

# TEXAS REGISTER

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date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

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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 TRID number

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

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

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

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

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

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

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

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

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

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

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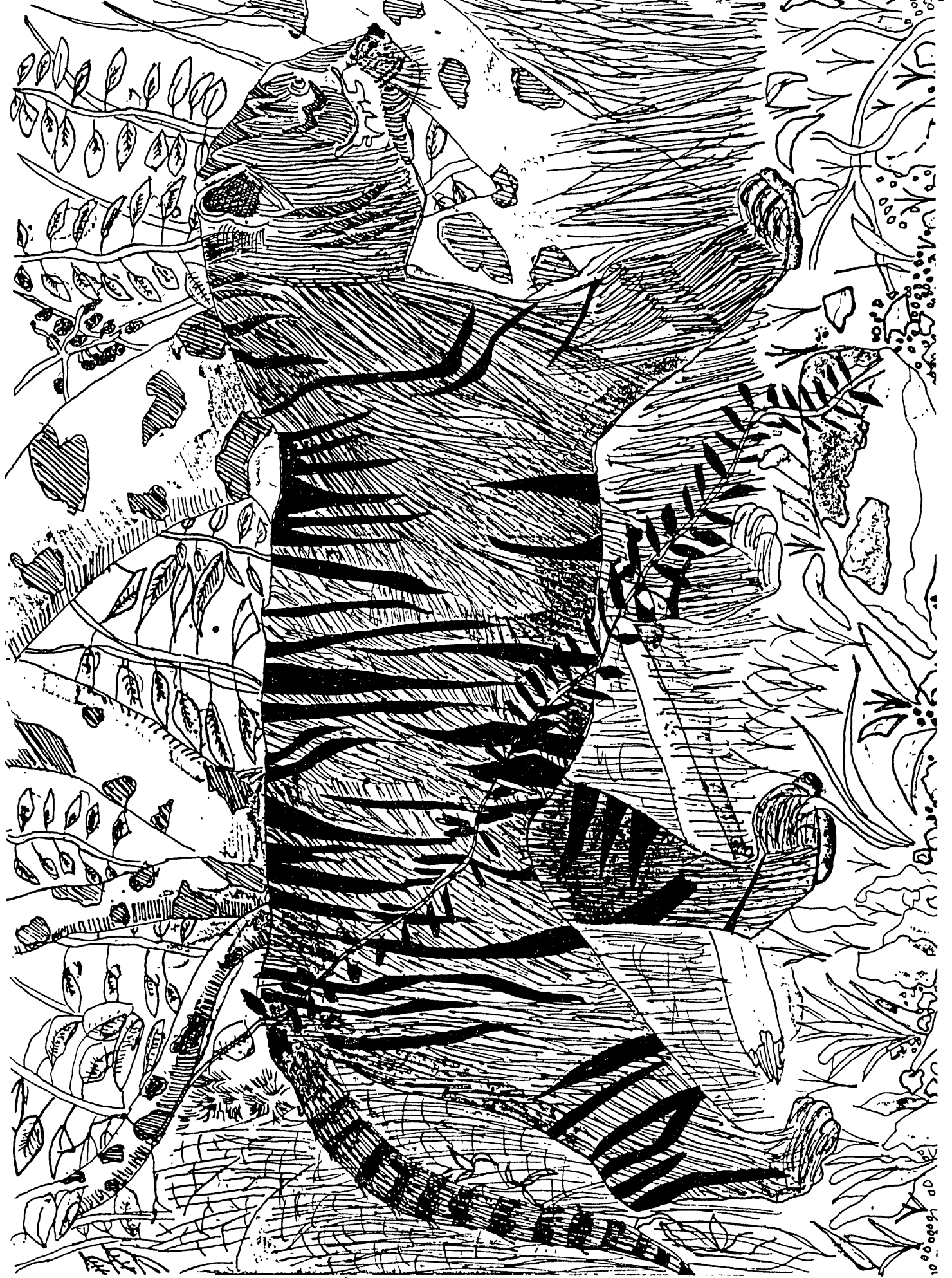
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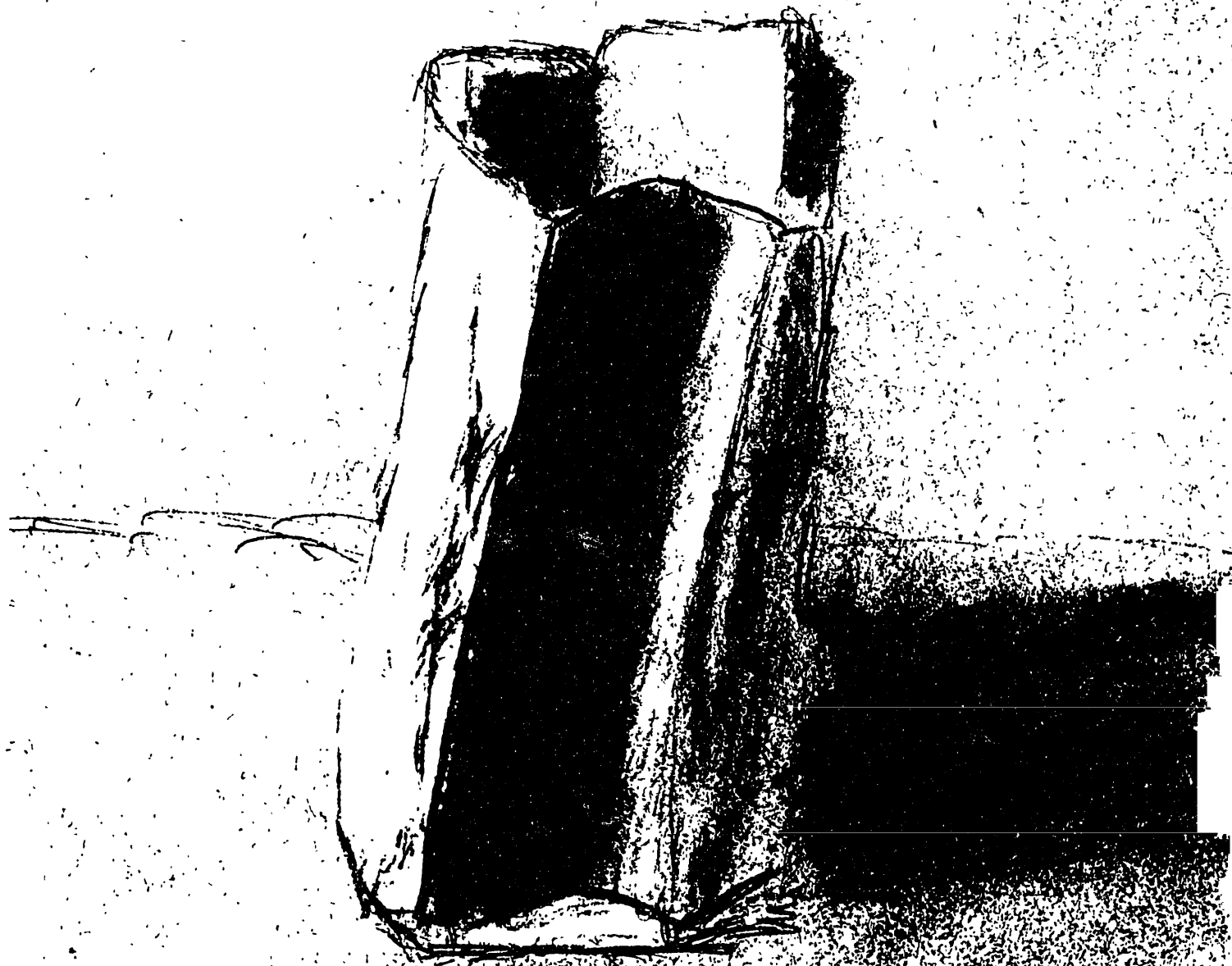
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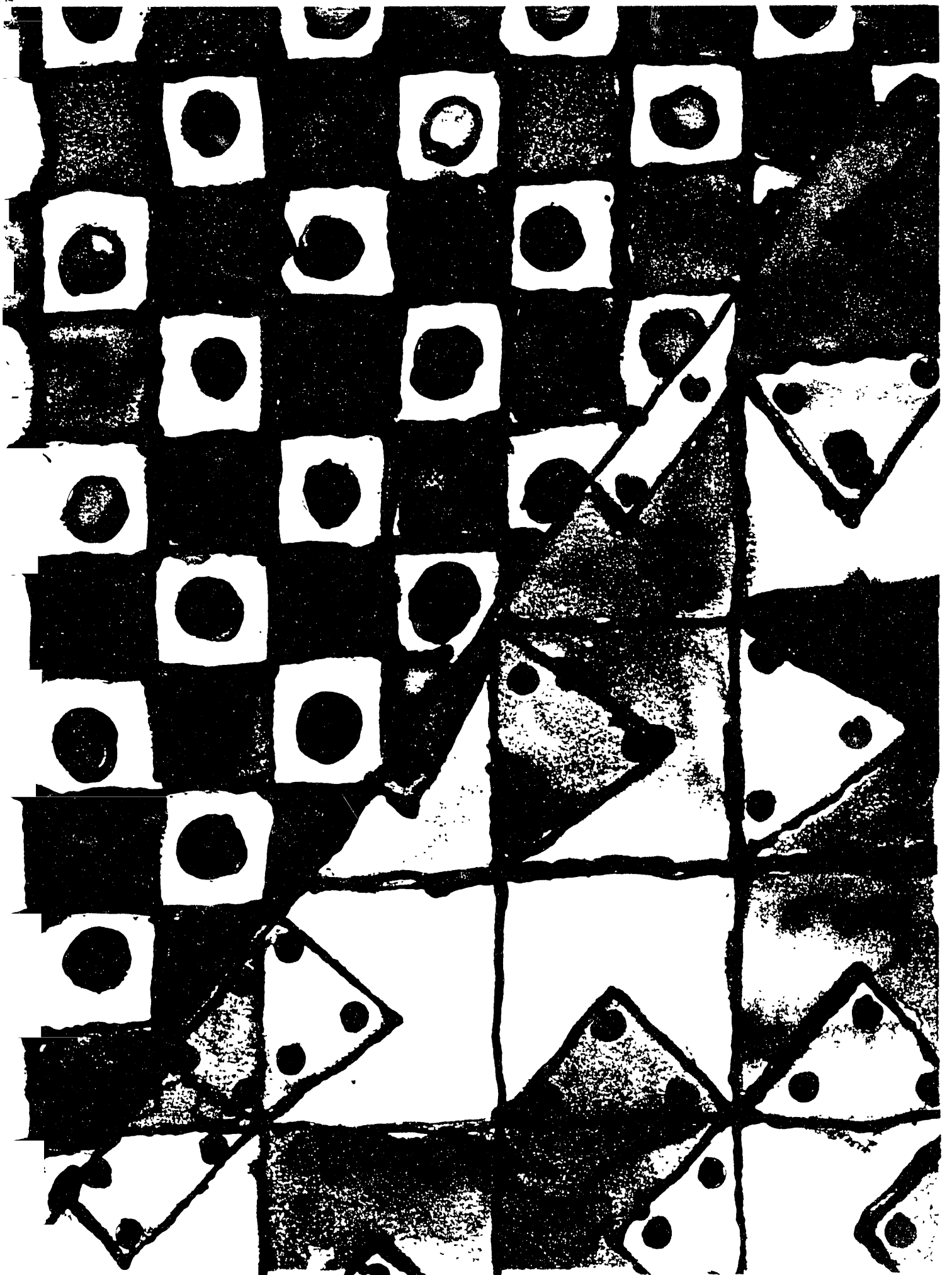
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*Rich. [Signature]*







# ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

## Letter Opinions

**LO-94-051 (ID# 25193).** Request from Honorable Ken Armbrister Chair Committee on Intergovernmental Relations Texas State Senate P.O. Box 12068 Austin, Texas 78711.

**Summary of Opinion.** Non-participants' wagering on the outcome of sporting events constitutes illegal gambling under of the Penal Code, §47. 02.

TRD-9443309

**LO-94-052 (RQ-688).** Request from Charles D. Travis, Executive Director, Employees Retirement System of Texas P.O. Box 13207 Austin, Texas 78701-3207 Letter Opinion No. 94-052.

Concerning whether, under Article XVI, §67 of the Texas Constitution and §815.103 of the Government Code, the Employees Retirement System of Texas may invest its funds in equity swap contracts.

**Summary of Opinion.** The Employees Retirement System of Texas may invest its funds in an equity swap contract or an interest rate swap contract if the particular transaction constitutes a "security" under the definition of "security" in Article 581-4(A) of the Texas Securities Act, Texas Civil Statutes, Title 19, or under the definitions of "security" in the federal securities laws, 15 U.S.C. §§77b(1), 78c(a)(10).

TRD-9443310

**LO-94-054 (ID# 24950).** Request from Michael F. Miller, General Counsel Board of Pardons and Paroles, P.O. Box 13401 Austin, Texas 78711 Letter Opinion No. 94-054

concerning whether a three-member parole panel has exclusive authority to make parole decisions when the offense is a capital felony committed before the effective date of §7(g) of Article 42.18 of the Code of Criminal Procedure. (ID# 24950)

**Summary of Opinion.** Section 7(g) of Article 42.18 of the Code of Criminal Procedure provides that the Board of Pardons and Paroles may grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership. However, parole decisions concerning a person convicted of a capital felony committed before September 1, 1993, the effective date of §7(g), must be made by a three-member panel in accordance with former §7(e) of article 42.18, Code of Criminal Procedure

TRD-9443312

**LO-94-055 (RQ-650).** Request from Valentun P. Colmenero, Office of the County Attorney Jim Wells County P.O. Drawer 2080 Alice, Texas 78333 Letter Opinion No. LO94-055

Concerning conflicts of interest involving officers and employees in Jim Wells County (RQ-650)

**Summary of Opinion.** A county commissioner may refuse to accept a court appointment to represent an indigent defendant in a criminal case pursuant to Article 26.06 of the Code of Criminal Procedure. Depending on the facts of a particular case, the representation may involve the county commissioner in a conflict of interest under Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct. The office-sharing arrangement that the county commissioner has with an assistant district attorney could result in a conflict of interest within Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct and may raise practical problems with respect to maintaining the confidentiality of client information under Rule 1.05. The county commissioner's law practice is a business entity within Chapter 171 of the Local Government Code. The commissioners court may approve her claims for payment for representing indigent defendants, but the commissioner whose claim it is must follow the procedure for notice and recusal required by chapter 171. A county commissioner who is a sister

of the county attorney is not for that reason involved in a violation of the nepotism law. The county commissioner in this case is not barred from participating as a member of the commissioners court in setting the salary, expenses, and other allowances of the county attorney pursuant to §152.013 of the Local Government Code or in approving the county attorney's claims for payment pursuant to §115.021 of the Local Government Code. The fact that the county commissioner's brother-in-law is the investigator for the local district attorney does not involve the county commissioner in a violation of the nepotism statute. Since the county commissioner has no interest in her brother-in-law's salary, expenses, or allowances, her participation with the commissioners court in setting the salaries and expenses for the district attorney's office and approving salary payments for employees of that office will not involve her in a conflict of interest.

