**Wednesday, May 25, 1994, 1:00 p.m.**

4900 Old Manor Road

Austin

According to the complete agenda, the State Aircraft Pooling Board will call to order; introductions; approval of minutes of board meeting, March 8, 1994; Texas Department of Transportation, management audit by State Auditor's Office, executive director's report, strategic plan 1995-1999; setting of time and place for next meeting; and final adjournment.

**Contact:** Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

**Filed:** May 16, 1994, 3:03 p.m.

TRD-9440963

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## Texas Commission on Alcohol and Drug Abuse

**Tuesday, May 17, 1994, 3:00 p.m.**

Perry Brooks Building, 710 Brazos, Eighth Floor Conference Room

Austin

Emergency Meeting

According to the complete agenda, the Grant and Contract Review Committee called to order; approval of minutes from April 11, 1994; fiscal year 1994 court-committed services; fiscal year 1994 non-competitive renewals; fiscal year 1994 reallocations; information items; next meeting; and adjourn.

Reason for emergency: To make immediate funding decisions affected fiscal year 1994 programs

**Contact:** Steve Casillas or Lynn Brunn-Shank, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8265.

**Filed:** May 13, 1994, 8:35 a.m.

TRD-9440839

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## Texas Commission on the Arts

**Wednesday, June 1, 1994, 9:00 a.m.**

Doubletree Hotel, Austin Room, 6505 IH-35 North

Austin

According to the complete agenda, the Assistance Review Committee will call to order; public hearing; approval of minutes of September 9, 1993 meeting; 1995 Peer Review Panelist Nominations Report; review of organizational update form; review of fiscal year 1995 overview and grant application rankings: organizational, project, touring; other business; and adjournment.

**Contact:** Marilyn Martin, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

**Filed:** May 16, 1994, 12:35 p.m.

TRD-9440948

**Thursday, June 2, 1994, 8:00 a.m.**

Doubletree Hotel, Austin Room, 6505 IH-35 North

Austin

According to the agenda summary, the Administrative Committee will call to order; public hearing; financial statement fiscal year 1994; NEA grants update; Sunset review update; performance measures report; fiscal year 1994-1995 budget reductions; strategic plan update; and fiscal year 1996-1997 legislative appropriations request.

**Contact:** Marilyn Martin, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

**Filed:** May 16, 1994, 12:35 p.m.

TRD-9440949

**Thursday, June 2, 1994, 9:30 a.m.**

Doubletree Hotel, Austin Room, 6505 IH-35 North

Austin

According to the agenda summary, the Texas Commission on the Arts will call to order; public hearing; items for commission consent; items for information only; executive session; and adjournment.

**Contact:** Marilyn Martin, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

**Filed:** May 16, 1994, 12:36 p.m.

TRD-9440950

## State Banking Board

**Thursday, May 26, 1994, 10:00 a.m.**

2601 North Lamar Boulevard

Austin

According to the agenda summary, the State Banking Board will discuss review and approval of minutes of previous meeting; consideration of trust company charter application, consideration of conversion applications; consideration of interim charter applications; review of the status of other pending applications; review of the status of proposed State Banking Board rules currently out for comment; review and discussion of the functions, authority and procedures of the State Banking Board; and the board may convene into executive session for consideration of matter pertaining to applications as required by Articles 342-115(6)(a) of the Texas Banking Code.

**Contact:** Lynda A. Drake, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

**Filed:** May 16, 1994, 2:11 p.m.

TRD-9440956

## Texas Cancer Council

**Wednesday, May 18, 1994, 9:00 a.m.**

Texas Medical Association, May Owens Conference Room, 401 West 15th

Austin

Emergency Revised Agenda

According to the agenda summary, the Board of Directors added to the agenda: National Cancer Institute State matching supplement application.

Reason for emergency: Notice of funding opportunity received of May 4, 1994.

**Contact:** Emily F. Untermeyer, 211 East Seventh, Suite 710, Austin, Texas 78701, (512) 463-3190.

**Filed:** May 13, 1994, 12:06 p.m.

TRD-9440851

## Texas Commission on Children and Youth

**Friday, May 20, 1994, 11:00 a.m.**

1600 West 38th Street, Suite 200

Austin

According to the agenda summary, the Texas Commission on Children and Youth will hold an intervention work group work session.

**Contact:** Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

**Filed:** May 12, 1994, 1:53 p.m.

TRD-9440809

**Friday-Saturday, May 20-21, 1994, 7:00 p.m. and 8:00 a.m. respectively.**

604 Highcrest Drive

Granite Shoals

According to the agenda summary, the Texas Commission on Children and Youth will discuss retreat agenda: Friday–opening remarks and overview; Saturday- breakfast, discussion and work group breakouts, lunch, discussion, and summation.

**Contact:** Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-8970.

**Filed:** May 12, 1994, 1:54 p.m.

TRD-9440810

**Monday, May 23, 1994, 10:00 a.m.**

1201 West University Drive, The University of Texas Pan American, University Ballroom

Edinburg

According to the agenda summary, the Texas Commission on Children and Youth will discuss organizational matters, guest speakers; public testimony; lunch; and public testimony.

**Contact:** Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

**Filed:** May 13, 1994, 3:20 p.m.

TRD-9440863

## Texas Board of Chiropractic Examiners

**Wednesday, May 25, 1994, 8:30 a.m.**

333 Guadalupe, Tower Three, Suite 825

Austin

Revised agenda

According to the complete agenda, the Enforcement Committee will meet to conduct informal conferences on cases #94-98, #94-103, #94-104, #94-77, #94-95, #94-106, #94-20, #94-87, #94-107, #94-96, #94-51, #94-113, and #94-130 regarding possible violations of its licensees.

**Contact:** Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

**Filed:** May 13, 1994, 2:28 p.m

TRD-9440856

**Tuesday, May 17, 1994, 10:00 a.m.**

333 Guadalupe, Tower Three, Room 102

Austin

According to the complete agenda, the Texas Board of Chiropractic Examiners will consider, discuss, and take appropriate action on: minutes of the March 31, 1994 board meeting; committee appointments; report of the president; report of the executive director; consideration of passage of rules as approved on March 31, 1994, printed for comment in the April 12, 1994 issue of the *Texas Register* and heard for comment at the May 19, 1994 public hearing; Enforcement Committee report; Education Committee report; Texas A&M Policy; and executive session-the board may meet from time to time in executive session session with respect to matters authorized by Chapter 551 of the Government Code.

**Contact:** Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

**Filed:** May 16, 1994, 10:18 p.m.

TRD-9440943

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## The Daughters of the Republic of Texas, Inc.

**Friday-Saturday, May 20-21, 1994, 8:00 a.m. and 8:30 a.m. respectively.**

801 Avenue Q

Lubbock

According to the agenda summary, the Daughters of the Republic, Inc. Annual Convention will: open meeting: call to order; determination of quorum; reports or discussion preview to reports of committees operating state-owned properties; recess to closed/executive session; determination of quorum; and discussion of matters affecting state-owned properties pursuant to Article 551: 551.004, §7; 551.043; 551.071; 551.074; and 552.007, if necessary thereof.

**Contact:** Gail Loving Barnes, 2922 Chisum, Odessa, Texas 79762, (915) 366-7085 or (915) 366-1612.

**Filed:** May 13, 1994, 2:38 p.m.

TRD-9440859

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## Texas Education Agency

**Monday, May 23, 1994, 10:00 a.m.**

William B. Travis Building, Room 1-109, 1701 North Congress Avenue

Austin

According to the complete agenda, the Academic Excellence Indicator System (AEIS) Parent/Family Report Card Advisory Committee will discuss approval of minutes from April 25, 1994 meeting; finalize recommendations for the elements and format of school report card; finalize recommendations for commissioner's rules; and finalize recommendations for the support materials.

**Contact:** Cherry Kugle, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

**Filed:** May 13, 1994, 12:05 p.m.

TRD-9440847

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## State Employee Charitable Campaign

**Tuesday, May 17, 1994, 2:00 p.m.**

501 Campus Drive, TSTC System Conference Room

Waco

According to the complete agenda, the Local Employee Committee held an organizational meeting to provide overview of State Employee Charitable Campaign and selected local campaign manager.

**Contact:** Fred L. Williams, TSTC Campus, Waco, Texas 76705, (817) 867-4892.

**Filed:** May 13, 1994, 3:22 p.m.

TRD-9440867

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## Texas Employment Commission

**Friday, May 20, 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; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 20; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** May 12, 1994, 4:09 p.m.

TRD-9440793

**Tuesday, May 24, 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; internal procedures of Commission Appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 21; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** May 16, 1994, 4:10 p.m.

TRD-9440972

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## Texas Commission on Human Rights

**Monday, May 23, 1994, 9:00 a.m.**

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

Emergency Meeting

According to the agenda summary, the Texas Commission on Human Rights will consider discussion and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; approval of minutes; administrative reports; status of EEO compliance training; report on EEOC/FEPA annual conference; status of Administrative Enforcement Report; status of the commission's annual EEO Law Conference; public rulemaking hearing and presentation of final amended procedural rules under the Texas Commission on Human Rights Act for review of comments and possible adoption; discussion of IPA grant with the U.S. Department of Housing and Urban Development; discussion of approved cost reduction plan for the commission and other agencies; commissioner issues; and unfinished business.