TRD-9443313

**LO-94-056 (ID# 16486).** Request from the Honorable Bill G. Carter, Chair, Public Safety Committee Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910 Letter Opinion No. 94-56

Concerning whether provisions of a home rule city ordinance directed at preventing children's discharge of firearms are invalid because inconsistent with provisions in Local Government Code, §215.001, barring municipal regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms (ID# 16486)

TRD-9443314

## Opinions

**DM-295 (RQ-618).** Request from the Honorable John Vance Dallas County District Attorney Frank Crowley Courts Building, LB 19 Dallas, Texas 75207-4313, concern-

ing whether the district clerk filing fees provided for in the Government Code, §51.317 apply to the filing of an application for a preindictment writ of habeas corpus, and a related question (RQ-618).

**Summary of Opinion.** The district clerk filing fees provided for in the Government Code, §51.317 do not apply to the filing of an application for a preindictment writ of habeas corpus, but a district clerk may charge a "reasonable" filing fee for services rendered in a habeas corpus proceeding pursuant to the Government Code, §51.319. The clerk may not refuse to issue the writ for nonpayment of such a fee, however, because Texas Rule of Civil Procedure 142 does not apply to a preindictment habeas proceeding.

TRD-9443306

**DM-296 (RQ-653).** Request from Honorable Lee Haney District Attorney 35th Judicial District Courthouse Brownwood, Texas 76801, concerning whether a district clerk may honor a change of address request from a child support obligee to remit child support payments to the care of a collection agency (RQ-653).

**Summary of Opinion.** A district clerk may honor a change of address request, even if the new address is "care of" a child support collection agency, that a child support obligee properly has completed and submitted without a court order modifying the original child support order to reflect the changed address.

TRD-9443307

**DM-297 (RQ-545).** Request from Kenneth H. Ashworth Commissioner Texas Higher Education Coordinating Board P.O. Box 12788 Austin, Texas 78711, concerning whether the Wharton County Junior College District may disannex the Needville Independent School District (RQ-545).

**Summary of Opinion.** Three statutory provisions authorize the disannexation of terri-

tory from a junior college district: §130.069 and §130.070 and of the Education Code, Texas Civil Statutes, Article 2815p. Neither the Education Code, §130.069 nor Texas Civil Statutes, Article 2815p, authorizes Wharton County Junior College District to disannex Needville Independent School District. We are not presented with sufficient facts to determine whether the Education Code, §130.070 authorizes the disannexation. If the Education Code, §130.070 is indeed applicable to the situation, that statute governs the procedure for the disannexation.

TRD-9443308

◆ ◆ ◆  
**Requests**

**(RQ-702).** Requested from Honorable Libby Linebarger Chair, Committee on Public Education Texas House of Representatives P.O. Box 2910, Austin, Texas 78768-2910, concerning disposal of paging devices confiscated under Education Code, §21.309, and related questions.

**(RQ-703).** Requested from Honorable Fred Hill Chair, Committee on Urban Affairs Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910, concerning whether a municipality may create a new Tax Increment Financing Zone with boundaries identical to a zone previously terminated, and related questions.

**(RQ-704).** Requested from Honorable Marcos Hernandez, Jr. Criminal District Attorney Hays County Courthouse Room 208 San Marcos, Texas 78666, concerning- Constitutionality of Property Tax Code, §23.12(a), which provides a special valuation for unoccupied residential real property.

**(RQ-705).** Requested from John Pouland Executive Director General Services Commission P.O. Box 13047 Austin, Texas 78711-3047, concerning whether telecom-

munication services offered by "service providers" are eligible for sale through the "catalogue purchase procedure" described by Texas Civil Statutes, Article 601b, §3.081.

**(RQ-706).** Requested from Honorable Mike Driscoll Harris County Attorney 1001 Preston, Suite 634 Houston, Texas 77002, concerning calculation of charges to non-governmental entities for law enforcement services provided by a county, and related questions.

**(RQ-707).** Requested from Honorable John Sharp Comptroller of Public Accounts P.O. Box 13528 Austin, Texas 78711 and Mary A. Boyd Executive Director Advisory Commission on State Emergency Communications 1101 Capital of Texas Highway South, Suite B-100 Austin, Texas 78746-6437, concerning authority of an appraisal district to maintain an addressing system for the purposes of providing emergency 9-1-1- services, and related questions: Reconsideration of LO94-016.

**(RQ-708).** Requested from Honorable Tom Craddick, Chair, Committee on Ways and Means Texas House of Representatives P.O. Box 2910, Austin, Texas 78768-2910, concerning whether use of a "cash lease," method of valuation properly taxes open-space land on the basis of its "productive capacity" as required by Texas Constitution Article VIII, §1-d-1.

**(RQ-709).** Requested from Honorable Don Henderson Chair, Committee on Jurisprudence Texas State Senate P.O. Box 12068 Austin, Texas 78711-2068, concerning whether a "videographer" who is also a notary public may conduct an oral deposition.

TRD-9443305  
◆ ◆ ◆

# 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 22. EXAMINING BOARDS

### Part IV. Texas State Board of Social Worker Examiners

The Texas State Board of Social Worker Examiners (the board) adopts on an emergency basis the repeals of existing §§781.101, 781.102, 781.104-781.106, 781.201-781.208, 781.301-781.305, and 781.401-781.410, and new sections §§781.101-781.102, 781.201-781.217, 781.301-781.313, 781.315, 781.501-781.514, 781.601-781.608, and 781.701-781.707, concerning the licensure and regulation of social workers. Existing §781.103 concerning the current code of ethics is not being repealed on an emergency basis and will continue to be effective until a new code of ethics is adopted.

#### Chapter 781. Social Worker Licensure

##### Certification Requirements

- 22 TAC §§781.101, 781.102, 781.104-781.106

The repeal and new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The repeals and new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.101. *Certification Required*

§781.102. *Definitions.*

§781.104. *Categories of Certification.*

§781.105. *Provisional Certification.*

§781.106. *Certificates of Recognition.*

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

TRD-9443788 Catherine Clancy  
Chairperson  
Texas State Board of  
Social Worker  
Examiners

Effective date: July 31, 1994

Expiration date: November 28, 1994

For further information, please call: (512)  
719-3521

#### ◆ ◆ ◆ Subchapter A. General Provi- sions

- 22 TAC §781.101, §781.102

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.101. *Purpose and Scope.*

(a) The purpose of this chapter is to implement the provisions in the Texas Professional Social Work Act (Act), Human Resources Code, Chapter 50.

(b) The Act restricts the use of the titles "licensed master social worker", "licensed social worker" or "social work associate" or any other title that implies licensure or certification in professional social work services.

(c) A person not represented to the public as a social worker is exempt from this chapter.

(d) This chapter covers the organization, administration, and other general procedures and policies of the Texas State Board of Social Worker Examiners.

(e) The Act and this chapter apply to every licensee even if the licensee is

involved in activities or services exempt under the Act, §50.002.

§781.102. *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 Professional Social Work Act, Human Resources Code, Chapter 50.

Accredited colleges or universities—Colleges or universities as reported by the American Association of Collegiate Registrars and Admission Officers.

Administrative Law Judge (ALJ)—A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

Agency—A public or private employer or business entity providing social work services.

APA—The Administrative Procedure Act, Government Code, Chapter 2001.

Board—Texas State Board of Social Worker Examiners.

Client—A person who seeks or receives social work services. A person remains a client until the termination of services.

Clinical social work—The practice of providing evaluation, diagnosis, and treatment to individuals, families, or groups with mental or emotional conditions or disorders or who are adversely affected by social or psychosocial stress or health impairment.

Confidential information—Information obtained from a client or records relating to a client, including the client's identity, that are not discloseable under applicable law.

Council on Social Work Education (CSWE)—The national organization which accredits social work education schools and programs.

Department—Texas Department of Health.

Detrimental to the client—An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

Full-time experience—Social work services totalling 30 or more hours per week.

Health care professional—A licensee or any other person licensed, certified, or registered by the State of Texas in a health-related profession.

License—A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

LMSW—Licensed master social worker.

LMSW-ACP—Licensed master social worker—advanced clinical practitioner.

LMSW-AP—Licensed master social worker—advanced practitioner.

LSW—Licensed social worker.

Licensee—A person licensed or recognized by the board to perform professional social work practice.

Nonclinical social work—The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, nonclinical consultation and other related social work activities.

Part-time—Social work services totalling less than 30 hours per week.

Professional social work practice—Services and actions performed for compensation to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of professional social work is guided by special knowledge, acquired through formal professional social work education, of social welfare policies and services, social welfare systems and resources, human development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Professional social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, counseling, assessment, and evaluation. Professional social work practice may also be referred to as social work services.

Recognition—Authorization from the board to engage in the private, independent or specialty practice of social work services.

Social worker—A person licensed under the Act as a SWA, LSW, LMSW, LMSW-AP or LMSW-ACP.

SWA—A person licensed as a social worker associate.

Supervision—The professional relationship between a supervisor and a social worker which provides evaluation and direction over the services provided by the social worker and promotes professional development of knowledge, skills, and abilities to provide social work services. It may

include, without being limited to, direct observation or the review of case presentations, audiotapes, or videotapes.

Termination—The end of professional services, meetings, and billing for services.

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Catherine Clancy  
Chairperson  
Texas State Board of  
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## Application Process

### • 22 TAC §§781.201-781.208

The repeals are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The repeal is necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.201. Fees.

§781.202. Application Requirements.

§781.203. Qualifications for Certification or Recognition.

§781.204. Supervision for Private and Specialty Practice Recognition

§781.205. Felony Conviction Statement.

§781.206. Examination Requirement.

§781.207. Exemption from Examination

§781.208. Certification by Endorsement

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## Subchapter B. The Board

### • 22 TAC §§781.201-781.217

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

#### §781.201. Board Rules.

(a) The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of an justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule

(3) The petition shall be filed with the board office.

(4) The board office may determine the petition does not contain the information described in paragraph (2) of this subsection and shall return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule making procedures

in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, the Government Code, Chapter 2001. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rules submitted within six months after the date of an initial position.

#### *§781.202. Board Meetings.*

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) A meeting may be called by the chairperson after consultation with board members or by a majority of members so voting at a meeting.

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

(d) The chairperson will invite comments or statements from nonboard members on all agenda items, but may limit the time allotted to each individual. The board may not act on comments or statements related to issues not on the agenda.

(e) Interpreters and other reasonable accommodations necessary to facilitate public participation will be made available as needed. Notice that reasonable accommodations will be needed must be received by the executive director at least one week in advance of the board or committee meeting.

*§781.203. Board Training.* The board adopts the Health Professions Council's approved board member training as the official training required of all new board members.

#### *§781.204. Transaction of Official Board Business.*

(a) The board may transact official business only when in a legally constituted meeting with a quorum present. A quorum

of the board necessary to conduct official business is five members.

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

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

#### *§781.205. Board Agendas.*

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

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

#### *§781.206. Board Minutes.*

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

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

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

#### *§781.207. Elections.*

(a) At the first meeting following the last day of January of each year, the board shall elect a vice-chairperson.

(b) A vacancy which occurs in the office of vice-chairperson may be filled at any meeting.

#### *§781.208. Officers of the Board.*

(a) Chairperson.

(1) The chairperson shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(2) The chairperson is authorized by the board to make day-to-day decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(b) Vice-chairperson.

(1) The vice-chairperson shall perform the duties of the chairperson in

case of the absence or disability of the chairperson.

(2) In case the office of the chairperson becomes vacant, the vice-chairperson shall serve until a successor is appointed.

#### *§781.209. Committees of the Board.*

(a) The board or the chairperson may establish committees deemed necessary to carry out board responsibilities.

(b) The chairperson shall appoint members of the board to serve on committees and shall appoint the committee chairpersons.

(c) The chairperson may appoint nonboard members to serve as committee members on a consultant or voluntary basis subject to board approval.

(d) Committee chairpersons shall make regular reports to the board in interim written reports or at regular meetings

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

(f) Committees shall meet when called by the committee chairperson or when so directed by the board or the board chairperson.

(g) Each committee shall consist of at least one public member and one professional member, unless the board authorizes otherwise.

#### *§781.210. Executive Director*

(a) The executive director of the board shall be an employee of the department appointed by the Commissioner of Health, as the administrator of board activities.

(b) The executive director shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board unless another custodian is designated by the board.

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

(d) The executive director shall be responsible for the investigation and presentation of complaints.

(e) The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(f) The executive director shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure and renewal. Determinations made by the executive director that propose denial of licensure are subject to the approval of the appropriate committee of the board or the board which shall make the final decision on the eligibility of the applicants.

*§781.211. Reimbursement for Expenses.*

(a) A board member is entitled to per diem in the same amount set for state employees by the General Appropriations Act and travel expenses to and from meetings.

(b) Payment to members of per diem and transportation expenses shall be on official department vouchers.

*§781.212. Official Records of the Board.*

(a) Records which are public may be reviewed by inspection or duplication, or both. Confidential records will not be made available.

(b) When any person's request would be unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.

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

(d) The rules of procedure for inspection and duplication of public records contained in the Texas Open Records Act shall apply to requests received by the board.

*§781.213. Impartiality and Non-discrimination.*

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, sex, disability, or national origin

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

*§781.214. Applicants with Disabilities.*

(a) The board shall comply with applicable provisions of the Americans with Disabilities Act.

(b) Applicants with disabilities shall inform the board in advance of any reasonable accommodations needed.

*§781.215. The License.*

(a) The board shall prepare and provide to each licensee a license which contains the licensee's name and license number.

(b) Regular licenses shall be signed by the board chairperson and executive director and be affixed with the seal of the board.

(c) Temporary and provisional licenses shall be signed by the board chairperson and the executive director.

(d) All licenses issued by the board remain the property of the board and must be surrendered to the board on demand.

*§781.216. Roster of Licensees.*

(a) Each year the board shall publish a roster of licensees.

(b) The roster of licensees shall include, but not be limited to, the name, address, and telephone numbers of current licensees.