Reason for emergency: Emergency meeting is necessary so that Commissioner can have a quorum.

**Contact:** William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

**Filed:** May 16, 1994, 9:46 a.m.

TRD-9440915

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## State Independent Living Council

**Wednesday, May 25, 1994, 10:45 a.m.**

Hill Country Ballroom, Hyatt Regency Hotel, 208 Barton Springs

Austin

According to the agenda summary, the State Independent Living Council will call to order, review of minutes, review agenda, public comment, committee reports and recom-

mendations, TRC-TCB reports, action plans, and pre-draft interim state plan report.

**Contact:** Humberto Orozco, P.O. Box 2946, McAllen, Texas, 78502, (210) 781-7733

**Filed:** May 13, 1994, 9 23 p.m.

TRD-9440816

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## Texas Department of Insurance

**Wednesday, May 25, 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 discuss request by Advantage Corporate Services, Inc for a hearing on reimbursement of workers' compensation insurance premiums for its 1990-1991 policy

**Contact:** Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** May 12, 1994, 4:53 p m.

TRD-9440808

**Wednesday, May 25, 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 meet to consider whether disciplinary action should be taken against Everett B Husband, Houston, Texas, who holds a solicitor'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:** May 12, 1994, 4 53 p.m

TRD-9440807

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## Texas Lottery Commission

**Wednesday, May 25, 1994, 11:00 a.m.**

American Founders Building, First Floor Auditorium, 6937 North IH-35

Austin

According to the complete agenda, the Texas Lottery Commission will call the meeting to order, approval of minutes of the March 25, 1994 meeting, consideration and possible adoption of a rule, 16 TAC §401 501, relating to the Lottery security plan; consideration of and possible adoption of a rule, 16 TAC §401.367, relating to sales criteria for Lottery retailers; consideration and possible approval of an amendment to the Lottery Operator contract between GTECH Corporation and the Texas Lottery Commission; report by the executive director and possible discussion relating to a financial/budget review of the agency; report by the executive director and possible discussion of the transfer of unspent administrative Lottery funds to the General Revenue Fund; report by the executive director and possible discussion and/or action relating to the Lottery Security study, including a summary of such study; consideration and possible action regarding procedures for evaluation of contractual issues; consideration of and possible approval of the agency's strategic plan, may meet in executive session on any items listed above as authorized by the Open Meetings Act, and adjournment

For ADA assistance, call Michell Guerrero at (512) 323-3791 at least two days prior to the meeting

**Contact:** Michelle Guerrero, 6937 North IH-35, Austin, Texas 78758, (512) 323-3791

**Filed:** May 16, 1994, 1:15 p.m.

TRD-9440953

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## Texas State Board of Medical Examiners

**Friday, May 20, 1994, 9:00 a.m.**

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division will discussion probation appearances 9:00 a.m , Bodhan John Harem, M D , Garland, Texas, 9 15 a.m., Robert Quinn Purnell, M.D , McKinney, Texas; 9.30 a.m , Nathaniel Tolbert Watts, Jr , M.D., Dallas, Texas, and termination request. 9·45 a.m , Carlton Eugene Hardey, M.D., Arlington, Texas

**Contact:** Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402

**Filed:** May 12, 1994, 1 12 p m.

TRD-9440768

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## Texas Natural Resource Conservation Commission

**Tuesday, May 24, 1994, 9:00 a.m.**

12100 Park 35, Building A

Austin

According to the complete agenda, the Irrigators Council will call to order; approval of minutes of the meeting of January 25, 1993 meeting; certify successful irrigator candidates; site in Arlington, Texas for examinations report; set site and dates for the next licensing exam, reports by various council committees; backflow specialist certification program at Texas A&M; complaints against Dan Funk, Randy Collins, Douglas Welsh, Bill Brisco, Charles Turner, Eliazar Hernandez, Donald and Troy Gibbins; summer council meeting dates; report by Doretta Conrad, staff of TNRCC; and chairman's report.

**Contact:** Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 239-6719 or (512) 239-6658 or (512) 239-6659.

**Filed:** May 16, 1994, 2:22 p.m.

TRD-9440958

**Wednesday, May 25, 1994, 9:00 a.m.**

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters on the attached uncontested agenda: water quality amendment; new water quality permits; district matters; on-site disposal; nunc pro tunc order; settled hearings; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but no limited to rescheduling an item in its entirety or for particular action at a future date and time.

**Contact:** Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

**Filed:** May 13, 1994, 3:21 p.m.

TRD-9440865

**Wednesday, May 25, 1994, 9:00 a.m.**

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters: water quality enforcement; report on enforcement actions; pilot project relating to standardized agency orders; rulemaking and concepts, statement of enforcement philosophy; authorization for public hearings; rules; executive session; in addition, the commission will consider items previously posted fór open meeting and at such meeting verbally postpponed 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 13, 1994, 3:21 p.m.

TRD-9440866

**Thursday, May 26, 1994, 9:30 p.m.**

12115 Park 35 Circle, North IH-35, Building E, Room 201-S

Austin

According to the agenda summary, the Texas Texas Water Well Drillers Advisory Council will meet to discuss and take action on the following: consider the approval of minutes of the March 24, 1994; consider whether to set the following complains for a formal hearing: Larry Bisidas, Vernon Davis, Lewis Dodd, James Grimes, City of Leander, Lloyd Munson, Traye Phelps, Glen Wells, Thomas Billalba, Rodney Carr, Jesse Gomez, Robert Guerrero, Furman Greer, Byron Jackson, Sonny Leggett, John McDonald, Todd Moore, Aaron Peters, Roy Richter, Randy Schneider, and Donald Woehl; consider certification of applicants for registration and driller trainee registration; and consider staff reports.

**Contact:** Bonnie Rubey, P.O. Box 13087, Austin, Texas 78711, (512) 239-0600.

**Filed:** May 16, 1994, 9:22 p.m.

TRD-9440909

**Friday, May 27, 1994, 9:30 a.m.**

Building E, Room 201-S, 12118 IH-35

Austin

According to the agenda summary, the Office of Hearings Examiners will hold an adjudicative hearing for administrative action to be taken against Glen Shook.

**Contact:** Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

**Filed:** May 16, 1994, 1:07 p.m.

TRD-9440952

**Friday, June 10, 1994, 3:00 p.m.**

100 East Washington, Herman Brown Free Library

Burnet

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss an application by Browning-Ferris, Inc., Registration Number MSW40035, to construct and operate a Type V Municipal solid waste transfer station. The proposed site contains approximately 4.0 acres of land and will be located approximately 1 3/4 miles north, northeast of the city limits of Burnet and approximately 1,000 feet east of Highway 963 in Burnet County, Texas.

**Contact:** Ann Scudday or Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687, (512) 239-6688.

**Filed:** May 16, 1994, 2:31 p.m.

TRD-9440962

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## Texas State Board of Physical Therapy Examiners

**Tuesday, May 31, 1994, 10:00 a.m.**

3001 South Lamar Boulevard, #101

Austin

According to the complete agenda, the Education Committee will call to order; public comment; discussion and possible recommendation on goals and objectives of Education Committee; discussion and possible recommendation on the role of the Education Committee; discussion and possible committee recommendations on the conversion of clinical education hours; discussion and possible committee recommendations on the role of credential agencies; discussion and possible committee recommendation concerning board member term expiration dates; and adjournment.

**Contact:** Gerard Swain, 3001 South Lamar, Suite 101, Austin, Texas 78704, (512) 443-8202.

**Filed:** May 12, 1994, 4:53 p.m.

TRD-9440803

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## Texas Department of Protective and Regulatory Services

**Monday, May 23, 1994, 10:00 a.m.**

701 West 51st Street, Second Floor, Classroom Two

Austin

According to the complete agenda, the Child Care Administrators and Facilities Advisory Committee will meet to: hear deputy director's report; discuss implementing board action on Day Care Center Minimum Standards; hear report on child placing agency standards implementation; conduct initial work session on rating of facilities; and plan for the administrator's conference

**Contact:** Doug Sanders, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3253

**Filed:** May 12, 1994, 1 55 p.m.

TRD-9440812

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## Public Utility Commission of Texas

**Thursday, May 26, 1994, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12959-petition of Southwestern Public Service Company for a declaratory order that activities do not constitute construction of new generating plants.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** may 16, 1994, 11:22 a.m.

TRD-9440946

**Thursday, June 2, 1994, 10:00 a.m.**

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12965-complaint of Shoreline Ventures Limited against Central Power and Light Company.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 12, 1994, 1:28 p.m.

TRD-9440781

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## Railroad Commission of Texas

**Monday, May 23, 1994, 9:30 a.m.**

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 0 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

**Contact:** Carole J. Vogel, P O. Box 12967, Austin, Texas 78711, (512) 463-6921

**Filed:** May 13, 1994, 11:11 a.m.

TRD-9440838

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on agency budget, fiscal and administrative matters, and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440837

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Division Director's report on budget, personnel, and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440836

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440835

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative, or procedural matters, strategic planning; and personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (463-6981.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440834

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters. The commission will consider and act on the Information Resource Manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440833

Monday, May 23, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440832

Monday, May 23, 1994, 2:00 p.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

According to the agenda summary, the Railroad Commission of Texas will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440830

Thursday, May 26, 1994, 9:30 a.m.

1701 North Congress Avenue, 12th Floor Willa Mae Palmer Conference Room

Austin

According to the complete agenda, the Railroad Commission of Texas will meet to consider administrative matters relating to a long range oil and gas plan for Texas as well as oil and gas legislative proposals for the 74th session.

Contact: David Garlick, P.O. Box 12967, Austin, Texas 78711, (512) 463-6893.

Filed: May 13, 1994, 11:10 a.m.

TRD-9440831

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## Texas Real Estate Commission

Monday, May 23, 1994, 8:30 a.m.

TREC Headquarters Office, Conference Room 236B, Second Floor, 1101 Camino La Costa

Austin

According to the complete agenda, the Travel Expense Committee will consider discussion and possible action to recommend travel and expense guidelines.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to the meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: May 13, 1994, 12:06 p.m.

TRD-9440852

Monday, May 23, 1994, 9:30 a.m.

TREC Headquarters Office, Conference Room 235, Second Floor, 1101 Camino La Costa

Austin

According to the agenda summary, the Texas Real Estate Commission will consider and possibly act on: staff reports; committee reports; possible action to adopt proposed amendment to 22 TAC §525.222, concerning inspection standards; request of Jack Dinerstein for renewal of license; possible action to adopt amendments to 22 TAC §§539.61, 529.81, 539.137, and 539.231, concerning residential service companies; discussion of proposed amendments to §535.51, concerning general requirements for licensing, §535.91, concerning renewal applications; discussion and possible action to propose amendments to 22 TAC §539.91, concerning annual reports by residential service companies, new §539.101, concerning advertisements and marketing of residential service contracts, and new §539.121, concerning examinations of residential service companies; pos-

sible action to propose amendments to 22 TAC §535.205, concerning inspectors licensed under prior law; to §535.208, concerning application for a license; to §525.212, concerning education and experience requirements for a license; to §525.214, concerning examinations; to §535.216, concerning renewal of a license; to §535.218, concerning continuing education; to §535.226, concerning sponsorship of apprentice inspectors and real estate inspectors; new §525.213, concerning schools and course of study in real estate inspection and new §535.215, concerning inspector inactive status; possible action to propose amendment to 22 TAC §533.29, concerning practice and procedure; staff report on development of possible Spanish language agency disclosure form; possible action to establish travel expense guidelines; approval of MCE providers and MCE courses or other providers and courses; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; authorization of payments from recovery funds or other action on matters discussed in executive session; consideration of complaint information; entry of orders in contested cases; Motion to Revoke Probation in Hearing Number 93-38-921139, and Motion for Rehearing in Hearing Number 94-25-931053.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

**Contact:** Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

**Filed:** May 13, 1994, 12:06 p.m.

TRD-9440853

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## Texas Real Estate Research Center

**Tuesday, May 24, 1994, 8:30 a.m.**

Clayton Williams Alumni Center, Texas A&M University

College Station

According to the complete agenda, the Advisory Committee will discuss opening remarks; remarks by Dr. Gary Trennepohl, Interim Dean, College of Business Administration; approval of minutes; progress report on the 1993-1994; current budget report; refunding strategies; other business; adjourn.

**Contact:** James W. Christian, Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

**Filed:** May 13, 1994, 4:02 p.m.

TRD-9440878

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## Texas National Research Laboratory Commission

**Monday, May 23, 1994, 1:00 p.m.**

Houston Hobby Airport, Terminal A, The Cloud Room

Houston

According to the agenda summary, the Texas National Research Laboratory Commission will convene meeting and roll call of members; chairman's report-Shelton Smith, executive session; reconvene; reports; action items; public comment; and adjourn.

**Contact:** Karen L. Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

**Filed:** May 13, 1994, 2:28 p.m.

TRD-9440857

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## Texas County and District Retirement System

**Wednesday-Thursday, May 25-26, 1994, 1:30 p.m. and 9:00 a.m. respectively.**

303 West 15th Street

Austin

According to the complete agenda, the Board of Trustees will review, consider, and act on TCDRS investment policies, practices, and personnel; and consider purchase of office building.

**Contact:** Terry Horton, 400 West 14th Street, Austin, Texas 78701-1688, (512) 476-6651.

**Filed:** May 16, 1994, 3:16 p.m.

TRD-9440967

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## Texas State Board of Examiners of Social Worker Examiners

**Saturday-Sunday, May 21-22, 9:00 a.m.**

6911 North IH-35, LBJ Room

Austin

Emergency Meeting

According to the complete agenda, the Rules Committee will discuss and possibly act on: rules not covered by other committees; proposed rules from other committees; and final drafts for June board meeting. The committee will meet on May 22 only if all agenda items are not completed on May 21.

Reason for emergency: Unforeseeable circumstances

**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:** May 16, 1994, 11:06 a.m.

TRD-9440945

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## Texas Sustainable Energy Development Council

**Friday, May 27, 1994, 7:30 a.m.**

3701 Lake Austin Boulevard, Lower Colorado River Authority, Hancock Building, Board of Director's Conference Room

Austin

According to the complete agenda, the Texas Sustainable Energy Council will call to order; discuss strategic planning; and adjourn.

**Contact:** Charlotte Banks, 17001 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

**Filed:** May 16, 1994, 1:32 p.m.

TRD-9440955

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## Texas Women's University

**Thursday, May 19, 1994, 10:00 a.m.**

Administration Conference Tower, 16th Floor, Board of Regents Conference Room

Austin

According to the complete agenda, the Board of Regents called to order; considered approval of bids, resolutions, certificates, and other necessary matters relating thereto, to sell $5,000,000 in Combined Fee Revenue Bonds, Series 1994, for the Texas Women's University as approved by the 73rd Texas Legislature, and designating a bank as the institution responsible for receipt and distribution of the bonds, based upon bids to be received at the bond offices of Rauscher, Pierce, Hefsnes, Inc., 2400 RPR Tower, 700 North Pearl, Dallas, Texas 75201; and meeting adjourned.

**Contact:** Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

**Filed:** May 11, 1994, 9:07 p.m.

TRD-9440905

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## Texas Department of Transportation

**Tuesday, May 24, 1994, 9:00 a.m.**

200 East Riverside Drive, Room 101

Austin

According to the agenda summary, the Texas Transportation Commission will approve minutes; awards/recognitions; presentations by Austin Transportation Study Policy Advisory Committee and Rio Grande Valley Mobility Task Force; public hearing on aviation projects; delegations from McLennan, El Paso, and various counties; contract awards/rejections; consider: 1995 Highway Safety Plan, size/weight inspection/weigh stations, and transportation enhancement projects; routine minute orders; district/division reports; environmental project multimodal projects; consider maintenance of Parks and Wildlife boat ramps; adoption of 1995 strategic plan; rulemaking: 43 TAC Chapters 9, 13, and 23; executive session for legal counsel and land acquisition matters; and open comment period.

**Contact:** Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

**Filed:** May 16, 1994, 3:19 p.m.

TRD-9440968

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## Texas Turnpike Authority

**Friday, May 20, 1994, 9:30 a.m.**

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

According to the agenda summary, the New Projects Committee will discuss consideration of the following: with respect to State Highway 190: briefing on potential feasability as a turnpike, consider retaining bond counsel, traffic and revenue engineer, general consulting civil engineer, requests to the Texas Transportation Commission for approval of expenditures and participation in funding; executive session; consider issuance of an RFQ for counsel on State Highway 190 turnpike; progress report on DFW Airport East-West Turnpike; progress report on Addison Airport; progress report on Two Nations Turnpike.

**James W. Griffin, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.**

**Filed:** May 12, 1994, 4:38 p.m.

TRD-9440798

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## University of North Texas

**Friday, May 20, 1994, 3:00 p.m.**

5505 Keller Springs Road

Dallas

According to the complete agenda, the Board of Regents, Advancement Committee will discuss planning for Capital Campaign, Phase II.

**Contact:** Jan Dobbs, P.O. Box 13737, Denton, Texas 76201, (817) 369-8515.

**Filed:** May 13, 1994, 12:14 p.m.

TRD-9440854

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## University of Texas Health Science Center at San Antonio

**Wednesday, May 25, 1994, 3:00 p.m.**

Medical School Building, Room 422A, President's Conference Room, 7703 Floyd Curl Drive

San Antonio

According to the agenda summary, the Institutional Animal Care and Use Committee will discuss approval of minutes; protocols for review; subcommittee reports; and other business.