(c) The board shall make a copy of the roster available to each licensee, and upon request, copies to other state agencies and the general public.

*§781.217. Fees.*

(a) The following are the board's fees.

(1) application fee for all licenses or specialty recognition-\$20;

(2) license fee for SWA, LSW, or LMSW-\$30;

(3) renewal fee for SWA, LSW or LMSW-\$30;

(4) license specialty recognition (AP or ACP)-\$10;

(5) renewal fee for specialty recognition-\$10;

(6) additional or replacement license fee-\$10;

(7) additional penalty fee for late renewal.

(A) 1-90 days-\$45; and

(B) 91 days but less than one year-\$90;

(8) inactive status fee-\$15;

(9) reactivation fee-\$15 plus the renewal fee for specialty recognition, if applicable;

(10) returned check fee-\$25; and

(11) continuing education sponsor application fee-\$50.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.303 of this title (relating to Application).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, a returned check fee must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (e.g. insufficient funds, account closed, or payment stopped) is invalid.

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For further information, please call: (512) 719-3521

◆ ◆ ◆  
**Certificate Expiration and Renewal**

• **22 TAC §§781.301-781.305**

The repeals are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The repeal is necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

*§781.301. Expiration and Renewal.*

*§781.302. Continuing Education Requirements.*

*§781.303. Inactive Status.*

*§781.304. Emeritus Certification.*

*§781.305. Variances.*



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◆ ◆ ◆  
Subchapter C. Licenses and  
Licensing Process

• 22 TAC §§781.301-781.313,  
781.315

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.301. *Qualifications for Licensure*

(a) The following education and experience is required for the specified licenses and specialty recognitions.

(1) LMSW—a doctoral or master's degree in social work from a CSWE accredited college or university;

(2) LSW—a baccalaureate degree in social work from a CSWE accredited college or university;

(3) SWA—

(A) a baccalaureate degree from an accredited college or university and one year of full-time social work experience as defined in §781.304(c) of this title (relating to Required Documentation of Qualifications for Licensure) under the supervision of a SWA, LSW or LMSW, or

(B) an associate of arts degree in a behavioral science from an accredited college or university and three years of full-time social work experience as defined in §781.304(c) of this title under the supervision of a SWA, LSW or LMSW.

(4) LMSW-ACP—

(A) licensure as a LMSW,

(B) three years of full-time experience in a clinical social work position while licensed as a LMSW,

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP supervisor as specified in §781.302(b) of this title (relating to Supervision for Specialty Recognition); and

(D) identification with and continued participation in the social work profession as evidenced by licensure as an LMSW, active membership and participation in social work organizations and experience in social work positions; and

(5) LMSW-AP—

(A) licensure as a LMSW;

(B) three years of full-time experience in a non-clinical social work position while licensed as a LMSW,

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP or LMSW-AP supervisor as specified in §781.302(b) of this title, and

(D) identification with and continued participation in the social work profession as evidenced by licensure as a LMSW, active membership and participation in social work organizations and experience in social work positions.

(b) Only a person who is licensed and recognized by the board as a LMSW-ACP or LMSW-AP is qualified for the private, independent practice of social work. No further recognition is necessary.

(1) As a private practitioner, a LMSW-ACP may provide any clinical or nonclinical social work services

(2) A LMSW-AP must restrict his or her private, independent practice to the provision of nonclinical social work services

(3) A licensee must not engage in any private, independent practice that is within the scope of the definition of professional social work practice without being licensed and recognized by the board as a LMSW-ACP or LMSW-AP.

(4) A person with a private, independent practice who is not an LMSW-ACP or LMSW-AP but is licensed in another profession and acting within the scope of that other license, may not use the titles "licensed master social worker", "licensed social worker", or "social work associate" or any other title that implies licensure or certification in professional social work services.

(c) An applicant for AP and ACP recognition is not eligible for a temporary or provisional license.

§781.302. *Supervision for Specialty Recognition.*

(a) A LMSW who plans to apply for specialty practice recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director at the beginning of supervision or within six months of the effective date of these rules;

(2) submit a notice to the board within 30 days of the end of each supervisory plan with each supervisor and a termination evaluation completed by the supervisor; and

(3) submit a new supervisory plan within 90 days of changing supervisors.

(b) A person who wishes to be an approved supervisor must file a request with the board. A supervisor must:

(1) be a LMSW-ACP or LMSW-AP or hold the equivalent social work license or certification in another state;

(2) take professional responsibility for the social work services provided within the supervisory plan;

(3) be the agency designated supervisor, have completed one graduate course in supervision from an accredited college or university, have completed two years of experience as a clinical social work supervisor, or have completed a supervisor's training course acceptable to the board; and

(4) currently be engaged in the practice of social work and self-identified as a social worker.

(c) On receipt of the request and verification of qualifications, the board will issue a letter of approval to a qualified supervisor.

(d) A supervisor must maintain the qualifications described in subsection (b) of this section while he or she is providing supervision.

(e) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(1) There can be no more than six individuals in a supervision group.

(2) Supervision shall consist of no less than 100 hours.

(3) Supervision shall be spread out over the experience of the supervisee.

(4) Supervision shall be accomplished in one or two hour blocks not exceeding 10 hours per month.

(f) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee

(g) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time of the supervision.

#### *§781.303. Application.*

(a) An application for licensure must be on the official form designated by the board. Application packets which include the application form are available on request.

(b) The application process begins when the completed application form and fee are received in the board office.

(c) Receipt of an application form will be acknowledged by a letter from the executive director within 15 working days of receipt. The letter will include:

(1) the licensing or recognition category requested;

(2) deficiencies in documented qualifications, if any; and

(3) additional documentation necessary for examination approval. This could include transcripts, supervisory references and other documents which verify qualifications.

(d) A letter approving the applicant to sit for the examination will be mailed within 15 working days of the receipt of all required documentation.

(e) If an applicant fails to fully document his or her qualifications or fails to successfully complete the examination within 12 months of approval of the application, the application will be voided and reapplication is required.

(f) If the applicant passes the examination, the executive director shall mail a notice of approval stating the fee for initial licensure.

(g) On receipt of the license fee in the board office, licensure for LMSW, LSW, or SWA will be immediately granted and the license will be mailed to the licensee within 10 working days. No additional fee is required before recognition as an ACP or AP is granted.

(h) In the event an application is not processed in the time periods stated in this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. The executive director will respond to the request for refund within 30 days from the date it is received. Good cause for exceeding the time period is considered to exist if the number of applications for license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(i) If a request for reimbursement under this section is denied by the executive director, the applicant may appeal to the chairperson of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairperson at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chairperson shall provide written notice of the chairperson's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(j) The time periods for contested cases related to the denial of a license or a license renewal are not included within the time periods in this section. The time period for conducting a contested case hearing runs from the date the board office mails notice of the proposed denial and ends when the decision of the board is final and appealable. A hearing may be completed within six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

#### *§781.304 Required Documentation of Qualifications for Licensure*

(a) Application form. An applicant for licensure must submit a completed official application form made under oath and all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts. Educational requirements must be met by completion of educational programs at accredited colleges or universities.

(2) Degrees for licensure as a LSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE. (Current written verification of a program's CSWE candidacy status must be on file with the board.) College or university degrees from outside of the United States and its territories must be from programs judged by the CSWE to be equivalent to a CSWE accredited program in the United States.

(c) Experience verification.

(1) Experience required for licensure as a SWA or for recognition as an ACP or AP must meet the requirements of §781.301 (relating to qualifications for licensure). Private, independent practice within the scope of the definition of professional social work practice will not be counted as experience in this subsection. Required documentation includes:

(A) names and addresses of supervisors;

(B) beginning and ending dates of supervision;

(C) job description;

(D) average number of hours of social work activity per week; and

(E) evaluations from each supervisor.

(2) Documentation of experience must include verification of the following:

(A) administrative authority over the applicant's provision of social work services;

(B) the applicant's compensation for services, if any; and

(C) the employment status as reflected in all advertising, informational material, and written policy.

(3) The board shall credit part-time experience on a prorated basis.

(4) Experience must have been in a position with primary responsibility for providing social work services, under the supervision of a qualified supervisor, and satisfactorily performed.

(5) The social work experience required by this chapter for SWA, ACP, or AP may be for compensation or as a volunteer.

(6) The applicant must maintain and upon request, provide to the board documentation of employment status, pay vouchers, or supervisory evaluations.

(d) References. An applicant must list on the official application the names and addresses of three individuals familiar with the applicant's professional qualifications. The board may contact the references for verification of the applicant's qualifications and fitness.

*§781.305. Fitness of Applicants for Licensure.* In determining the fitness of an applicant, the board shall consider the following:

(1) the skills and abilities of an applicant to provide adequate social work services to clients;

(2) the ethical behavior of an applicant in relationships with other professionals and clients; and

(3) the applicant's worthiness of public trust and confidence. The board may consider a person, who has committed any act that would have been a violation of the Act or this chapter had the person been licensed at the time the act was committed, as unworthy of public trust and confidence.

*§781.306. Materials Considered in Determination of Fitness of Applicants.* In determining the fitness of applicants, the board shall consider the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) allegations of clients;

(5) transcripts or findings from official court, hearing, or investigative proceedings; and

(6) any other information which the board considers pertinent to determining the fitness of an applicant.

*§781.307. Finding of Non-Fitness.* The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license or recognition:

(1) lack of the necessary skills and abilities to provide adequate social work services;

(2) any misrepresentation in the application or other materials submitted to the board;

(3) the violation of any provision of the Act in effect at the time of application which is applicable to an unlicensed person; or

(4) the violation of any provision of the code of ethics or standards of practice which would have applied if the applicant had been a licensee at the time of the violation.

*§781.308. Provisional Licenses.*

(a) The board may grant a provisional license as a LMSW, LSW, or SWA to a person who holds, at the time of application, a license or certificate as a social worker or social work associate issued by another state, the District of Columbia, or a territory of the United States that is acceptable to the board. An applicant for a provisional license must:

(1) submit a written request for a provisional license along with a completed application;

(2) be licensed in good standing as a social worker or social work associate in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act;

(3) have passed an examination accepted by another state, District of Columbia, or territory for licensure or certification as a social worker; and

(4) be sponsored by a person who holds a license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The provisional licensee shall use the appropriate licensing title or initials followed by the word "provisional."

(d) The provisional license shall be issued for the same category or level of license or certificate as the applicant held in the other state, District of Columbia, or territory of the United States.

(e) The board must complete the processing of a provisional licensee's application for a regular license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must

file all evidence of his or her academic and experience requirements within this time period. The board office shall evaluate the information received and may issue a deficiency letter during this period. If the documentation received during this period does not show that the person meets the education and experience requirements set out in this chapter, the application shall be proposed for denial.

(f) A provisional license is valid until the date the board issues a license or denies the provisional licensee's application for a license.

(g) The board shall issue a regular license to the holder of a provisional license if:

(1) the provisional licensee passes the examination required by §50.014 of the Act; and

(2) the board verifies that the provisional licensee has the education and experience requirements for a regular license.

(h) The board shall consider only states, the District of Columbia, and territories of the United States as acceptable for the purposes of licensure by endorsement.

(i) The provisional license automatically expires at the end of six months or on official receipt of the applicant's score on the designated examination, whichever is later.

(j) The board may waive any licensure requirement for an applicant with a valid certificate or license from another state with which the board has a reciprocity agreement.

*§781.309. Temporary License.*

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a LMSW, LSW, or SWA as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

(1) A person holding a temporary license must take the designated examination within six months of issuance of the license.

(2) The temporary license is valid until the results of the first qualifying examination are made available (i.e. the first examination taken by the temporary licensee or the end of the six months from issuance of the license if the examination is not taken, whichever is earlier).

(b) A person may receive a maximum of two temporary licenses at a certain level of license.

(c) A person who failed the examination and is without a valid temporary

license may still retake the examination under §781.310(b) (relating to Examination Requirement).

*§781.310. Examination Requirement.*

(a) An applicant for licensure or recognition must pass an examination designated by the board.

(b) If an applicant fails the examination, he or she may retake the examination no more than twice in a 12-month period. Such an applicant must petition the board to retake the examination. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination. If a petition is granted, the application does not expire under §781.303(e) of this title (relating to Application) until the applicant retakes the examination as stated in the granted petition.

*§781.311. Alternate Method of Examining Competency.*

(a) An applicant who has failed the examination on two or more occasions by less than 10 points may submit a written petition to the board for a probated license as a SWA, LSW, or LMSW. The petition must include but is not limited to the following:

(1) evidence of the applicant's professional competency including but not limited to:

(A) college transcripts;

(B) work history; and

(C) statements of professional colleagues;

(2) a statement of the practice setting in which the applicant proposes to work; and

(3) a statement from a licensed social worker which documents his or her qualifications as a supervisor and indicates his or her willingness to take professional responsibility for the applicant during the probationary period.

(b) The board will consider the interest of the public in its review of the petition and will issue its decision in writing

(c) The written decision will include the following:

(1) a statement of the reason(s) the petition for a probated license is denied, or

(2) the terms of probation under which the license is granted.

(d) The board may grant a regular license to an applicant who successfully completes the terms of probation to the satisfaction of the board.

*§781.312. Issuance of Licenses.*

(a) The board issues licenses indicating the professional social work title, whether SWA, LSW, LMSW, LMSW-AP or LMSW-ACP, granted to applicants who have met all of the qualifications established by the board.

(b) The license title or its initials must be included in all professional uses of the licensee's name as required by §50.011 of the Act.

(c) A licensee shall display the license issued by the board in a prominent place in all locations of practice.

(d) A copy of the code of ethics listed in §781.401 of this title (relating to Code of Ethics) is issued with the license. The copy of the code of ethics also includes information regarding the client complaint process. The copy of the code of ethics must be displayed in all locations of practice

(e) The board will send copies of its client information brochure to each LMSW-ACP or LMSW-AP. These brochures must be made available to all clients by the licensee.

*§781.313 Application Denial.*

(a) The board shall deny an application if all of the requirements for licensure or recognition are not met. An applicant shall be notified when the license or recognition is proposed for denial.

(b) A person whose application for licensure or recognition is denied is entitled to a formal hearing as set out in Subchapter G of this chapter (relating to Formal Hearings).

*§781.315 Surrender of License*

(a) Surrender by licensee.

(1) A licensee may at anytime voluntarily offer to surrender his or her license for any reason, without compulsion

(2) The licensee may be delivered to the board office by hand or certified mail

(3) If there is no complaint pending, the board office may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee has offered the surrender of his or her license after a com-

plaint has been filed, the board shall consider whether to accept the surrender of the license.

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

(3) In order to accept a surrender, the board may require the licensee to agree to certain findings of fact and conclusions of law, including the making of an admission of a violation of the Act or this chapter.

(4) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

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

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Catherine Clancy  
Chairperson  
Texas State Board of  
Social Worker  
Examiners

Effective date: July 31, 1994

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For further information, please call: (512) 719-3521

◆ ◆ ◆  
**Administrative Actions**

**• 22 TAC §§781.401-781.410**

The repeals are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The repeal is necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

*§781.401 Issuance of Certificates.*

*§781.402. Application Denial.*

*§781.403. Use of a Title Without Certification.*

*§781.404. Complaint Procedures*

*§781.405. Disciplinary Action.*

§781.406. *Notification of Intent to Discipline.*

§781.407. *Probation.*

§781.408. *Procedures for Establishing Proof of Rehabilitation.*

§781.409. *Administrative Review.*

§781.410. *Appeals.*

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◆ ◆ ◆  
**Subchapter E. License Renewal  
and Continuing Education**

• **22 TAC §§781.501-781.514**

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.501. *General.*

(a) A regular license must be renewed annually.

(b) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by this chapter in order to renew a license.

(c) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying penalty fees for late renewal. Failure to receive notice from the board does not waive payment of penalty fees

(d) The board may deny the renewal of the license of a licensee who is in violation of the Act or this chapter at the time of application for renewal.

(e) A person whose license has expired shall not use the terms or titles described in the Act, §50.010(a). The person shall return his or her license to the board.

(f) The deadlines established for renewals, late renewals, and penalty fees are based on the postmarked date of the documentation submitted by the licensee.

(g) The board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

§781.502. *Staggered Renewals.* The board shall use a staggered system for license renewals.

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

(2) License fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.

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

§781.503. *License Renewal.*

(a) At least 30 days prior to the expiration of a regular license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and penalty fees, and the number of credit hours of continuing education needed to complete the renewal requirements.

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses; telephone numbers; a listing of the continuing education completed; a signed statement regarding any civil lawsuits, criminal cases and convictions or any complaints against, investigations involving, or actions against the licensee by any licensing or certification body related to health or mental health care services; and a statement of continuing compliance with the Act and this chapter.

(c) The executive director will respond in writing to the application for renewal within 15 working days of initial receipt and of receipt of a completed application (if the initial application is deficient) notifying the applicant that his or her license is renewed, that the application is deficient, or that renewal is proposed for denial. Failure to process a renewal application in the time periods stated shall be governed by §781. 303(h)-(j) of this title (relating to Application)

(d) The board shall not renew a license until it receives the completed license renewal form and the renewal fee and the licensee has complied with applicable continuing education requirements.

(e) The board shall mail a new license to a licensee who has met all requirements for renewal.

(f) If a licensee has made timely and sufficient application for renewal, the license does not expire until the board has acted on the renewal.

(g) The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §781.602(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

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

(2) In the case of delay in the license renewal process because of formal disciplinary action, penalty fees shall not apply.

§781.504. *Late Renewal.*

(a) A person who fails to meet all the requirements to renew his or her license by the renewal date ceases to be licensed and may not violate the Act, §50.010.

(b) A person who renews a license after the expiration date but on or before 90 days after the expiration date shall pay the renewal fee and appropriate penalty fees.

(c) If a person has not renewed a license for more than 30 days after the date of expiration, the board shall inform the person of the expiration date of the license and the amount of the fee required for renewal

(d) The board shall notify a person whose license is expired that the person may not violate the Act, §50.010

(e) A person whose license was not renewed on or before 90 days from the expiration date may renew within one year of the expiration date by paying the appropriate renewal and penalty fees

(f) If a person did not have the required continuing education at the time of expiration of the license, the person shall file evidence of completion of the required continuing education before the license can be renewed

(1) The continuing education may have been earned during the continuing education period or within the one-year period following expiration

(2) The evidence of continuing education shall be the completed continuing education form and other documentation required by the board

(g) On or after one year from the expiration date, a person may no longer renew the license and must reapply by submitting a new application, paying the required fees, and meeting the current

requirements for the license including passing the licensure examination.

*§781.505. Inactive Status.*

(a) A licensee with a current license and who is in good standing, but who is not employed to provide social work services in Texas, is eligible for inactive status. The request for inactive status must be submitted in writing to the board prior to the expiration of the license

(b) No continuing education is required of a licensee while on inactive status

(c) The inactive status fee must be paid on or before the expiration date of the license, instead of the renewal fee

(d) A person must notify the board in writing to reactivate their status. Reactivation status shall begin on the first day of the month following payment of the reactivation status fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).

*§781.506 Emeritus Status*

(a) A licensee who is at least 55 years of age or disabled and who is not engaged in professional social work practice is eligible for an emeritus license. The request for emeritus status must be submitted in writing to the board

(b) On receipt of the request the board will issue an emeritus license that will remain valid for the lifetime of the licensee. No renewal fee or continuing education will be required

(c) The emeritus licensee may only use his or her emeritus title in the provision of social work services as a volunteer. The emeritus social worker may not receive any compensation for social work services.

(d) An emeritus license can be reinstated as a regular license within one year of the date the emeritus license was issued by following the same procedures for late renewal of a license. To be eligible for a new license after one year, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing the examination.

*§781.507 Active Military Duty*

(a) A licensee who is on active duty with the armed forces of the United States serving outside of the State of Texas at the time of renewal is exempt from the renewal requirement and may, within one year of his or her return to Texas or release from active duty, whichever occurs first, request reinstatement of his or her license

(b) The board will issue a license on receipt of the request for reinstatement, documentation of his or her active duty status at the time the license expired, and the fee for the current license. No continuing education will be required prior to reinstatement and no penalty fees will be charged

*§781.508 Hour Requirements for Continuing Education.* A licensee must complete 15 credit hours (15 continuing education units (CEU)) of continuing education acceptable to the board in the year preceding his or her license renewal date. In this subchapter "credit hours" will mean continuing education acceptable to the board

*§781.509 Types of Acceptable Continuing Education* Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories.

(1) participating in institutes, seminars, workshops, conferences, independent study programs, post graduate training programs, college academic or continuing education courses which are related to or enhance the practice of social work and are offered, sponsored or approved by an approved provider. Approved providers are:

(A) accredited colleges and universities,

(B) a national or statewide association or organization representing members of the social work profession;

(C) a person, agency or entity who is approved as a provider in accordance with §781.511 of this title (relating to Approval of Continuing Education Sponsor);

(D) a person, agency or entity who is approved by a state professional licensing or certification board as a continuing education sponsor or provider as stated in §781.512 of this title (relating to Acceptance of Continuing Education Approved by Another Licensing Board)

(E) nationally accredited health or mental health facilities,

(2) teaching or presenting the activities described in paragraph (1) of this section,

(3) writing a published work or making a presentation directed toward or applicable to the profession of social work, or

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE.

*§781.510. Activities Unacceptable as Continuing Education.* The board will not give credit hours for

(1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;

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

(3) meetings and activities such as in service programs which are required as a part of one's job unless the in service training is a type of acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education),

(4) college academic courses which are audited or not taken for credit; or

(5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

*§781.511 Approval of Continuing Education Sponsor*

(a) A sponsor is an individual or any type of legal entity which has been approved under this section to offer or sponsor continuing education programs.

(b) A person seeking approval as a continuing education sponsor shall file an application on board forms and include the continuing education sponsor application fee. Governmental agencies shall be exempt from paying this fee

(c) The applicant shall certify on the application that

(1) all programs offered by the sponsor for credit hours from the board will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (j) of this section.

(d) A program offered by a sponsor for credit hours (CEU) from the board shall

(1) contribute to the advancement, extension and enhancement of the professional skills and knowledge of the licensee in the practice of social work,

(2) be developed and presented by persons with education and/or experience in the subject matter of the program,

(3) specify the course objectives, course content and teaching methods to be used, and

(4) specify the number of credit hours.

(e) The sponsor must document each program's compliance with §781.511(d) of this title (relating to Approval of Continuing Education Sponsor) and maintain that documentation for a period of two years.

(f) The executive director will review the continuing education sponsor application and notify the applicant of any deficiencies or grant approval and indicate the continuing education sponsor approval number to be noted on all certificates of attendance.

(g) Each continuing education program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the sponsor by mail. The sponsor and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The sponsor shall keep all evaluations for two years and allow the board to review the evaluations on request.

(h) An approved sponsor may subcontract with individuals or organizations to provide continuing education programs. The sponsor must insure that the subcontractor meets all requirements of this section.

(i) To maintain approval as a sponsor, each sponsor shall submit to the board annually an application and a continuing education approval application fee.

(j) It shall be the responsibility of a sponsor to provide each participant in a program with a certificate of attendance. The certificate of attendance shall contain:

- (1) the name of the sponsor and approval number;
- (2) the name of the participant;
- (3) the title of the program;
- (4) the number of credit hours given;
- (5) the date and place of the program; and
- (6) the signature of the sponsor or its representative.

(k) The sponsor shall maintain attendance records for not less than three years.

(l) The sponsor shall be responsible for assuring that no licensee receives continuing education credit for time not actually spent attending the program.

(m) Upon the failure of a sponsor to comply with any of the requirements of

this section, the board, after notice to the sponsor and a due process hearing, may revoke the sponsor's approval status.

(n) The board may evaluate any approved sponsor or applicant at any time to ensure compliance with requirements of this section.

(o) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director

#### *§781.512. Acceptance of Continuing Education Approved by Another Licensing Board*

(a) A person, agency or entity approved by another state professional licensing or certification board may request authorization to advertise its program(s) as accepted for credit hours by the board. The person, agency or entity shall submit documentation of that board's approval, a statement of the relevance of the program(s) to social work practice and the continuing education sponsor application fee

(b) The executive director will review the documentation and notify the approved provider in writing whether the program(s) are acceptable as credit hours and of the approved provider number, if acceptable.

#### *§781.513 Credit Hours Granted* The board will grant the following credit hours toward the continuing education requirements for license renewal

(1) One credit hour (0.1 CEU) will be given for each hour of participation in a continuing education program by an approved provider.

(2) Credit may be earned through successful completion of postgraduate training programs (e.g., intern, residency, or fellowship programs) or successful completion of social work-related courses which are part of the curriculum of a college, university or graduate school of social work at a rate of 5 credit hours (0.5 CEU) per each semester hour or its equivalent

(3) Credit may be earned for verified teaching in a college, university or graduate school of social work or as an instructor of a continuing education program given by an approved provider. Credit will be applied at the rate of 5 credit hours (0.5 CEU) for every course taught, not to exceed 10 hours (1.0 CEU) per renewal period

(4) A field instructor for a social work intern will be granted 5 credit hours (0.5 CEU) for each college semester completed, not to exceed 10 credit hours (1.0 CEU) per renewal period

(5) A presenter or author of a published work which imparts social work knowledge and skills may be granted 5 credit hours (0.5 CEU) for each original or substantially revised presentation or publication, not to exceed 10 credit hours (1.0 CEU) per renewal period

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. No more than 10 credit hours (1.0 CEU) for independent study programs will be accepted per renewal period

(7) A licensee may carry over to the next renewal period up to 5 credit hours (0.5 CEU) earned in excess of the continuing education renewal requirements.

#### *§781.514 Continuing Education Documentation*

(a) Credit hours must be listed on the license renewal form supplied by the board. Failure to submit the form or failure to complete the required continuing education is grounds for denial of the application for license renewal

(b) A random sample of renewal applications will be selected for review.

(1) A licensee who is selected for review will be notified by mail and required to submit acceptable documentation of the continuing education listed on the continuing education report form. Acceptable documentation includes the following:

(A) copies of continuing education certificates of attendance or other form of verification from the provider of the continuing education program,

(B) grade reports or transcripts verifying the completion of a college course,

(C) letters from the dean or department head or his or her authorized representative verifying the teaching or field instructor assignment,

(D) letters from the program sponsor verifying participation as a presenter in a continuing education program or a copy of the program, or

(E) copies of continuing education programs and other documentation as necessary to establish the relevance of its content to social work practice for any continuing education program which does not have an approved provider number

(2) All forms of verification must include the subject, date(s), credit hours given and if applicable, name of the sponsor and sponsor approval number.

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## Subchapter F. Complaints and Violations

### • 22 TAC §§781.601-781.608

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

**§781.601. Purpose.** The purpose of this subchapter is to set out grounds for denial of an application or discipline of a licensee and the procedures for reporting alleged violations of the Act or this chapter.

#### **§781.602. Disciplinary Action; Notices.**

(a) The board shall revoke, suspend, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons:

- (1) violation of any provision of the Act;
- (2) violation of any rule adopted by the board;
- (3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;
- (4) physically or mentally incompetency to perform social work services as determined by the board;
- (5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board; or
- (6) any of the grounds described in the Act, §50.021(a).

(b) Prior to institution of formal proceedings to revoke or suspend a license or recognition, the board shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension; and the licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, probation or suspension of a license or recognition is proposed, the board shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, or probated.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt

(e) No notice or hearing is required for the board to issue a reprimand other than notice to the licensee of the board meeting where the reprimand will be considered.

#### **§781.603. Complaint Procedures.**

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint a complaints committee to work with the executive director.

(c) On receipt of a complaint, the executive director shall send an acknowledgement letter to the complainant, a copy of applicable rules, and an official form which the complainant must complete and return to the board before further action can be taken. The form must be signed under oath. The executive director may accept an anonymous complaint if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.

(d) Within 15 days of the receipt of the official forms, the executive director shall review the complaint to assure that there is sufficient information to initiate an

investigation and that the allegations contained in the complaint fall within the board's jurisdiction.

(1) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the complaints committee. Based on its review of the complaint, the complaint committee may instruct the executive director to:

(A) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or

(B) advise the complainant of the additional information necessary to initiate an investigation.

(2) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(A) evaluate the threat to public health and safety documented by the complaint;

(B) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;

(C) apprise all parties to the complaint of the schedule for the investigation and notify parties within seven days of changes in the schedule; and

(D) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.

(e) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

(f) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the allegations within the two week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(g) The complaints committee will review the complaint log to ensure that:

(1) complaint investigations are being handled in a timely manner;

(2) complaints are not dismissed without appropriate consideration;



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

(4) any issues related to complaints which arise under the Act or this chapter are resolved.

(h) The complaints committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

(i) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(j) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

#### *§781.604. Licensing of Persons With Criminal Backgrounds.*

(a) The board may take action against a licensee or deny a license pursuant to Texas Civil Statutes, Articles 6252-13c and 6252-13d relating to felony or misdemeanor convictions or the Act, §50.021(a)(11) relating to felony convictions.