**Contact:** Molly Greene, 770 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717.

**Filed:** May 16, 1994, 1:29 p.m.

TRD-9440954

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## Texas Veterans Commission

**Friday, May 27, 1994, 9:30 a.m.**

E.O. Thompson Building, Sixth Floor, Tenth and Colorado Street

Austin

According to the complete agenda, the Texas Veterans Commission will approve the minutes of the second quarterly meeting, discuss matters concerning veterans' benefits; and receive staff reports. The commission will also discuss the subjects of the Texas Veterans Commission accreditation of Veterans County Services Officer, agency strategic plan, agency budget, and adoption of rules specifying the charges the Commission will make for copies of public records. Election of officers will be conducted to fill vacancies created by the appointment of new commissioners. The commission will also conduct routine business and any old or unfinished business that might be presented. Action may be taken by the commission on those items which are discussed.

**Contact:** Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

**Filed:** May 16, 1994, 3:14 p.m.

TRD-9440965

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## Texas Workers' Compensation Commission

**Friday, May 20, 1994, 9:30 a.m.**

Southfield Building, Room 910-911, 4000 South IH-35

Austin

According to the agenda summary, the Medical Advisory Committee will call to order; review and approval of March 11, 1994 minutes; discussion of commission rules presented to commissioners; discussion on impairment ratings; discussion on designated doctor process; discussion, review, and possible approval of treatment guidelines; discussion on possible conceptual framework of lost time guidelines; establish draft agenda; establish next meeting date; and adjournment.

**Contact:** Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 469-7811.

**Filed:** May 12, 1994, 3:23 p.m.

TRD-9440792

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## Regional Meetings

### Meetings Filed May 12, 1994

**The Alamo Area Council of Governments** Management Committee met at 118 Broadway, Suite 420, San Antonio, May 17, 1994, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9440806.

**The Alamo Area Council of Governments** Community Affairs met at 118 Broadway, Suite 420, San Antonio, May 17, 1994, at 1:30 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9440769.

**The Brazos Valley Solid Waste Management Agency Board of Trustees** met at the College Station City Council Chambers, 1101 Texas Avenue, College Station, May 17, 1994, at 1:30 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9440805.

**The Burnet County Appraisal District** Board of Directors met at 223 South Pierce, Burnet, May 19, 1994, at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9440801.

**The Coleman County Water Supply Corporation** Board of Directors met at the Coleman County Courthouse, Coleman, May 17, 1994, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna, Coleman, Texas 76834, (915) 625-2133. TRD-9440773.

**The Deep East Texas Regional MHMR Services** Board of Trustees will meet at 2215 North John Redditt Drive, Lufkin, May 24, 1994, at Noon. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9440765.

**The Deep East Texas Regional MHMR Services** Board of Trustees will meet at 4101 South Medford Drive, Lufkin, May 24, 1994, at 2:30 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9440764.

**The Denton Central Appraisal District (Revised agenda.)** Board of Directors will meet at 3911 Morse Street, Denton, May 26, 1994, at 4:00 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904. TRD-9440778.

**The East Texas Council of Governments** Private Industry Council met at the Regional Training and Development Center, #123, Tyler, May 19, 1994, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9440772.

**The Gray County Appraisal District** Board of Directors met at 815 North Sumner, Pampa, May 17, 1994, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9440800.

**The Gulf Bend Center** Board of Trustees met at the Brackenridge Plantation Campground and Marine, Lake Texana, Edna, May 19, 1994, at Noon. Information may be obtained from Sharon Pratka, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9440758.

**The Harris County Appraisal District** Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, May 18, 1994, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-6291. TRD-9440771.

**The Houston Galveston Area Council** Projects Review Committee met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, May 17, 1994, at 9:00 a.m. Information may be obtained from Rowena Ballas, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9440762.

**The Houston Galveston Area Council** Board of Directors met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, May 17, 1994, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9440763.

**The Hunt County Appraisal District** Appraisal Review Board will meet at 4801 King Street, Board Room, Greenville, May 31-June 3, 1994, at 8:30 a.m. Information may be obtained from Shirley Gregory, 4801 King Street, Greenville, Texas 75403, (903) 454-3510. TRD-9440775.

**The Johnson County Rural Water Supply Corporation** Regular Board met at the JCRWSC Office, Highway 171 South, Cleburne, May 17, 1994, at 6:00 p. m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9440813.

**The Middle Rio Grande Development Council** Budget Committee met in the MRGDC Central Office Conference Room, 1904 North First Street, Carrizo Springs, May 16, 1994, at 10:00 a.m. Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9440776.

**The Middle Rio Grande Development Council** Nominating Committee met at the Holiday Inn, Rose Room, 290 East Main, Uvalde, May 17, 1994, at 5: 00 p.m. Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9440777.

**The Middle Rio Grande Quality Work Force Council (Rescheduled from May 10, 1994.)** met at the Golden Corral Family Steak House, Uvalde, May 17, 1994, at Noon. Information may be obtained from Pat Gonzales, 209 North Getty, Uvalde, Texas 78801, (210) 278-2527. TRD-9440799.

**The Rio Grande Council of Governments** Board of Directors will meet at 1100 North Stanton, Main Conference Room, El Paso, May 29, 1994, at 9: 30 a.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9440761.

**The Shackelford Water Supply Corporation** Regular Monthly Directors met at the Fort Griffin Restaurant, Albany, May 18, 1994, at Noon Information may be obtained from Gaynell Perkins, P.O. Box 1295, Albany, Texas 76430, (817) 345-6868. TRD-9440774.

**The Tarrant Appraisal District** Tarrant Appraisal Review Board met at 2329 Gravel Road, Fort Worth, May 19, 1994, at 8:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9440783.

**The Tax Appraisal District of Bell County** Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, May 18, 1994, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9440780.

**The Texas Municipal Asset Pool (Revised agenda.)** Board of Directors met at the Riverway Bank, Five Riverway, Board Room, Second Floor, Houston, May 18, 1994, at 8:00 a.m. Information may be obtained from Jamie D. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9440770.

**The West Texas Municipal Power Agency** Board of Directors will meet at the Lubbock Country Club, 3400 North Mesa Road, Lubbock, May 24, 1994, at 1:30 p.m. Information may be obtained from J. Robert Massengale, P.O. Box 2000, Lubbock, Texas 79457, (806) 767-2500. TRD-9440804.

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## Meetings Filed May 13, 1994

**The Austin-Travis County MHMR Center** Planning and Operations Committee will meet at 1430 Collier Street, Board Room, Austin, May 20, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9440868.

**The Burnet County Appraisal District (Revised agenda.)** Board of Directors met at 110 Avenue H, Suite 106, Marble Falls, May 19, 1994, at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9440882.

**The Dallas Area Rapid Transit** Audit Committee met in Conference Room "C", 1401 Pacific Avenue, Dallas, May 17, 1994, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9440861.

**The Dallas Area Rapid Transit** Committee-of-the-Whole met in Conference Room "C", 1401 Pacific Avenue, Dallas, May 17, 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-9440860.

**The Ellis County Appraisal District** Board of Directors met at 406 Sycamore Street, Waxahachie, May 19, 1994, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9440864.

**The Golden Crescent Private Industry Council** Planning Committee met at the Holiday Inn, Room #3, 2705 Houston Highway, Victoria, May 16, 1994, at 11:45 a.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9440828.

**The Golden Crescent Private Industry Council** Oversight Committee met at 2401 Houston Highway, Victoria, May 16, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9440827.

**The Golden Crescent Private Industry Council** Executive Committee met at 2401 Houston Highway, Victoria, May 18, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9440826.

**The Heart of Texas Council of Governments** Private Industry Council met at 300 Franklin Avenue, Waco, May 19, 1994, at 5:30 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9440815.

**The Heart of Texas Council of Governments** Executive Committee will meet at 300 Franklin Avenue, Waco, May 26, 1994, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (512) 756-7822. TRD-9440814.

**The Kempner Water Supply Corporation** Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, May 19, 1994, at 7:00 p.m. Information may be obtained from Doug Lavender, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9440846.

**The Lampasas County Appraisal District** Appraisal Review Board met at 109 East Fifth, Lampasas, May 17, 1994, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9440858.

**The Leon County Central Appraisal District** Appraisal Review Board met at the Corner of Highway 7 and Highway 75, Leon County Central Appraisal District Office, Gresham Building, Centerville, May 18, 1994, at 9: 00 a.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9440829.

**The Lower Colorado River Authority** Ad Hoc Committee on Community Resources and Development met at the Thomas C. Ferguson Power Plant, Conference Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 17, 1994, at 2:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440818.

**The Lower Colorado River Authority** Board of Directors met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440817.

**The Lower Colorado River Authority** Planning and Public Policy Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440819.

**The Lower Colorado River Authority** Energy Operations Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440820.

**The Lower Colorado River Authority** Natural Resources Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440821.

**The Lower Colorado River Authority** Ad Hoc Committee on Community Resources and Development met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440825.

**The Lower Colorado River Authority** Audit Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440824.

**The Lower Colorado River Authority** Finance and Administration Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440823.

**The Lower Colorado River Authority** Conservation and Environmental Protection Committee met at the Thomas C. Ferguson Power Plant, Lunch Room (located approximately five miles west of the intersection of Highways 281 and 71 to the intersection of Highway 71 and RR 2147, then approximately five miles northeast on RR 2147 to the intersection of RR 2147 and Ferguson Road, and then approximately 1.5 miles north on Ferguson Road), Burnet, May 18-19, 1994, at 9.00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9440822.

**The Texas Natural Resource Conservation Commission** The Galveston Bay National Estuary Program Management Committee met at the University of Houston/Clear Lake, Forest Room, 2700 Bay Area Boulevard, Houston, May 18, 1994, at 9:30 a.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9440840.

**The South Texas Private Industry Council, Inc.** will meet at the Zapata Commissioners Court Annex, Zapata, May 26, 1994, at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (512) 722-0546. TRD-9440883.

**The Swisher County Appraisal District** Board of Directors met at 130 North Armstrong, Tulia, May 19, 1994, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9440850.

**The Texas Municipal Power Agency** Board of Directors (Workshop) met at the Chamber of Commerce Offices, 4001 East 29th, Suite 175, Bryan, May 18, 1994, at 6:30 p.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9440848.

**The Texas Municipal Power Agency** Board of Directors met at the Gibbons Creek Steam Electric Station, Administration Building, 2-1/2 Miles North of Carlos, Texas on FM 244, May 19, 1994, at 9:00 a.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9440849.

**The Trinity River Authority of Texas (Revised agenda.)** Central Regional Wastewater System Right-of-Way Committee met at 5300 South Collins, Arlington, May 17, 1994, at 10:00 a.m Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9440862.

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## Meetings Filed May 16, 1994

**The Archer County Appraisal District (Rescheduled from May 11, 1994.)** Appraisal Review Board met at 101 South Center, Archer City, May 19, 1994, at 8:30 a.m. Information may be obtained from Edward H. Trigg, Box 1141, Archer City, Texas 76531. TRD-9440944.

**The Atascosa County Appraisal District** Board of Directors met at Fourth and Avenue J, Poteet, May 19, 1994, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9440924.

**The Bastrop Central Appraisal District** Board of Directors met at 1200 Cedar Street, Bastrop, May 19, 1994, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9440925

**The Capital Area Rural Transportation System** CARTS Board of Directors met at 2010 East Sixth Street, Austin, May 19, 1994, at 9:00 a.m. Information may be obtained from Edna M. Burroughs, P O. Box 6050, Austin, Texas 78702, (512) 389-1011 TRD-9440904.

**The Central Appraisal District of Nolan County** Board of Directors will meet at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, May 20, 1994, at 7:00 a m. Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421 TRD-9440959.

**The Central Counties Center for MHMR Services** Board of Trustees will meet at 304 South 22nd Street, Temple, May 24, 1994, at 7:45 p m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext 301. TRD-9440969.

**The Coryell City Water Supply District** Board of Directors met at the CCWSD Office, FM 185, Coryell City, May 19, 1994, at 7 30 p m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089 TRD-9440971.

**The Deep East Texas Private Industry Council Inc.** will meet at the Pitner Garrison Civic Center, Lufkin, May 26, 1994, at 10:00 a m. Information may be obtained from Charles Meadows, P.O. Box 1423, Lufkin, Texas 75901 TRD-9440970

**The Eastland County Appraisal District** Appraisal Review Board will meet in the Commissioners Courtroom, Eastland County Courthouse, Eastland, May 25, 1994, at 10 00 a.m Information may be obtained from Steve Thomas, P. O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9440918

**The Grayson Appraisal District** Board of Directors will meet at 205 North Travis, Sherman, May 25, 1994, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673 TRD-9440917

**The Guadalupe-Blanco River Authority** Ethics Committee met at the First Lockhart National Bank, 111 Main Street, Community Room, Lockhart, May 19, 1994, at 1:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9440922.

**The Jasper County Appraisal District** Appraisal Review Board met at 137 North Main, Jasper, May 19, 1994, at 1:00 p.m Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9440951.

**The Lampasas County Appraisal District (Revised agenda.)** Appraisal Review Board met at 109 East Fifth, Lampasas, May 17, 1994, at 9.00 a m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9440923

**The Lampasas County Appraisal District** Board of Directors met at 109 East Fifth, Lampasas, May 19, 1994, at 7·00 p.m. Information may be obtained from Janice Henry, P.O Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9440916.

**The Texas Municipal Power Agency** Board of Directors met at the Gibbons Creek Steam Electric Station, Administration Building, 2-1/2 miles north of Carlos on FM 244, May 19, 1994, at 1:00 p.m. Information may be obtained from Carl J. Shahady, P O Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9440947.

**The Northeast Texas Municipal Water District** Board of Directors will meet at Highway 250 South, Hughes Springs, May 23, 1994, at 10:00 a m. Information may be obtained from J W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538 TRD-9440920.

**The Parmer County Appraisal District** Board of Directors will meet at 305 Third Street, Bovina, June 9, 1994, at 7.00 p.m Information may be obtained from Ronald E Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9440966

**The Region One Education Service Center** Board of Directors met in the Harlingen ISD Board Room, 1409 East Harrison, Harlingen, May 16, 1994, at 2 00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611 TRD-9440921.

**The Rusk County Appraisal District** Appraisal Review Board will meet at the Administrative Office, 107 North Van Buren, Henderson, May 27, 1994, at 9·00 a.m. Information may be obtained from Melvin R Cooper, P.O Box 7, Henderson, Texas 75653-0007, (903) 657-9697 TRD-9440919

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## Meetings Filed May 17, 1994

**The Gregg Appraisal District** Appraisal Review Board will meet at 2010 Gilmer Road, Longview, May 24, 1994, at 9.00 a.m. Information may be obtained from

Main Street, Liberty, May 25, 1994, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9440979.

**The Texas Political Subdivisions** Board of Trustees will meet at Texas Political Subdivisions, 14135 Midway Road, Suite 300, Dallas, May 20, 1994, at 9:30 a.m. Information may be obtained from Jennifer Devine, 14135 Midway Road, #300, Dallas, Texas 75244, 1-(800)-588-0013. TRD-9440975.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards. To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department of Banking

### Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular banking. A hearing may be held if the application is denied by the Commissioner.

On May 11, 1994, the Banking Commissioner received an application to acquire control of the Union State Bank, Carrizo Springs, Texas, by Michael L. Allen, Carrizo Springs, Texas.

Additional information may be obtained from: Lynda A. Drake, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Issued in Austin, Texas, on May 12, 1994.

TRD-9440879 Lynda A Drake
Director of Corporate Activities
Texas Department of Banking

Filed: May 13, 1994

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## Texas Bond Review Board

### Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of April 23, 1994-May 6, 1994.

Total amount of state ceiling remaining unreserved for the $252,434,000 subceiling for qualified mortgage bonds under the Act as of May 6, 1994: $85, 429,250.

Total amount of state ceiling remaining unreserved for the $157,771,250 subceiling for state-voted issues under the Act as of May 6, 1994. $47,770,363. 96.

Total amount of state ceiling remaining unreserved for the $67,616,250 subceiling for qualified small issues under the Act as of May 6, 1994: $57,216, 250.

Total amount of state ceiling remaining unreserved for the $45,077,500 subceiling for residential rental project issues under the Act as of May 6, 1994: $467,500.

Total amount of state ceiling remaining unreserved for the $378,651,000 subceiling for all other bonds requiring an allocation under the Act as of May 6, 1994: $23,651,000.

Total amount of the $901,550,000 state ceiling remaining unreserved as of May 6, 1994: $214,534,363.96.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from April 23, 1994-May 6, 1994: Southeast Texas HFC, Oyster Creek Financial Corporation, Residential Rental Creekside Apartments, $5,660,000; Southeast Texas HFC, Hearthstone at Liberty Ltd., Residential Rental Hearthstone Apartments, $4,200,000; Southeast Texas HFC, Assured Housing Corporation, Residential Rental Garland Oaks Apartments, $3,750,000; San Antonio HFC, Anlar Group, Inc., Residential Rental Brittany Apartments, $6,000,000; Grand Prairie HFC, Quality Life Foundation, Residential Rental Clayton, Pointe Apartments, $3,300,000; Grand Prairie HFC, Eligible Borrowers, Mortgage Revenue Bonds, $14,942,400.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from April 23, 1994-May 6, 1994: Laredo HFC, Eligible Borrowers, Mortgage Revenue Bonds, $12,285,000; Winter Garden HFC, Eligible Borrowers, Mortgage Revenue Bonds, $14,765,000; Hidalgo County HFC, Eligible Borrowers, Mortgage Revenue Bonds, $15,000,000; Travis County HFC, Eligible Borrowers, Mortgage Revenue Bonds, $28,820,000; Grapevine IDC, Trencor Jetco, Inc., Qualified Small Issue, $8,000,000; Port of Port Arthur Navigation District of Jefferson County, Texas, Star Enterprise, Industrial Waste Water Treatment Plant, $50, 000,000.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from April 23, 1994-May 6, 1994: Southeast Texas HFC, Oyster Creek Financial Corporation, Residential Rental Creekside Apartments, $5,660,000; Grande Prairie, Quality of Life Foundation, Residential Rental Clayton Pointe Apartments, $3,300,000.

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from April 23, 1994-May 6, 1994: Laredo HFC, Mortgage Revenue Bonds, $4,900; Hidalgo County HFC, Mortgage Revenue Bonds, $3,350,000; Veteran's Land Board, Veteran's Land Bonds, $14,999,113.96.