(b) The following felonies and misdemeanors relate to licensure as a social worker because these criminal offenses indicate an inability or a tendency to be unable to perform as a social worker:

- (1) a violation of the Act;
- (2) an offense involving moral turpitude;
- (3) failure to report child abuse or neglect;
- (4) a misdemeanor involving deceptive business practices;
- (5) the offense of assault or sexual assault;
- (6) the felony offense of insurance claim fraud; or
- (7) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a social worker.

#### *§781.605. Suspension, Revocation, or Nonrenewal.*

(a) If the board suspends a license or recognition, the suspension shall remain

in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) If a suspension overlaps a license renewal date, the suspended licensee shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon revocation, suspension or nonrenewal of a license, a licensee shall return his or her license to the board.

#### *§781.606. Informal Disposition.*

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive director or the complaints committee determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this section shall apply to any settlement conferences. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the conference. The licensee or applicant may waive the 10-day notice requirement.

(1) The notice shall inform the licensee or applicant:

- (A) of the nature of the alleged violation;
- (B) that he or she may be represented by legal counsel;
- (C) that he or she may offer the testimony of witnesses and present other evidence as may be appropriate;
- (D) that complaint committee members may be present;
- (E) that the board's legal counsel or a representative of the Office of the Attorney General will be present;

(F) that attendance and participation in the conference is voluntary;

(G) that the complainant and any client involved in the alleged violations may be present; and

(H) that the settlement conference shall be cancelled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(2) The notice of the settlement conference shall also contain a copy of the board's rules concerning informal disposition.

(e) A notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant and shall inform the complainant that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(f) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(g) The licensee, the licensee's attorney, committee members, and the board may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(h) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference.

(i) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act, Government Code, Chapter 552 and the Administration Procedure Act (APA).

(j) At the discretion of the executive director or the committee members, a tape recording may be made of none or all of the settlement conference.

(k) The committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee, the licensee's attorney, board staff, and the board's attorney.

(l) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the settlement conference, the committee members or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The committee members may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject at the conference the settlement recommendations.

(1) If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law.

(2) The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order.

(3) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(4) If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(5) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(o) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(p) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(q) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(r) A proposed agreed order is not effective until the full board has approved

the agreed order. The order shall then be effective in accordance with the APA.

(s) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c)

#### §781.607 Default Orders.

(a) If a right to a hearing is waived under §781.602(c) of this title (relating to Disciplinary Action; Notices) or §781.703(b) of this title (relating to Notice), the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) The board's legal counsel or an attorney from the Office of Attorney General shall attend the board meeting.

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

#### §781.608 Monitoring of Licensees.

(a) The executive director shall maintain a disciplinary action tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license or recognition shall be required to submit regularly scheduled reports at intervals appropriate to each individual situation.

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

(d) The complaints committee may consider more severe disciplinary proceedings if noncompliance occurs.

Issued in Austin, Texas, on July 11, 1994

TRD-9443780

Catherine Clancy  
Chairperson  
Texas State Board of  
Social Worker  
Examiners

Effective date: July 31, 1994

Expiration date: November 28, 1994

For further information, please call: (512) 719-3521

### ◆ ◆ ◆ Subchapter G. Formal Hearings

#### • 22 TAC §§781.701-781.707

The new sections are adopted on an emergency basis in order to meet requirements of the Texas Professional Social Work Act, Human Resource Code, Chapter 50, as

amended by Senate Bill 1426, 73rd Legislature, 1993, and became effective September 1, 1993. The new sections are necessary to prevent conflict between the new law and the existing rules and to implement new requirements of the law, including the organization of a governor-appointed board and the transfer of administrative assistance to the Texas Department of Health.

§781.701. Purpose. This subchapter covers the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, probation, and revocations of a license and implements the contested case provisions of the Administrative Procedure Act (APA) Government Code, Chapter 2001..

#### §781.702. General.

(a) The board or complaints committee on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of the Administrative Procedure Act (APA), applicable state and federal statutes, and this chapter.

(b) The formal hearing shall be held before an administrative law judge (ALJ).

(c) A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(d) The parties to a hearing shall be the applicant or licensee and the complaints committee of the board.

(e) A copy of all pleadings, motions, or any other documents filed with the ALJ shall be provided to all other parties by first class United States mail or personal delivery and certified, in writing, with the names, addresses, date and manner of service of the parties to whom a copy was furnished.

#### §781.703. Notice.

(a) The ALJ shall ensure that notice of the formal hearing is given in accordance with the notice requirements of the Administrative Procedure Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice:

(1) the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances; and

(2) the applicant or licensee is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the board.

**§781.704. Subpoenas.**

(a) On the written request of any party to the hearing, the executive director shall issue a subpoena to require the attendance of witnesses or the production of documents. The ALJ may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Texas Civil Practice and Remedies Code.

(b) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(c) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage at 28 cents a mile, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

**§781.705. Prehearing Conferences.**

(a) The ALJ, on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleadings;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties, and
- (8) other matters which may expedite the hearing

(b) The ALJ shall issue whatever orders are necessary to cover the matters or issues

(c) Any action taken at the prehearing conference shall be reduced to writing, signed by the ALJ and the parties, and made a part of the record.

**§781.706. Hearing Procedure.**

(a) The ALJ's duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing;

(3) announce that a record of the hearing will be made;

(4) outline the procedure and order of presentation that will be followed;

(5) administer oaths to those who intend to testify; and

(6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) The order of proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(3) The ALJ may limit the number of witnesses whose testimony will be repetitious. The ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(4) The ALJ, at his or her discretion, may allow final arguments and shall note the time and close the hearing. The ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings shall not be consolidated unless the ALJ finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the ALJ and all other persons participating in or observing the hearing. The ALJ is authorized to take whatever action he or she deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the ALJ deems fair and just

(e) Recording the hearing. The ALJ will keep either a stenographic or other

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

(f) Rules of evidence. The ALJ will apply the Texas Rules of Civil Evidence and the rules contained in paragraphs (1)-(4) of this subsection.

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Exhibits.

(A) Form. The parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After the hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing

(3) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(4) Offer of proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

*§781.707. Action After the Hearing.*

(a) Proposal for decision.

(1) The ALJ shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(b) Pleading after close. At any time after the record has been closed in a contested case, and prior to the board's decision becoming final in such case, all

briefs, exceptions, written objections, motions, replies to the foregoing, and all other written documents shall be filed with the ALJ.

(c) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board may deny, suspend, probate, or revoke a license as it deems appropriate and lawful. A decision of the board may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the board to be appropriate and lawful.

(2) All final orders shall be signed by the chairperson of the board, however, interim orders may be issued by the ALJ.

(d) Motion for rehearing. A motion for rehearing shall be addressed to the board and filed with the executive director.

(e) Appeals. All communications regarding any appeal shall be to the executive director.

Issued in Austin, Texas, on July 11, 1994

TRD-9443779

Catherine Clancy  
Chairperson  
Texas State Board of  
Social Worker  
Examiners

Effective date July 31, 1994

Expiration date. November 28, 1994

For further information, please call (512) 719-3521

◆ ◆ ◆  
**TITLE 31. NATURAL RE-  
SOURCES AND CON-  
SERVATION**

**Part II. Texas Parks and  
Wildlife**

**Chapter 57. Fisheries**

**Emergency Shrimp Season  
Closure**

• 31 TAC §57.352

The Texas Parks and Wildlife Department amends on an emergency basis §57.352,

concerning provisions for an early opening of the shrimping season in Gulf (outside) waters of the Texas territorial sea (nine nautical miles). Based on sound biological data, the executive director has determined that migration of small brown shrimp from the bays to the Gulf of Mexico will occur earlier than the July 12 statutory opening date. Sound biological data indicate that most of the shrimp on the Gulf fishing grounds will meet or exceed the 65 tails per pound size criterion on July 7.

The purpose of the closed Gulf season is to protect brown shrimp during their major period of emigration from the bays to the Gulf of Mexico until they reach a larger, more valuable size before harvest and to prevent waste caused by the discarding of smaller individuals. The season closed 30 minutes after sunset May 13, 1994. The executive director found imminent peril to the public welfare required the opening date as an emergency measure to minimize social and economic hardship in a depressed industry by opening the season five days earlier than scheduled and to obtain optimum yield from the resource.

The amendment is adopted on an emergency basis under the authority of the Texas Parks and Wildlife Code, §77.062. In April 1978, the Texas Parks and Wildlife Commission delegated to the executive director the duties and responsibilities of opening and closing the shrimping season under this section.

*§57.352 Early Opening of the Gulf Shrimping Season.* The 1994 general closed season for shrimp as defined in the Texas Parks and Wildlife Code, §77.061(a)(1), extends from 30 minutes after sunset May 13, 1994, to 30 minutes after sunset July 7 [July 12], 1994.

Issued in Austin, Texas, on July 5, 1994

TRD-9443519

Paul M. Shinkawa  
Acting Legal Counsel  
Texas Parks and Wildlife  
Department

Effective date July 6, 1994

Expiration date: July 9, 1994

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 71. Office of the Secretary of State

##### Practice and Procedure

###### • 1 TAC §71.8

*(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 Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Office of the Secretary of State proposes new §71.8 and the repeal of §71.8, concerning the provision of and payment for certified and noncertified copies of any public record on file with the Office of the Secretary of State. The new rule specifies the charges for noncertified copies of public records and defines some of the words and terms used in the section. The repeal and proposed new rule are necessary to implement the provisions of House Bill 1009, Chapter 428, Acts, 73rd Legislature, Regular Session (1993), regarding the cost of providing public records and the charges that state agencies may set to recover the full costs of providing copies of, or access to, public records.

Jim Beck, deputy assistant secretary, Administrative Services Division, has determined that there will be fiscal implications as a result of enforcing or administering the new rule. Mr. Beck has determined that the effect on state government for the first five-year period the rule will be in effect will be a reduction in revenue resulting from the decrease in the cost of noncertified standard-sized paper copies under the proposed rule. It is anticipated however that this will be offset by the additional charges that can be made under the proposed rules and an increase in charges associated with providing copies of records on other media; specifically, copies of computer databases on magnetic tape. It is determined that the overall fiscal implications will be neutral. Mr. Beck has further determined that there will be no effect on local government as a result of the proposed actions.

The effect on small business will be a reduction in the cost of obtaining noncertified standard-sized paper copies of public records

on file with this office. Commercial users purchasing the public information in bulk on other media will see an estimated 33% to 40% increase in cost over the charges paid for the last eight years

Mr. Beck also has determined that the public benefit anticipated as a result of the proposed actions will be: a reduction in the cost of purchasing noncertified standard-sized paper copies of documents on file in the Office of the Secretary of State and greater ease in determining the cost for such copies. The new rule and repeal of the rule eliminates the difference in cost for the first page and the subsequent pages of a document. The new rule allows for a more specified list of charges for noncertified copies of public information and will result in charges more consistent with those made by other state agencies. The proposed actions will not impose any economic costs on individuals.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The repeal is proposed under Texas Government Code, §552.261 (Vernon Supplement 1994), which provides the Office of the Secretary of State with the authority to adopt rules which specify the charges for copies of public records and to establish charges equal to the full cost of providing the copy.

The following code is affected by this rule: Texas Government Code, §552.261 (Vernon Supplement 1994); Texas Government Code, §552.262 (Vernon Supplement 1994); Texas Government Code, §405.031 (Vernon 1990).

###### §71.8. Copies; Certified Copies, Fees for Copies.

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 July 5, 1994.

TRD-9443592

Machree Garrett Gibson  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Earliest possible date of adoption: August 15, 1994

For further information please call: (512) 463-5586

The repeal and new rule are proposed under Texas Government Code, §552.261 (Vernon Supplement 1994), which provides the Office of the Secretary of State with the authority to adopt rules which specify the charges for copies of public records and to establish charges equal to the full cost of providing the copy.

The following code is affected by this rule: Texas Government Code, §552.261 (Vernon Supplement 1994); Texas Government Code, §552.262 (Vernon Supplement 1994); Texas Government Code, §405.031 (Vernon 1990).

###### §71.8. Fees for Copies of Open Records.

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

(1) Full Cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with generally accepted methodologies.

(2) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

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

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

single-copy. A piece of paper that is printed on both sides is counted as two copies.

(b) Upon request, and upon payment of the statutory fee for the certificate in addition to the statutory fee for the copies, copies of documents on file in the Office of the Secretary of State will be certified by the signature of the Secretary and the seal of the State of Texas.

(c) The following is a summary of the charges for copies of public information on file in the Office of the Secretary of State.

- (1) Standard-size paper copy - \$ .10 per page
- (2) Nonstandard-size copy
  - (A) Diskette - \$1.00 each
  - (B) Magnetic tape - \$10 each
  - (C) VHS video cassette - \$2.50 each
  - (D) Audio cassette - \$1.00 each
  - (E) Paper copy - \$ .50 each
  - (F) Other Actual cost
- (3) Personnel charge - \$15 per hour
- (4) Overhead charge - 20% of personnel charge
- (5) Microfiche or microfilm charge
  - (A) Paper copy - \$ .25
  - (B) Fiche or film copy - Actual cost
- (6) Remote document retrieval charge - Actual cost
- (7) Computer resource charge
  - (A) Mainframe - \$17.50 per minute
  - (B) Midsize - \$3.00 per minute
  - (C) Client/Server - \$1.00 per minute
  - (D) PC or LAN - \$ .50 per minute
- (8) Programming time charge - \$26 per hour
- (9) Miscellaneous supplies - Actual cost
- (10) Postage and shipping charge - Actual cost
- (11) Fax charge - \$2.00 per page
- (12) Other costs - Actual cost

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 July 5, 1994.

TRD-9443591 Machree Garrett Gibson  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Earliest possible date of adoption: August 15, 1994

For further information please call (512) 463-5586

## Chapter 77. Computer Services

### • 1 TAC §77.1

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

The Office of the Secretary of State proposes the repeal of §77.1, concerning the fees and charges for the extraction of information from public records maintained on the computer databases of the Secretary of State. The rule specifies the charges for equipment and personnel costs associated with this means of providing public information. The repeal is necessary as these charges will be specified in proposed rule §71.8 which attempts to implement the provisions of House Bill 1009, Chapter 428, Acts, 73rd Legislature, Regular Session (1993), regarding the cost of providing public records and the charges that state agencies may set to recover the full costs of providing copies of, or access to, public records.