Issued in Austin, Texas, on May 9, 1994.

TRD-9440811 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Filed: May 12, 1994

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has

ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

| Types of Rate Ceilings | Effective Period (Dates are Inclusive) | Consumer [1]/Agricultural/ Commercial [2] thru $250,000 | Commercial[2] over $250,000 |
|---|---|---|---|
| Indicated (Weekly) Rate - Art. 1.04(a)(1) | 05/16/94-05/22/94 | 18.00% | 18.00% |

[1]Credit for personal, family or household use. [2]Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on May 9, 1994.

TRD-9440880 Al Endsley
Consumer Credit Commissioner

Filed. May 13, 1994

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## Finance Commission of Texas

### Notice of Hearing

The Finance Commission of Texas will conduct a public hearing pursuant to Government Code §2001.029(b) through a designated hearing officer of the purpose of receiving comments on proposed 7 TAC §10.1, concerning the establishment of minimum capital requirements for a trust company to do business with the general public, as published at 19 TexReg 3209. A record will be made of the proceeding. This notice will correct an error in an earlier notice published May 13, 1994, at 19 TexReg 3787.

The public hearing will be held on Wednesday, May 25, 1994, at 9:00 a.m. at the State Finance Commission Building, 2601 North Lamar Boulevard, third floor, in Austin. Oral presentations will generally be limited to a maximum of ten minutes each. More extensive comments should be submitted in writing. The Finance Commission of Texas will fully consider all written and oral submissions concerning the proposed rule, whether submitted prior to or at the public hearing.

Additional information may be obtained from Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Issued in Austin, Texas, on May 13, 1994.

TRD-9440841 Everett D Jobe
General Counsel
Finance Commission of Texas

Filed: May 13, 1994

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## Texas Department of Health

### Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Ingleside Industrial Med., Inc., Ingleside, R17161; Ronald R. Schalk, D.C., Texas City, R14679; John N. Kirk, D.D.S., M.A., Houston, R15644; Michael R. Mullen, D.D.S., El Paso, R15864; Family Medicine Center, Pampa, R17034; Day Chiropractic Center, Lubbock, R17110; North Main Chiropractic Associates, Fort Worth, R18517; Northwest Texas Hospital, Amarillo, Z00472; Navarro Regional Hospital, Corsicana, Z00475.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 12, 1994.

TRD-9440802 Susan K.Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: May 12, 1994

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## Texas Higher Education Coordinating Board

### Consultant Proposal Request

Under the provisions of Texas Government Code, Chapter 2254, Subchapter B, the Texas Higher Education Coordinating Board invites proposals from qualified consultants to study the current automated computer system for the Hinson-Hazlewood Student Loan Program, determined the feasibility and cost benefit of a redesign project, and

recommend to the Coordinating Board the alternatives available to improve the loan and payment processing system from improved service to customers and improved cost-efficient loan collection procedures.

Proposals from women, women-owned firms, minorities, and minority-owned firms are encouraged. If other considerations are equal, preference will be given to a private consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas.

An evaluation panel composed of staff from the Coordinating Board's Administration Division (Information Service) and Student Services Division, and the Department of Information Resources (DIR) will be conducting the evaluation of the vendor proposals. The following criteria will be used to evaluate the proposals: The proposal amount will be 20% of the evaluation criteria; the vendor shall provide references proving success and expertise in projects with similar scope and complexity (40% of evaluation); and the vendor's proposed detailed work plan, time lines, and deliverables will be 40% of evaluation.

Funding for this study shall not exceed $50,000. The anticipated contract award date is June 12, 1994. The anticipated contract completion date is August 1, 1994.

For more information or a copy of the RFP, contact Bill Grabo, Director of Automated Information Service, Texas Higher Education Coordinating Board, at (512) 483-6300. Proposals must be postmarked no later than the close of business (5:00 p.m.) on May 31, 1994. Five copies of the proposal are required and may be mailed to the Texas Higher Education Coordinating Board, Attention: Bill Grabo, Director, Automated Information Services, P.O. Box 12788, Austin, Texas 78711; or delivered to the Texas Higher Education Coordinating Board, Building IV, Room 4.120, 7715 Chevy Chase Drive, Austin, Texas 78752 by 5:00 p. m. on May 31, 1994.

The Texas Higher Education Coordinating Board reserves the right to accept or reject any or all proposals submitted under this RFP and to negotiate modifications to improve the quality or cost effectiveness of any proposal.

Issued in Austin, Texas, on May 11, 1994.

TRD-9440709 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: May 11, 1994

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## Texas Department of Insurance

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for a name change in Texas for Enderly Development Corporation, (doing business under the assumed name of Trinity Claims), a domestic third party administrator. The proposed new name is All Care, Inc., (doing business under the assumed name of Trinity Claims). The home office is Fort Worth, Texas.

Application for a name change in Texas for Glenn Software Systems, Inc., (doing business under the assumed name of Claimspro, Inc.), a foreign third party administrator. The proposed new name is Claimspro Health Claims Services, Inc., (doing businesss under the assumed name of Glenn Software Systems, Inc.) . The home office is Southfield, Michigan.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78701.

Issued in Austin, Texas, May 13, 1994.

TRD-9440903 D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed: May 13, 1994

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## Texas Natural Resource Conservation Commission

### Notices of Receipt of Applications and Declaration for Administrative Completeness for Sludge Registrations

Attached are Notices of Receipt of Applications and Declaration for Administrative Completeness for sludge registrations issued during the period of April 25-May 6, 1994.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that these applications are subject to change based on evaluations of the proposed treatment levels, treatment processes and site specific conditions as they relate to the protection of the environment and public health.

Persons desiring a public meeting regarding these applications should submit a written request to the Chief Clerk of the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711. The request should contain the name, mailing address and phone number of the person making the request; and the reason a public meeting is desired. The deadline for submitting this request is 30 days from the date which the application was posted for public review.

Information concerning these applications must be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Enviroganics, Inc.; located 5.5 miles north of Raymondville on the west side of U.S. Highway 77 in Willacy County, Texas; new beneficial sludge use site; 710691.

Kenneth Grant; located approximately two miles south of Nocona on Highway 175 in Nocono, Montague County, Texas; new beneficial sludge use site; 710671.

CDR Environmental, Inc.; located four miles north of the intersection of FM Road 1093 and FM Road 1463, along FM Road 1463 in Fort Bend County, Texas; new beneficial sludge use site; 710681.

Issued in Austin, Texas, on May 9, 1994.

TRD-9440910 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: May 11, 1994

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## Public Notice

The Texas Natural Resource Conservation Commission published in the April 7, 1994, issue of the *Texas Register* (17 TexReg 2493), the first Priority Enforcement List (PEL) identifying illegal tire sites for which no responsible party had been identified. The following is an update to the first PEL published to include additional sites identified and to delete sites cleaned up. Twenty-eight additional sites have been added and 28 sites have been cleaned up since the last publication and are being deleted. Copies of the PEL can be obtained from the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Waste Tire Recycling Fund Program (WTRF) at 12015 Park 35 Circle, Austin, Texas 78753. Any questions regarding the implementation or operation of this program should be directed to the staff of the WTRF at (512) 908-6001.

**SITES ADDED**

**PRIORITY ENFORCEMENT LIST**

| Site # | Rank | County | Name | #Tires |
|---|---|---|---|---|
| 70661 | 36 | BEXAR | ROMOS | 3000 |
| 70662 | 25 | BOSQUE | M.B. WALTON | 2000 |
| 70663 | 33 | BEXAR | REAL | 4000 |
| 70664 | 28 | HILL | U.S. ARMY CORPS OF ENGINEERS | 1220000 |
| 70665 | 32 | HARRIS | EDMISTON | 40000 |
| 70666 | 32 | TARRANT | JC'S AUTO SALVAGE | 1000 |
| 70667 | 19 | LAMPASAS | CAMIE & BRIAN CRISP | 3000 |

| | | | | |
|---|---|---|---|---|
| 70668 | 29 | BELL | BANDAS INDUSTRIES | 4240 |
| 70669 | 28 | HARRIS | BENDER ROAD SITE | 8000 |
| 70670 | 33 | BEXAR | CARSSOW | 3000 |
| 70671 | 31 | WISE | MARSHALL BURTON | 850 |
| 70672 | 31 | SMITH | BILLY RAY ROZELLE | 3500 |
| 70673 | 34 | HARRIS | VERBOSKY | 30000 |
| 70674 | 15 | HENDERSON | GENE PARKS | 2000 |
| 70675 | 33 | BEXAR | SOUTHWEST FOUNDATION | 4000 |
| 70676 | 30 | DALLAS | ROWLETT CREEK PRESERVE | 1000 |
| 70677 | 25 | REFUGIO | LAURA CUSTER | 80000 |
| 70678 | 30 | WISE | LESLIE GILMORE | 680 |
| 70679 | 31 | WISE | CLAUD H. HARTSFIELD | 14000 |
| 70680 | 31 | WISE | TOMMY TACKETT | 2000 |
| 70681 | 40 | SHELBY | T.G. CARROLL | 2000 |
| 70682 | 26 | TRAVIS | CAMERON ROAD TIRE DUMP | 10000 |
| 70683 | 15 | CORYELL | F.L. BROWN | 1300 |
| 70684 | 25 | HARRIS | BISBEE ST. | 600 |
| 70685 | 25 | HARRIS | SCHAFF PLACE | 600 |
| 70686 | 27 | HARRIS | GLEENS BAYOU | 700 |
| 70687 | 31 | LAMAR | WILLIAMS BROTHERS AUTO SALVAGE | 23000 |
| 70688 | 28 | BOWIE | CORPS OF ENGINEERS- WRIGHT PAT | 725 |

**SITES DELETED**

**PRIORITY ENFORCEMENT LIST**

| Site # | Rank | County | Name | #Tires |
|---|---|---|---|---|
| 70036 | 31 | WISE | DONALD DALE SMITH | 92546 |

| | | | | |
|---|---|---|---|---|
| 70075 | 0 | PARKER | JOHN HEARTSILL | 41370 |
| 70158 | 29 | LAMB | ESTATE OF FRANK WAYNE TRACY | 5000 |
| 70207 | 0 | YOAKUM | JEROME HEAD | 300 |
| 70222 | 37 | LUBBOCK | AAA WRECKING, INC | 3000 |
| 70267 | 32 | BRAZORIA | WILKES | 5630 |
| 70273 | 16 | HARRIS | VAN DEAFSMITH | 14176 |
| 70315 | 25 | HIDALGO | VISTA OIL | 500 |
| 70336 | 13 | HIDALGO | WRIGHT WAY CONSTRUCTION | 500 |
| 70350 | 28 | BRAZORIA | COBURN | 0 |
| 70353 | 32 | JOHNSON | JEFFERY ACKERMAN | 1010 |
| 70362 | 32 | ELLIS | GEORGE SHIRLEY | 1183 |
| 70381 | 20 | MITCHELL | A.B. MOSHER | 3512 |
| 70416 | 19 | BRAZOS | LEON SEVCIK | 1687 |
| 70498 | 32 | ARANSAS | ARANSAS COUNTY TRANSFER STATIO | 15000 |
| 70526 | 25 | DENTON | HICKORY ST. SELF STORAGE | 1300 |
| 70534 | 40 | BEXAR | COKER METHODIST CHURCH | 2693 |
| 70535 | 40 | BEXAR | HYATT | 2936 |
| 70541 | 25 | ARANSAS | NEIL STREET | 602 |
| 70573 | 36 | GALVESTON | FRAN JAMISON | 1000 |
| 70582 | 40 | BEXAR | PAM FLORES | 6572 |
| 70584 | 40 | BEXAR | FOUNDATION PROPERTIES | 11970 |
| 70586 | 31 | TARRANT | LOWE'S TRAILERS | 3449 |
| 70604 | 31 | SMITH | JACKSON TRUCK STOP | 4000 |
| 70605 | 40 | BEXAR | FORTUNA | 2164 |
| 70606 | 36 | BEXAR | GONZALEZ | 2292 |
| 70616 | 31 | TARRANT | BIBLE TRAINING CENTER | 1230 |

Issued in Austin, Texas, on May 16, 1994.

TRD-9440844 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: May 13, 1994

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## Request for Proposal

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of grant funding to support the establishment and implementation of programs or activities designed to maximize the collection, handling and reuse or recycling of automotive used oil generated by vehicle owners/operators who change their own automotive oil. Eligible applicants are local governments, public agencies, districts and authorities having legal authority to manage the collection and/or recycling or municipal solid waste. To be eligible to receive a grant under this request for proposal (RFP), prospective recipients must not be in arrears in the payment of any municipal solid waste or hazardous waste fee owed the State of Texas.

No award under this RFP will be less than $4,500 or more than $20,000. The projects 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 accordance with the printed guidelines that are available from the TNRCC as part of Grant Application Packet Number 94-OIL. Please note that a sample contract will be included in the Grant Application Packet in an effort to expedite the negotiation of contracts. Although the TRNCC 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 Fred Wiley, Logistical Support Section, Municipal Solid Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6818 or the CLEAN TEXAS 2000 Environmental Information Center at 1-800-64-TEXAS and request Grant Application Packet Number 94-OIL.

Issued in Austin, Texas, on May 16, 1994.

TRD-9440911 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: May 16, 1994

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# Public Utility Commission of Texas

## Consultant Request for Proposal

Notice of Request for Proposals Pursuant to Texas Government Code, §2254.029, the Public Utility Commission of Texas (PUC), the State agency charged with the regulation of the rates and services of public utilities (electric and telephone, not municipal corporations), announces a Request for Proposals (RFP) to conduct a comprehensive operational prudence audit of the South Texas Project (STP). STP is jointly owned by HL&P, Central Power and Light Company (CP&L), the City of Austin (COA), and the City Public Service Board of San Antonio (CPSB).

The General Counsel of the PUC seeks the assistance of experts to analyze the causes of the recent extended outages at STP, to evaluate the prudence of the management of the operator of the plant, Houston Lighting and Power Company (HL&P), and the STP Management Committee as it may relate to the outages, to quantify the costs associated with the outage that should not be borne by the rate-payers, to provide a report and testimony on this matter in a proceeding before the PUC, and to assist in the preparation of briefs on this matter. The consultant would necessarily need to be familiar with Public Utility Regulatory Act, the appropriate Substantive Rules, PUC precedent and applicable case law. The consultant would need to have a thorough understanding of the operation of a nuclear power plant and the circumstances in which the plant must be operated, such as, Nuclear Regulatory Commission requirements, safety concerns, and the need for economic dispatch of the utilities generating units.

Copies of the RFP are currently available.

Contact Person. Persons interested in offering services to conduct such an audit should contact Russell Trifovesti, Assistant General, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757 or (512) 458-0283 for a complete copy of the RFP.

Closing Date. Audit Proposals should be received by the PUC no later than 5: 00 p.m., June 9, 1994. The period for performance is estimated to be July 7, 1994, to February 1, 1995.

Award Procedures. Selection of the consultant will be based on demonstrated competence, experience, knowledge, qualifications in the area, the quality of the work plan submitted, the depth of understanding of the evaluation to be performed, the level of minority participation, and cost. All proposals received shall be subject to evaluation by a committee of qualified PUC personnel to select the proposal which most clearly meets the requirements of the RFP. The General Counsel will make a recommenda-

tion to the PUC Commissioners who will make the final selection. Consultants may be asked to make an oral presentation of their proposal prior to the Commission's final selection.

The PUC reserves the right to accept or reject any or all proposals submitted. The PUC is under no legal or other requirement to execute a resulting contract on the basis of this notice or distribution of the RFP. Neither this notice nor the RFP commit the PUC to pay for any costs incurred.

Issued in Austin, Texas, on May 12, 1994.

TRD-9440794 John M. Renfrow
Secretary
Public Utility Commission of Texas

Filed: May 12, 1994

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## Notices of Application to Locate and Maintain Records Outside the State of Texas

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application for a waiver of Public Utility Commission Substantive Rule 23.14, which requires public utilities to keep all records necessary for regulation within the State of Texas.

Docket Title and Number. Application of Caddoan Telephone Company for Authority to Maintain Records Outside the State of Texas. Docket Number 12999.

The Application. Caddoan Telephone Company is requesting approval to maintain certain records in Monroe, Louisiana.

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 Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 10, 1994.

TRD-9440730 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 11, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application for a waiver of Public Utility Commission Substantive Rule 23.14, which requires public utilities to keep all records necessary for regulation within the State of Texas.

Docket Title and Number. Application of Century Telephone of San Marcos, Inc. for Authority to Maintain Records Outside the State of Texas. Docket Number 12998.

The Application. Century Telephone of San Marcos, Inc. is requesting approval to maintain certain records in Monroe, Louisiana.

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 Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 10, 1994.

TRD-9440731 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 11, 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 a customer-specific contract for Billing and Collection Services.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of A Customer Specific Contract for Billing and Collection Services with Mountaineer Long Distance, Inc., doing business as Thrifty Call, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 13023.

The Application. Southwestern Bell Telephone Company is requesting approval to provide billing and collection services for Mountaineer Long Distance, Inc., doing business as Thrifty Call. The geographic service market for this specific service is anywhere within the State of Texas where Mountaineer Long Distance, Inc., doing business as Thrifty Call provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 11, 1994.

TRD-9440797 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 12, 1994

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## Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Promotional Rates for its Common Line 800 Service, Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 13024.

The Application. Southwestern Bell Telephone Company is requesting approval to provide promotional rates for its

Common Line 800 Service offered in the Company's Wide Area Telecommunications Service (WATS) tariff. The geographic service market for this specific service is anywhere within the State of Texas where Common Line 800 Service is offered to Southwestern Bell end user customers. The promotional rates will only apply to new customers requesting service during the promotional period.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 11, 1994.

TRD-9440796 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 12, 1994

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## Petition for Rulemaking

The Public Utility Commission of Texas has received a joint petition for rulemaking from the Texas Association of Long Distance Telephone Companies, AT&T Communications of the Southwest, Inc., and MCI Telecommunications Corporation, requesting that the commission amend its existing rule and adopt a new rule relating to telephone extended area service (EAS).