Jim Beck, deputy assistant secretary, Administrative Services Division, has determined that there will be fiscal implications as a result of the repeal of the rule. Mr. Beck has determined that the effect on state government for the first five-year period will be an anticipated increase in revenue resulting from the additional charges that can be made under the proposed new rule and an increase in charges associated with providing copies of records on other media; specifically, copies of computer databases on magnetic tape. This increase is offset by a reduction in revenue resulting from the decrease in the cost of noncertified standard-sized paper copies under the proposed new rule. It is anticipated that the overall fiscal implications will be neutral. Mr. Beck has further determined that there will be no effect on local government as a result of the proposed action.

The effect on small business will be that commercial users purchasing the public information in bulk on other media will see an estimated 33% to 40% increase in cost over the charges paid for the last eight years.

Mr. Beck also has determined that the public benefits anticipated as a result of the repeal will be that it will make way for a new rule which will provide greater ease in determining the cost for such copies. The new rule allows

for a more specified list of charges for public information extracted from computer databases and provided on media other than standard-sized paper. The repeal will also make the charges for nonstandard-sized copies more consistent with those made by other state agencies. The proposed repeal will not impose any economic costs on individuals.

Comments on the proposal may be submitted to Carmen Flores, Legal Counsel, Statutory Filings Division, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697.

The repeal is proposed under Texas Government Code, §552.261 (Vernon Supplement 1994) which provides the Office of the Secretary of State with the authority to adopt rules which specify the charges for copies of public records and to establish charges equal to the full cost of providing the copy.

The following code is affected by this rule: Texas Government Code, §552.261 (Vernon Supplement 1994); Texas Government Code, §552.262 (Vernon Supplement 1994); Texas Government Code, §405.031 (Vernon 1990).

### §77.1. Fees and Charges.

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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## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 5. Quarantines

#### Imported Fire Ant Quarantine

##### • 4 TAC §§5.1-5.9

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

The Texas Department of Agriculture (the department) proposes the repeal of §§5.1-5.9, concerning the imported fire ant quarantine. The department in a separate submission is renumbering this undesignated head and submitting the newly numbered sections simultaneously with these repeals. In addition, the department is submitting in a separate submission, new §§5.1-5.9. The repeals are

proposed in order to allow the department to restructure Chapter 5 and add new general provisions applicable to all sections in Chapter 5.

Danny Johnson, coordinator, Nursery/Floral and Quarantine Programs, 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. Johnson also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer description of the department's duties. 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 Danny Johnson, Coordinator for Nursery/Floral and Quarantine Programs, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*

The repeals are proposed under the Texas Agriculture Code, §71.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests.

The code affected by this proposal is in the Texas Agriculture Code, Chapter 71

#### §5.1 Quarantined Areas

#### §5.2 Quarantined Articles

#### §5.3. Exemptions

#### §5.4 Conditions Governing the Movement of Quarantined Articles

#### §5.5 Conditions Governing the Movement of Quarantined Articles within Quarantined Areas

#### §5.6 Disposition of Permits

#### §5.7 Movement for Scientific Purposes

#### §5.8 Inspection and Disposal.

#### §5.9 Penalties

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-9443468

Dolores Alvarado Hibbs  
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Judge  
Texas Department of  
Agriculture

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For further information, please call (512) 463-7583

## General Provisions [Imported Fire Ant Quarantine]

### • 4 TAC §§5.1-5.5

The Texas Department of Agriculture (the department) proposes new §§5. 1-5.5, concerning general provisions for quarantines established by the Texas Department of Agriculture. The new sections are proposed to provide terminology and other general requirements related to quarantine regulatory functions. New §5.1 provides definitions applicable to all quarantines to be used in Chapter 5, new §5.2 provides for quarantine inspection requirements, new §5.3 provides for quarantine inspection certificates, new §5.4 provides for quarantine inspection fees and new §5.5 provides fees for the issuance of phytosanitary certificates, and phytosanitary growing season inspection certificates.

Danny Johnson, coordinator, Nursery/Floral and Quarantine Programs, has determined that for the first five-year period the sections are in effect there will be fiscal implications to state government as a result of enforcing or administering the sections. The effect on state government will be an estimated increase in revenue of \$79,825 per year. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Johnson 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 a more clearer description of the department's quarantine program functions and the retrieval of some of the department's costs for performing these functions. The anticipated economic cost to persons who are required to comply with the sections will be an estimated cost of \$79, 825 annually.

Comments on the proposal may be submitted to Danny Johnson, Coordinator for Nursery/Floral and Quarantine Programs, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*

The new sections are proposed under the Texas Agriculture Code, §71.005, which provides the Texas Department of Agriculture with the authority to establish a fee for inspection required for the movement of plants into or out of a quarantined area, §71.007, which provides the department with the authority to adopt rules necessary for the protection of agricultural and horticultural interests, and §12.021, which authorizes the department to collect an inspection fee for the issuance of a phytosanitation fee certificate.

The code affected by this proposal is the Texas Agriculture Code, Chapters 12 and 71

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

*Altered certificate-A* certificate that has been modified after it was issued by a commissioner, deputy commissioner, or inspector.

*Compliance Agreement-A* written agreement which a person engaged in growing, dealing in, or moving regulated articles may be required to sign, in which the person agrees to comply with conditions specified in the agreement on the basis of which a certificate or permit may be issued for movements of regulated articles.

*False certificate-A* document that has not been issued by a commissioner, deputy commissioner, or inspector.

*Florist item-A* cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

*Host-Any* plant or plant product designated in the quarantine upon which the quarantined subject pest is dependent for completion of any portion of its life cycle.

*Infested-Actually* infested with the pest or so exposed to infestation that would be reasonable to believe that an infestation exists.

*Invalid certificate-A* document that is based upon false information supplied to the commissioner, deputy commissioner, or inspector which is essential to the issuance of the certificate.

*Move To ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved*

*Nursery product-Includes* a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud, that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

*Official Pecan Certificate* The certification by a commissioner, deputy commissioner, or inspector of the pest condition or treatment of pecan nuts and pecan nursery stock required by other states for such products exported from this state.

*Pass For Shipment Certificate-A* certificate required by other states for nursery products and florist items exported from this state. This certificate may also be required for the movement of plants into or out of a quarantined area.

*Pest* All living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.

*Phytosanitary Certificate-The* certification by a commissioner, deputy commissioner, or inspector of the pest condition of plants, parts of plants or plant products required by other states or foreign countries for such products exported from this state.

**Phytosanitary Growing Season Inspection Certificate**—The certification by a commissioner, deputy commissioner, or inspector of the pest condition of field-grown seed crops.

**Quarantine inspection**—An examination of agricultural products to determine the presence of insects and/or diseases for shipment into or out of a quarantined area.

**Regulated articles**—Any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

**Vegetable Certificate**—The certification by a commissioner, deputy commissioner, or inspector of the pest condition of field-grown vegetable plants required by other states for such products exported from this state

**§5.2 Quarantine Inspection Requirements** The department shall perform a quarantine inspection and issue an inspection certificate upon the request of a producer, for plants, vegetables, and other agriculture products.

**§5.3 Quarantine Inspection Certificates.**

(a) A quarantine inspection certificate is a certificate issued by a commissioner, deputy commissioner, or inspector certifying the pest condition or treatment of any shipment of plants

(b) If the shipment to be inspected does not meet the criteria for certification because it was found infested by insects or diseases, no certificate will be issued

(c) The inspection certificate is valid for a period of 14 days from the date it was issued.

**§5.4 Quarantine Inspection Fees.**

(a) **Pass For Shipment Inspection Fee** The department shall collect a inspection fee of \$25 for the issuance of a pass for shipment certificate required by other states for nursery products and florist items exported from this state

(b) **Phytosanitary Certificate Inspection Fee.** The department shall collect an inspection fee of \$25 for the issuance of a phytosanitary certificate required by foreign countries or other states for agricultural products exported from this state

(c) **Phytosanitary Growing Season Inspection Fee** The department shall collect a fee of \$25 per field for the performance of a growing season inspection

(d) **Official Pecan Certificate Inspection Fee** The department shall collect an inspection fee of \$25 for the issuance an official pecan certificate required by other states for pecan nuts and pecan nursery stock exported from this state.

(e) **Vegetable Inspection Fee.** The department shall collect a fee of \$5 for the first 5 acres and no more than \$1 for each acre over 5 acres for field-grown vegetable plants.

**§5.5. Fees for Issuance of Phytosanitary Certificate, Phytosanitary Growing Season Inspection Certificate**

(a) **Phytosanitary certificate.** The department shall collect a fee of \$25 for the inspection of agricultural products when an inspection is required by other states or foreign countries for agricultural products exported from this state.

(b) **Phytosanitary growing season inspection certificate.**

(1) The department shall perform a growing season inspection and issue a phytosanitary growing season inspection certificate, upon the request of a producer.

(2) The department shall collect a fee of \$25 per field for the issuance of a growing season inspection certificate.

(3) A growing season inspection and issuance of a phytosanitary growing season inspection certificate shall not be required for fields which have been certified for genetic identity by the department.

(4) An application for a growing season inspection accompanied by a field location map shall be submitted to the department no later than 40 days after planting. The department shall supply the proper forms for the application and map.

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 June 30, 1994

TRD-9443467 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption August 15, 1994

For further information, please call: (512) 463-7583

◆ ◆ ◆  
**Sweet Potato Weevil Quarantine**

• 4 TAC §5.64, §5.71

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

The Texas Department of Agriculture (the department) proposes the repeal of §5.64 and §5.71, concerning sweet potato weevil quar-

antine. The department proposes the repeal of §5.64 because the department no longer recognizes a sweet potato weevil eradication area in Texas. The department proposes the repeal of §5.71 because trapping by the department has produced no positive catches of the sweet potato weevil during the last two years in Marion County. The department has determined that since the sweet potato weevil is no longer a threat to the sweet potato industry and to the general public in Marion County, the quarantine should be removed

Danny Johnson, coordinator, Nursery/Floral and Quarantine Programs, 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 Johnson 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 more commerce and freedom of exchange of sweet potatoes in Marion County. 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 Danny Johnson, Coordinator for Nursery/Floral and Quarantine Programs, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §71.002, which provides the Texas Department of Agriculture with the authority to quarantine an infested area if the department determines a dangerous pest not widely distributed in the state exists within an area of the state, and §71.007, which provides the department with the authority to adopt rules necessary for the protection of agricultural and horticultural interests in the state

The code affected by the proposed repeals is the Texas Agriculture Code, Chapter 71

**§5.64. Eradication Area.**

**§5.71. Quarantined 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

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TRD-9443466 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

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For further information, please call: (512) 463-7583



## Imported Fire Ant Quarantine

### • 4 TAC §§5.400-5.408

The Texas Department of Agriculture (the department) proposes new §§ 400-5.408, concerning the imported fire ant quarantine. The new sections are proposed to relocate these provisions from elsewhere in Chapter 5, in order to reorganize Chapter 5. The department in a separate submission has repealed these provisions and proposed new §§ 5.1-5.9, concerning general provisions. The new § 5.400 provides imported fire ant quarantine areas, new § 5.401 provides imported fire ant quarantined articles, new § 5.402 provides imported fire ant exemptions, new § 5.403 provides conditions governing the movement of imported fire ant quarantined articles, new § 5.404 provides conditions governing the movement of imported fire ant quarantined articles within imported fire ant quarantined areas, new § 5.405 provides disposition of permits under the imported fire ant quarantine, new § 5.406 provides for the movement of quarantined articles for scientific purposes under the imported fire ant quarantine, new § 5.407 provides inspection and disposal provisions under the imported fire ant quarantine and new § 5.408 provides penalties for violations of the imported fire ant quarantine.

Danny Johnson, coordinator, Nursery/Floral and Quarantine Programs, 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. 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 Danny Johnson, Coordinator for Nursery/Floral and Quarantine Programs, P O Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §71.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests.

The code affected by this proposal is the Texas Agriculture Code, Chapter 71.

#### §5.400. Quarantined Areas.

(a) The Texas Department of Agriculture hereby adopts by reference as quarantined areas those counties in Texas, or portions thereof, listed as regulated areas in the most current federal imported fire ant quarantine as adopted by the United States Department of Agriculture, and found at 7 Code of Federal Regulations, §301. 81-2a

(b) In addition to the areas described in subsection (a) of this section, Brown, Maverick, Midland, Jones, Kimble, La Salle, Palo Pinto, Stephens, and Val Verde counties are quarantined areas.

(c) In addition to the areas described in subsections (a) and (b) of this section, the following parts of Ector and Montague counties are quarantined areas:

(1) Ector County--that part of the county beginning at the intersection of U.S. Interstate Highway 20 and State Highway 302 in the southwest corner, then northerly along State Highway 302 until the intersection of State Highway 302 and West Loop 338, then continuing north on West Loop 338 to East Loop 338, then continuing southeasterly and south along East Loop 338, to the intersection of U.S. Interstate Highway 20 on the southeast corner, then proceeding westerly along U.S. Interstate Highway 20 to the intersection of State Highway 302 and U.S. Interstate Highway 20; and

(2) Montague County--that part of the county that is south of State Highway 82.

#### §5.401. Quarantined Articles

(a) The following are designated as quarantined articles

(1) the imported fire ant (*Solenopsis invicta* buren) in any living state of development,

(2) soil, compost, decomposed manure, humus, muck, and peat, separately or with other things,

(3) plants with roots with soil attached,

(4) grass sod,

(5) hay and straw,

(6) logs, pulpwood, and stumpwood, and

(7) used mechanized soil-moving equipment

(b) Any other products, articles, or means of conveyance of any character whatsoever, not covered by subsection (a) of this section, when it is determined by an inspector that they present a hazard of spread of imported fire ants and the person in possession thereof has been so notified

§5.402 Exemptions The following quarantined articles are exempt from permit requirements from all areas under the applicable conditions prescribed in paragraphs (1)-(6) of this section:

(1) soil samples of one pound or less which are packaged so that no soil will be spilled in transit,

(2) soil samples of any size collected and shipped to any United States Army Corps of Engineers soil laboratory,

(3) compost, decomposed manure, humus, and peat, if dehydrated, ground, pulverized, or compressed,

(4) logs and pulpwood; provided, the railroad loading site has been treated;

(5) stumpwood, if free of excessive amounts of soil; provided the railroad loading site has been treated and the stumpwood is consigned to a designated plant; and

(6) used mechanized soil-moving equipment, if cleaned and repainted

#### §5.403 Conditions Governing the Movement of Quarantined Articles

(a) Permit required Unless exempted in a quarantine supplemental hereto, a permit must accompany the movement of quarantined articles from any quarantined area into or through any point outside thereof, and from generally infested quarantined areas into suppressive quarantined areas. Quarantined articles originating outside of a quarantined area may be moved without a permit if the point of origin is clearly indicated on the shipping document accompanying the quarantined articles; provided, in the case of articles moved through a quarantined area, the quarantined articles are protected from infestation, while within quarantined areas, to the satisfaction of an inspector

(b) Attachment permits When permits are required, they shall be securely attached to the outside of the container in which the articles are moved except where the permit is attached to the shipping document and the quarantined articles are adequately described on the shipping document or on the permit, the attachment of the permit to each of the containers is not required

(c) Issuance of permits. Permits may be issued by an inspector if the quarantined articles

(1) have originated in noninfested premises in a quarantined area and have not been exposed to infestation while within the quarantined area,

(2) upon examination, have been found to be free of infestation,

(3) have been treated to destroy infestation in accordance with approved procedures, or

(4) have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted hereby

(d) Issuance of permits Permits may be issued by an inspector to allow the movement of noncertified quarantined articles to locations outside of the quarantined areas for particular handling, utilization, processing, or for treatment in accordance

with approved procedures, provided the inspector has determined that such movement will not result in the spread of the imported fire ant.

**§5.404. Conditions Governing the Movement of Quarantined Articles within Quarantined Areas.** There are no restrictions imposed on the movement of quarantined articles within quarantined areas unless the articles originate on infested properties and an inspector has determined that a hazard of spread exists and property owner has been so notified. A property owner so notified may move the specified quarantined articles within the quarantined area only under conditions approved by an inspector.

**§5.405. Disposition of Permits.** In all cases, permits shall be furnished by the carrier to the consignee at the destination of the shipment.

**§5.406. Movement for Scientific Purposes.** Quarantined articles may be moved for experimental or scientific purposes in accordance with specified conditions provided a permit is securely attached to the container of such articles or to the article itself.

**§5.407. Inspection and Disposal.** Any properly identified inspector is authorized to stop and inspect without a warrant, any person or means of conveyance moving within or from the State of Texas upon probable cause to believe that such means of conveyance or articles are infested with the imported fire ant; and such inspector is authorized to seize, treat, destroy, or otherwise dispose of articles found to be moving in violation of this quarantine.

**§5.408. Penalties.**

(a) All quarantined articles imported into the State of Texas or transported from county to county within the state in violation of these sections are subject to destruction or return to the point of origin at the discretion of the commissioner of agriculture.

(b) Any person who shall violate any of the provisions of this quarantine shall be guilty of a Class C misdemeanor, and each thing sold or transported, and each act in violation hereof shall be considered a separate offense.

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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Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

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For further information, please call (512) 463-7583

◆ ◆ ◆  
**Chapter 9. Agricultural and Environmental Sciences Division**

**Miscellaneous Fees**

• 4 TAC §9.18, §9.19

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

The Texas Department of Agriculture (the department) proposes the repeal of §9.18 and §9.19, concerning miscellaneous fees. The department proposes the repeal of §9.18 because it no longer tests agricultural products for aflatoxins. The department proposes the repeal of §9.19 because this section is being moved to Chapter 5, concerning quarantines.

Danny Johnson, coordinator, Nursery/Floral and Quarantine Programs, 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. Johnson also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a more accurate and clearer description of the department's duties. 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 Danny Johnson, Coordinator for Nursery/Floral and Quarantine Programs, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §71.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests; the Texas Agriculture Code, §12.018, which authorizes the department to set a fee for aflatoxin testing; and §12.021, which authorizes the department to collect a fee for the issuance of a phytosanitation fee certificate.

The code affected by this proposal is the Texas Agriculture Code, Chapter 71

**§9.18. Fee for Aflatoxin Testing**

**§9.19. Fee for Issuance of Phytosanitary Certificate, Phytosanitary Growing Season Inspection Certificate.**

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

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Chief Administrative Law  
Judge  
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**Chapter 15. Consumer Services Division**

**Ranch Scales**

• 4 TAC §§15.171-15.183

The Texas Department of Agriculture proposes new §§15.171-15.183, concerning the licensing of private individuals to inspect and test ranch scales. The purpose of these regulations is to implement the new ranch scales testing and inspection program authorized in the Texas Agriculture Code, §§13.351-13.358. Proposed §15.171 will define the terms used in the new undesignated head. Proposed §15.172 will specify the general requirements for licensing, and the expiration and renewal of licenses. Proposed §15.173 will require a late fee for persons who fail to submit a license renewal fee. Proposed §15.174 will clarify licensee's representatives, and the requirements for registration and renewal. Proposed §15.175 will specify the minimum equipment and equipment specifications. Proposed §15.176 will specify insurance requirements. Proposed §15.177 will explain the authority and responsibilities of the licensees and their representatives to inspect or test a device, to seal a device, or to place a device out of service. Proposed §15.178 will require that all standards and test equipment be submitted to the department, at least annually, for examination and certification. Proposed §15.179 will specify that the department may inspect the licensee's procedures, facilities, and equipment. Proposed §15.180 will clarify the department's authority to deny, suspend, or revoke a license. Proposed §§15.181-15.183 will clarify the department's authority to file for administrative, civil or criminal penalties.

James H. Eskew, coordinator, Weights and Measures Program, 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. The effect on each ranch scale owner is an estimated \$275 over a five-year period.

Mr. Eskew 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 improved ranch scale inspections and tests in the state. The effect on small and large businesses will be a more timely inspection on ranch scales.

The anticipated economic cost to persons who are required to comply with the sections as proposed will be \$100 per year in the form of a new license fee. Additional economic costs for training, additional or better equipment, or professional publications may be incurred by persons whose training, equipment or information resources do not meet the standards established by the proposed regulation.

Comments may be submitted to James H. Eskew, Coordinator, Weights and Measures Program, Texas Department of Agriculture, 119 Cumberland Road, Austin, Texas 78704. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §13.355, which provides the Texas Department of Agriculture with the authority to adopt rules for the inspection and testing of ranch scales, and §13.354, which provides the department with the authority to establish by rule a nonrefundable annual license fee not to exceed \$200 for licensing persons who inspect and test ranch scales.

The code chapter affected by these new sections is the Texas Agriculture Code, Chapter 13.

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

**Anniversary date**—The month and day each year on which the licensee's license expires.

**Certification**—Official verification of accuracy of a licensee's test equipment.

**Department**—The Texas Department of Agriculture.

**Device**—Ranch scale.

**Employee**—Any individual who for hire, award, commission, or any other payment of any kind, inspects or tests a ranch scale, and including individuals hired on a part-time or temporary basis or on a full-time or permanent basis, and an owner-employee.

**Inspection**—To determine the device's compliance with specifications and other requirements pertaining to design, installation, and operation, as stated in National Institute of Standards and Technology Handbook 44.

**Licensee**—A person, partnership, firm, corporation, association, or any other business entity who for hire, award, commission, or any other payment of any kind, inspects or tests a ranch scale, and who has applied for and been granted the authority to inspect or test ranch scales by the department.

**NIST**—The National Institute of Standards and Technology of the United States Department of Commerce.

**Person**—Any individual, partnership, firm, corporation, association other business entity or licensee.

**Ranch scale**—A livestock scale which is located on a private ranch and which has a capacity of 4,999 pounds or greater.

**Representative**—An individual registered with the department who is authorized to perform the functions of a designated licensee.

**Test**—The official field examination of a device to determine compliance with performance requirements, as stated in National Institute of Standards and Technology Handbook 44.

**Test equipment or standards**—Certified weights or measures used in the official test of a device.

#### *§15.172. Licensed Ranch Scale Testers.*

(a) General requirement. A person may not inspect or test ranch scales unless the person holds a license issued in accordance with these rules.

(1) A person licensed under this section may be an individual or a business entity. If an applicant is a business entity, the applicant shall register an individual as a representative with the department in accordance with §15.174 of this title (relating to Licensee Representatives). If the applicant is a sole proprietorship, the business entity and the representative may be the same individual.

(2) An out-of-state licensee shall designate an agent who resides in Texas on the form for this purpose provided by the department. Any person designated as a resident agent must meet the following requirements.

(A) be a citizen of this state, and

(B) maintain a permanent address within this state where documents dealing with the administration and enforcement of this law may be served.

(3) An out-of-state licensee shall notify the department in writing within ten days of any change of his resident agent. Failure to give such notice shall be grounds for suspending the licensee's license.

(b) Application. Any person desiring to be licensed to inspect ranch scales by the department shall submit to the department an application form prescribed by the department, accompanied by a nonrefundable annual license fee of \$100. The application, signed by an individual with authority to bind the applicant, shall demonstrate the applicant's compliance with the following

(1) passage of a written test administered by the department. The test shall be designed to verify the applicant's knowledge of Texas Weights and Measures Laws

(Texas Agriculture Code, §13.001 et seq. and Chapter 15 of this title (relating to Consumer Services Division)), the most recently published edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and NIST Publication 12, "Examination Procedures Outlines for Weighing and Measuring Devices;"

(2) ownership of test equipment which meets the requirements of §15.175 of this title (relating to Equipment and Standards);

(3) insurance requirements prescribed in §15.176 of this title (relating to Insurance Requirements);

(4) registration requirements prescribed in §15.172 of this title (relating to Licensed Ranch Scale Testers); and

(c) Expiration and renewal of licenses. Applicants who meet all requirements will be issued a license for a term of no more than one year. A license issued under this section may be renewed by filing with the department a renewal application form prescribed by the department, accompanied by a nonrefundable annual license renewal fee of \$100 and the recertification of test equipment. Proof of passage of a written test administered by the department shall be submitted with the renewal application every five years from the date of the initial issuance of the license.

*§15.173. Late Fees.* Late fees shall be assessed against a person who fails to submit a license renewal fee as follows:

(1) If at least one but less than 31 days after the expiration date of the license the licensee must pay, in addition to the license renewal fee, a late fee of 20% of the renewal fee.

(2) If at least 31 but less than 91 days after the expiration date of the license the licensee must pay, in addition to the license renewal fee, a late fee of 50% of the renewal fee.

(3) If at least 91 but less than 365 days after the expiration date of the license the licensee must pay, in addition to the license renewal fee, a late fee of 100% of the renewal fee.

(4) A person who fails to pay the renewal fee and applicable late fee within one year after the due date of the renewal fee is not eligible to renew a license. The ineligible person may reapply for an initial license.

#### *§15.174. Licensee Representatives.*

(a) Registration of licensee's representatives. A licensee shall register all individuals that are to perform the authorized inspection and testing functions of the li-

censee. Each individual registered under this section shall be known as a representative. To register a representative a licensee must submit an application form supplied by the department. The application, signed by an individual with authority to bind the licensee, shall demonstrate compliance with the following minimum requirements for registration:

(1) that the representative is the owner or an employee of the licensee,

(2) that the representative has met the written test requirement of §15.172 of this title (relating to Licensed Ranch Scale Testers); and

(3) that the representative is covered by the licensee's insurance policy required by §15.176 of this title (relating to Insurance Requirements).

(b) **Written Test.** A representative's written test results may be transferred if the representative changes his or her employing licensee.

(c) **Number of Representatives.** The department reserves the right to limit the number of representatives that a licensee may register to no more than five representatives per scale test unit.

(d) **Registration cards.** The department shall issue a registration card to each individual who meets all of the requirements for registration under this section. The registration card shall include a designation of the employing licensee and the type of device the individual is authorized to inspect or test. A representative must surrender his or her registration card to his or her designated employing licensee immediately upon termination of employment with the licensee.

(e) **Expiration and renewal of representative's registration.** A representative's registration shall expire on the licensee's anniversary date. A licensee may renew the registration of a representative by filing with the department a registration renewal application form prescribed by the department.

#### §15.175 *Equipment and Standards*

(a) An applicant must have available sufficient and currently certified standards and equipment to adequately test devices as set forth in the notes section of each applicable code in the most recently published edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and in the most recently published edition of NIST Publication 12, "Examination Procedures Outlines for Weighing and Measuring Devices."

(b) **Minimum equipment.** An applicant/licensee must own and maintain the following equipment

(1) for devices with a capacity more than 1,000 pounds but not more than 40,000 pounds capacity: Test weights equal to 500 pounds or 25% of the capacity of the device being tested, which ever is more, and correction weights in sizes no larger than one-half the minimum graduation of any device to be tested;

(2) for devices with a capacity more than 40,000 pounds: Test weights equal to 10,000 or 12.5% of the capacity of the device being tested, which ever is more, and correction weights in sizes no larger than one-half the minimum graduation of any device to be tested; and

(3) at least one copy of the most recently published edition of NIST Handbook 44 and Texas Weights and Measures Laws (Texas Agriculture Code, §13.001 et seq. and Chapter 15 of this title (relating to Consumer Services Division)).

(c) **Equipment specifications.** Minimum equipment required under this section shall meet all applicable specifications contained in the most recently published edition of NIST Handbook 105-1, "Specifications and Tolerances for Field Standard Weights (NIST Class F)".

#### §15.176 *Insurance Requirements*

(a) **Proof of financial responsibility.** All applicants must have on file with the department, proof of financial responsibility which shall be in the form of certified copy of liability insurance policy along with all endorsements and amendments issued by an insurance company authorized to do business in Texas or by surplus lines insurer that meets the requirement of the Texas Insurance Code, Article 1, 14-2. No application for license will be deemed complete until the applicant has provided to the department the appropriate proof of financial responsibility.

(b) **Amount of coverage.** Each liability policy must, at a minimum, provide for limits of general liability coverage, including premises and operations, in an amount not less than \$25,000 per occurrence, \$50,000 aggregate and completed operations and products liability in an amount not less than \$25,000 per occurrence; \$50,000 aggregate.

(c) **Extent of coverage.** The insurance policy must adequately protect persons who may suffer damages or injuries as a result of the operations of the licensee or persons working for the licensee. The coverage must include personal injuries and damages to real or personal property and structures on land being worked on by the licensee. The licensee and each representative must be covered by a form of financial responsibility that complies with this section.

(d) **Cancellation or reduction in coverage.** The liability insurance policy must include the endorsement approved by the State Board of Insurance for third-party notification of cancellation or coverage change or other similar language that the surety or insurance carrier, noted as company on the certificate of insurance, will give the department 30 days' written notice before the cancellation or material change in the policy.

#### §15.177 *Authority and Responsibilities of Licensed Ranch Scale Testers.*

(a) Each licensee is authorized to inspect or test devices to insure compliance with all specifications and requirements set out in NIST Handbook 44 and to insure that the device is suitable for the intended use. A licensee may inspect or test their own devices.

(b) A seal of approval shall be placed on a device that meets all requirements. The seal must contain the following information and be approved by the department.