The petition requests that the commission's rule concerning extended area service, 16 Texas Administrative Code, §23.49, be amended to modify access rates in EAS exchanges and to require that for joint filings a community of interest be established among exchanges to be included in a common calling area. Further, the petition requests the adoption of a new rule relating to access parity between local exchange companies and interexchange companies for intraLATA extended area service. Copies of the joint petition are available in the Central Records office of the commission under Project Number 13008.

The commission requests comments on whether it should initiate a proceeding to amend its rule and/or adopt a new rule, in the manner requested by the joint petitioners. If the commission decides to initiate a rulemaking proceeding on this subject, it will, at a later date, request that interested persons comment on the merits of the proposals. Today's request for comments relates only to whether the commission should initiate the rulemaking project, and interested persons are requested to confine their comments to this issue. Interested persons should file 15 copies of their comments with the commission's secretary, John Renfrow, at the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 21 days of the publication of this notice in the *Texas Register*. Comments should refer to Project Number 13008. This notice is not a formal notice of proposed rulemaking, but the comments of interested parties will assist the commission in deciding whether to initiate a rulemaking proceeding.

Issued in Austin, Texas, on May 12, 1994.

TRD-9440795 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 12, 1994

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## Public Notice

On March 28, 1994, GTE of the Southwest, Inc. and Southwestern Bell Telephone Company filed amended workplans in Tariff Control Numbers 12475 and 12481. The workplans were filed pursuant to Substantive Rule §23.91, a rule regarding cost studies for local exchange services, which was adopted in Project Number 9075. On May 3, 1994, said workplans were docketed for hearing in Docket Number 12475, Application of GTE Southwest, Inc. for Approval of LRIC Workplan Pursuant to Substantive Rule §23.91 and Docket Number 12481, Application of Southwestern Bell Telephone Company for Approval of LRIC Workplan Pursuant to Substantive Rule §23.91. On May 13, 1994, a prehearing was conducted at the Public Utility Commission of Texas. Docket Numbers 12475 and 12481 were consolidated at the prehearing and a date for intervention in this matter was established.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by May 31, 1994. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

A settlement conference among the parties is scheduled to be held at the Commission on June 1, 1994, at 10:00 a.m. to discuss outstanding issues and a procedural schedule in this matter. The next prehearing in this matter is scheduled for June 10, 1994, at 9:00 a.m.

Issued in Austin, Texas, on May 16, 1994.

TRD-9440929 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 16, 1994

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# Texas Department of Transportation

## Request for Proposals

Notice of Invitation. The Texas Department of Transportation (TxDOT) is seeking consultant services of an architectural/engineering/space planning firm, joint venture, consortium, or association, pursuant to Chapter 2254, Subchapter A, of the Government Code, with the expertise and personnel to perform specific tasks in a feasible, cost effective manner and on a timely basis. The project will consist of:

1. analysis for and development of a statewide master space utilization plan (office areas) which shall consist of space planning analysis and verification of compliance with the 153 square feet per person space allocation law; and

2. comprehensive analysis and condition assessment of all the department's buildings and site conditions.

The state will consider all written inquiries pertaining to this invitation if received by May 23, 1994. Responses to each valid question will be included in a general mailout to each of the prospective submitting consultant firms two weeks prior to the deadline filing date. Deadline for final proposal submittals is June 15, 1994, at 11:00 a.m.

Agency Contact. For further information or questions concerning this project, please contact Paul Campbell or Linda Watkins, General Services Division, 125 East 11th Street, Austin, Texas 78701, (512) 416-3048.

Issued in Austin, Texas, on May 13, 1994.

TRD-9440886 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: May 13, 1994

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Notice of Invitation The Texas Department of Transportation (TxDOT) intends to engage an engineering consultant pursuant to Chapter 2254, Subchapter A of the Government Code, to provide services necessary to compile construction documents (plans, specifications and estimates) for the section of Northwest Military Highway (FM 1535) between IH-410 and Braesview in San Antonio.

Mandatory Pre-proposal Meeting. A mandatory pre-proposal meeting will be held at the Texas Department of Transportation, District Office, 4610 Northwest Loop 410, Building 2 (meeting room), San Antonio, Texas at 10:00 a.m. on Tuesday, May 31, 1994 TxDOT will not accept a proposal from a consultant who has failed for any reason to attend the pre-proposal meeting

Agency Contact. Requests for additional information regarding this request for proposals should be directed to Judy Friesenhahn, P.E , TxDOT Advance Project Development, P.O. Box 29928, San Antonio, Texas 78284, (210) 615-5814.

Issued in Austin, Texas, on May 12, 1994.

TRD-9440887 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: May 13, 1994

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## On-Site Wastewater Treatment Research Council

### Notice of Intent to Award Grant

The Texas On-Site Wastewater Treatment Research Council (the Council) announces its intention to award a grant to the Texas Water Resources Institute (Texas Agricultural Experiment Station, Texas A & M University), for the continuation of the public information system and technology transfer project that was started in 1992. The grant was made pursuant to Chapter 367 of the Texas Health and Safety Code. The purpose of the grant is twofold; to communicate information from the Council to the inspectors and installers of on-site sewage systems through the production, publication, and distribution of the quarterly newsletter On-site Insights and to develop and maintain a database mailing list of such inspectors and installers. The grant will be for the period June 6, 1994-August 31, 1995.

Parties wishing to submit alternative proposals should contact Ted Johns, Executive Secretary, Texas On-Site Wastewater Treatment Council, at (512) 463-3109. The deadline for submitting alternative proposals is 3:00 p m., June 3, 1994.

Issued in Austin, Texas, on May 16, 1994.

TRD-9440855 Ted Johns
Executive Secretary
Texas On-Site Wastewater Research Council

Filed: May 13, 1994

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## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Sebastian Municipal Utility District, P.O. Box 118, Sebastian, Texas 78594, received April 4, 1994, request for $40,000 additional grant funds from the Economically Distressed Areas Account of the Water Development Fund.

Jefferson County Water Control and Improvement District Number 10, 3707 Central Boulevard, Nederland, Texas 77627, received April 13, 1994, request for additional financial assistance in the amount of $1 million from the State Water Pollution Control Revolving Fund.

City of Corpus Christi, 1201 Leopard, Corpus Christi, Texas 78401, received March 1, 1994, application for financial assistance in the amount of $8,520, 000 from the State Water Pollution Control Revolving Fund.

City of Atlanta, P.O. Box 669, Atlanta, Texas 75551-0669, received April 22, 1994, application for additional financial assistance in the amount of $160, 000 from the State Water Pollution Control Revolving Fund and Water Quality Enhancement Account of the Texas Water Development Fund.

City of Van, P.O. Box 487, Van, Texas 75790-0487, received April 8, 1994, application for financial assistance in the amount of $1,475,000 from the State Water Pollution Control Revolving Fund.

City of Carthage, P.O. Box 400, Carthage, Texas 75633, received May 4, 1994, application for additional financial assistance in the amount of $210,000 from the State Water Pollution Control Revolving Fund.

City of El Paso, #2 Civic Center Plaza, El Paso, Texas 79901-1196, received April 11, 1994, application for financial assistance in the amount of $18 million from the State Water Pollution Control Revolving Fund.

Hall-Childress Soil and Water Conservation District, 307 Avenue B Northwest, Childress, Texas 79201, received October 12, 1993, application for grant assistance in the amount of $12,820.11 from the Agricultural Conservation Grants to Districts Program.

Floyd County Soil and Water Conservation District, P.O. Box 157, Floydada, Texas 79235, received March 22, 1994, application for grant assistance in the amount of $5,055 from the Agricultural Conservation Grants to Districts Program.

Hudspeth County Conservation and Reclamation District Number 1, P.O. Box 125, Fort Hancock, Texas 79839, received October 18, 1994, application for grant assistance in the amount of $36,330 from the Agricultural Conservation Grants to Districts Program.

Hickory Underground Water Conservation District Number 1, P.O. Box 1214, Brady, Texas 76825, received July

1, 1993, application for grant assistance in the amount of $1,329.95 from the Agricultural Conservation Grants to Districts Program.

Irion County Water Conservation District, P.O. Box 10, Mertzon, Texas 76941, received July 1, 1993, application for grant assistance in the amount of $3, 667.50 from the Agricultural Conservation Grants to Districts Program.

Springhills Water Management District, P.O. Box 771, Bandera, Texas 78003-0771, received October 15, 1992, application for grant assistance in the amount of $9,243 from the Agricultural Conservation Grants to Districts Program.

Plateau Underground Water Conservation District, P.O. Box 324, Eldorado, Texas 76936, received December 31, 1992, application for grant assistance in the amount of $1,256.25 from the Agricultural Conservation Grants to Districts Program.

High Plains Underground Water Conservation District Number 1, 2930 Avenue Q, Lubbock, Texas 79405, received February 12, 1993, application for grant assistance in the amount of $10,000 from the Agricultural Conservation Grants to Districts Program.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on May 11, 1994.

TRD-9440782 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: May 12, 1994

# 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 |