(1) the licensee's company name, address and phone number;

(2) the licensee's license number; and

(3) the date of inspection and test.

(c) Any device that does not meet all requirements shall be placed out of service. A security seal or some other means of rendering the device inoperable shall be placed on the device. The licensee shall not repair or replace the device unless the licensee is also registered as a service person with the department in accordance with §15.9 of this title (relating to Registration of Service Men and Service Agencies).

(d) Within ten days of inspecting or testing a device, the licensee shall submit to the Texas Department of Agriculture, Weights and Measures Program, 119 Cumberland Road, Austin, Texas 78704, a test report, on a form approved by the department. The licensee shall maintain copies of test reports for a period of five years.

(e) It shall be the responsibility of the licensee to notify the department of a representative's termination. The representative's registration card must be surrendered to an officer or owner of the company named in the license application immediately upon termination of employment with that company. Notice of termination of employment of a representative must be given, in writing, to the Texas Department of Agriculture, Weights and Measures Program, 119 Cumberland Road, Austin, Texas 78704, within five working days of termination.

(f) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the licensee acknowledged and recorded by the department. The licensee may not resume operation until such time as it has a qualified representative acknowledged and recorded by the department and all requirements for appropriate insurance coverage are satisfied.

(g) A licensee shall notify the department in writing within 30 days of any change of address or change of name of business locations.

**§15 178 Certification of Standards and Testing Equipment** At least annually, a licensee shall submit to the department for examination and certification all standards and testing equipment that are used, or are to be used, in inspecting or testing devices. No licensee shall use in inspecting or testing devices in this state any standards or testing equipment that has not been certified by the department or by another state weights and measures laboratory that is certified by NIST. A copy of any certificate of calibration of equipment certified by another state weights and measures laboratory must be on file with the department.

**§15 179 Inspection** The department, to verify compliance with the requirements of these rules, may conduct inspection of the licensee's procedures, facilities, and equipment used by the licensee to test, inspect, repair and calibrate ranch scales.

**§15 180 Denial, Suspension and Revocation of Licenses and Registration**

(a) Any applicant for license or license renewal failing to meet the requirements of these rules may be denied the license or license renewal.

(b) The department may suspend or revoke a license at any time if a licensee or representative fails to comply with a provision of the Texas Agriculture Code, Chapter 13, Subchapter G, or rules adopted thereunder, including, but not limited to:

- (1) failure to have test equipment or standards certified,
- (2) failure to use adequate testing equipment,
- (3) failure to inspect or test a device in accordance with NIST Handbook 44,
- (4) failure to maintain proof of insurance, or
- (5) failure to register representatives.

(c) Before suspending or revoking a license issued under the Texas Agriculture

Code, Chapter 13, Subchapter G, the department shall conduct a hearing on the proposed suspension or revocation in accordance with rules prescribed in the Texas Administrative Procedures Act, Government Code Annotated, Chapter 2001, and Chapter 1 of this title (relating to General Practice and Procedure). The decision of the department may be appealed in the same manner as contested cases under the Texas Administrative Procedure Act and Chapter 1 of this title (relating to General Practice and Procedure).

(d) The department may refer to the appropriate prosecuting attorney for prosecution under applicable civil and criminal codes, any person who has violated or is violating any provision of these rules or any provision of the Texas Agriculture Code, Chapter 13.

**§15 181 Administrative Penalty.** If a person violates Texas Agriculture Code, Chapter 13, Subchapter G, or these rules, the department may assess an administrative penalty against the person as provided by Texas Agriculture Code, §12.020.

**§15 182 Civil Penalty, Injunction**

(a) A person who violates Texas Agriculture Code, Chapter 13, Subchapter G, or these rules, is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50% of the recovery to be paid to the general revenue fund and the other 50% equally to the government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of the Texas Agriculture Code, Chapter 13, Subchapter G, of these rules. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

**§15 183. Criminal Penalty.** An individual who is required to be licensed under the Texas Agriculture Code, Chapter 13, Subchapter G, or these rules shall be guilty of a Class B misdemeanor if that person performs or offers to perform an inspection or test on a ranch scale for compensation without a valid license from the department.

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 July 1, 1994.

TRD-9443463

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: August 15, 1994

For further information, please call (512) 463-7583

◆ ◆ ◆  
**TITLE 16. ECONOMIC  
REGULATIONS**  
**Part II. Public Utility  
Commission of Texas**

**Chapter 23. Substantive Rules**

**General Rules**

**• 16 TAC §23.5**

The Public Utility Commission of Texas proposes a new §23.5, concerning the cost of copies of public records made at the Commission. This proposal is formulated in response to the requirements of the Government Code, §552.261 and §552.262, as well as the rule of the General Services Commission at 1 TAC §111.61(d).

The purpose of the new rule is to establish the cost of copies of public records made at the Commission, as well as the procedure for establishing those costs. Promulgation of the new rule will satisfy the legal obligations of the Commission as described in Texas Government Code, §552.261-262 and 1 TAC §111.61(d), as that rule was published in the April 8, 1994, edition of the *Texas Register* at (19 TexReg 2485).

John Casey, director of accounting, has concluded that for the first five-year period the section is in effect, the fiscal implication for state government as a result of enforcing or administering this section will be positive, and that there will be no fiscal implication for units of local government.

Kenneth W. Mills, assistant general counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be in ensuring that appropriate procedures and charges are in effect at the Commission regarding the compilation and production of public records requested by the public.

Mr. Mills also has determined that for each year of the first five years the section is in

effect, there will be no effect on employment in the geographical areas affected by implementing the requirements of this section.

Comments on the proposed amendment (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 10 days after publication. Comments should refer to Project Number 13123.

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

The proposed new rule affects Texas Civil Statutes, Article 1446c.

*§23.5. Cost of Copies of Public Records.* The rules set forth in 1 TAC §111.61(b)-(e) (relating to General), §111.62 (relating to Definitions), §111.63 (relating to Suggested Charges for Providing Copies of Public Information), §111.65 (relating to Access to Information Where Copies Are Not Requested), §111.66 (relating to Format for Copies of Public Information), §111.67 (relating to Estimates and Waivers of Public Information Charges), and §111.69 (relating to The General Services Commission Charge Schedule), as those rules were published in the April 8, 1994, edition of the *Texas Register* at (19 TexReg 2485), all of which rules were effective April 22, 1994, will apply to copies of public records made at the commission.

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 July 7, 1994.

TRD-9443650 John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Earliest possible date of adoption: August 15, 1994

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

◆ ◆ ◆  
**Customer Service and Protection**

• 16 TAC §23.42

The Public Utility Commission of Texas proposes an amendment to §23.42 of its Substantive Rules concerning refusal of service. The purpose of the amendment is to reflect the fact that a customer may not be refused essential local service for non-payment of other services.

Joyce Gonzalez, assistant general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local govern-

ment as a result of enforcing or administering the section.

Ms. Gonzalez 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 include the ability of customers to receive and retain essential local service even if they are unable to pay for other services. As a result, access to social services, emergency services and employment services will not be lost. 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.

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

Initial comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days of publication. Reply comments are due 45 days from the date of publication. Comments should refer to Project Number 12334

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

Texas Civil Statute, Article 1446c, §16 is affected by the proposed amendment.

*§23.42. Refusal of Service.*

(a) Compliance by applicant. Any utility may decline to serve an applicant until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the commission governing the service applied for or for the following reasons:

(1) (No change.)

(2) for indebtedness. If the applicant is indebted to any utility for the same kind of service as that applied for [, including only the carriage charges of interexchange carriers where a local exchange carrier bills those charges pursuant to its tariffs]; provided, however, that in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirement in §23.43 of this title (relating to Applicant and Customer Deposit). [In the event that the appropriate federal authority prohibits payment of interstate carriage charges of interexchange carriers as a condition of local exchange service or prohibits disconnection of local exchange service for failure to pay interexchange carriage charges, payment of intrastate carriage charges of interexchange carriers shall not be a condition for local exchange service.] A telephone utility may not refuse essential local service as defined in §23.46 of

this title (relating to Discontinuance of Service) for the applicant's indebtedness to the utility for services other than essential local service;

(3) (No change)

(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 July 1, 1994.

TRD-9443462 John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Earliest possible date of adoption August 15, 1994

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

◆ ◆ ◆  
• 16 TAC §23.43

The Public Utility Commission of Texas proposes an amendment to §23.43 of its Substantive Rules concerning customer deposits. The purpose of the amendment is to reflect the fact that an end-user's deposit amount shall only be based on the charges of services provided by a local exchange carrier to the end-user

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

Ms. Gonzalez 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 include the promotion of universal service as a result of a possible reduction in deposit amounts required from end-users. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

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

Initial comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of publication. Reply comments are due 45 days from the date of publication. Comments should refer to Project Number 12334

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

Texas Civil Statutes, Article 1446c, §16 is affected by this amendment

§23.43. Applicant and Customer Deposit.

(a) Establishment of credit for permanent residential applicants.

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

(4) An initial deposit may not be required from residential customers unless the customer has more than one occasion during the last 12 consecutive months of service in which a bill for utility service was paid after becoming delinquent or if the customer's service was disconnected for nonpayment. A deposit required pursuant to this section shall not exceed an amount equivalent to one-sixth of annual billings for utility service. Carriage charges of an interexchange carrier shall not be included in the determination of the deposit amount [including the carriage charges of interexchange carriers only where a local exchange carrier's tariffs provide for billing for the interexchange carrier]. Such deposit may be required to be made within 10 days after issuance of written termination notice and requested deposit. In lieu of initial deposit, the customer may elect to pay the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months. The customer may furnish in writing a satisfactory guarantee to secure payment of bills in lieu of cash deposit. [In the event the appropriate federal authority prohibits inclusion of interstate charges for an interexchange carrier in the determination of the deposit amount, or prohibits payment of interexchange carriage charges as a condition for local exchange service or reason for disconnection of local exchange service, intrastate carriage charges of an interexchange carrier shall not be included in the determination of the deposit amount.]

(5) (No change.)

(b) (No change.)

(c) Amount of deposit and interest for permanent residential, commercial, and industrial service and exemption from deposit.

(1) The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billing. For local exchange telephone carriers the estimated annual billings shall include, only the [in addition to the] charges of the local exchange carrier. Carriage charges of an interexchange carrier shall not be included in the determination of the deposit amount. [the carriage charges of interexchange carriers only where the local exchange carrier's tariff provides for billing for the interexchange carrier. In the event the appropriate federal authority prohibits inclusion of interstate charges in the determination of the deposit amount, or prohibits payment of interexchange carriage charges as a condition for local exchange service or as a reason for disconnection of local ex-

change service, intrastate carriage charges of an interexchange carrier shall not be included in the determination of the deposit amount.]

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

(2)-(6) (No change.)

(d)-(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 July 1, 1994.

TRD-9443461

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

Earliest possible date of adoption: August 15, 1994

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

◆ ◆ ◆  
• 16 TAC §23.46

The Public Utility Commission of Texas proposes an amendment to §23.46 of its Substantive Rules concerning the disconnection of local service. The purpose of the amendment is to prohibit local exchange carriers (LECs) from disconnecting essential local service for non-payment of other services, including long distance services. The amendment also authorizes LECs to block a customer's access to all providers of the service for which payment was not made and, upon request of a specific provider, to unblock access only to the provider making the request. Finally, the amendment allows global unblocking upon payment of the delinquent charges.

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

Ms. Gonzalez 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 include the fostering of competition among billing and collection agencies for long distance services. This is because LECs as billing and collection agencies will no longer be in the unique position of withholding monopoly local service for non-payment of charges for other services. In addition, the public benefit will be served by the ability of customers to retain essential local service even if they are unable to pay for other services, so that access to social services, emergency services and employment opportunities will not be lost. There will be no effect on small businesses. There will be no uncompensated economic cost to persons who are required to comply with the section as proposed.

Ms. Gonzalez also has determined that for each of the first five years the proposed sec-

tion is in effect, the section will have no effect on employment in the state.

Initial comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days of publication. Reply comments are due 45 days from the date of publication. Comments should refer to Project Number 12334.

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

Texas Civil Statutes, Article 1446c, §16 is affected by this amendment.

§23.46. Discontinuance of Service.

(a) Applicability. For purposes of this section, the term "telephone utility service" has the same meaning as "essential local service".

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

(1) Essential local service—The following items shall represent essential local service:

(A) voice grade dial tone service consisting of local measured service (including units) and/or flat rate service;

(B) mileage associated with the provision of voice grade dial tone service;

(C) subscriber line charge (SLC);

(D) surcharges established by a governmental entity that are billed by the local exchange carrier (LEC);

(E) all forms of two-way extended area service;

(F) expanded toll-free local calling area service pursuant to §23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Areas);

(G) non-published service and non-listed service;

(H) touch tone service;

(I) essential local service restoral charge;

(J) service order charge for essential local service;

(K) construction or aid-to-construction charge for essential local service;

(L) taxes applicable to items described in subparagraphs (A)-(K) of this paragraph;

(M) late payment charge on items described in subparagraphs (A)-(L) of this paragraph; and

(N) non-sufficient funds (NSF) check charge for items described in subparagraphs (A)-(M) of this paragraph.

(2) Global blocking-Blocking of an end-user's access to all providers of a service.

(3) Global unblocking-Unblocking of an end-user's access to all providers of a service.

(4) Selective unblocking-Unblocking of an end-user's access to a specific provider of a service.

(c)[(a)] Disconnection for delinquent bills. A customer's telephone or electric utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least 10 days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. Attached to or on the face of the termination notice for [or] electric bills shall appear a statement notifying the customer that if they are in need of assistance with the payment of their bill, or are ill and unable to pay their bill, they may be eligible for payment assistance or special payment programs, such as deferred payment plans, disconnection moratoriums for the ill, or energy assistance programs, and to contact the local office of the utility for information on the available programs. Attached to or on the face of the termination notice for telephone bills shall appear a statement notifying the customer that if they are in need of assistance with payment of their bill, or are ill and unable to pay their bill, they may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day

may not fall on a holiday or weekend, but shall fall on the next working day after the 10th day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notice to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(d)[(b)] Disconnection with notice and related billing issues.

(1) Disconnection of electric utility service. Electric utility service may be disconnected after proper notice for any of the following reasons:

(A)[(1)] failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement [including only the carriage charges of interexchange carriers where a local exchange carrier's tariff provides for billing for those carriers. In the event the appropriate federal authority prohibits disconnection of local exchange service for failure to pay the interstate charges of an interexchange carrier or prohibits payment of interexchange carriage charges as a condition of local exchange service, intrastate carriage charges of an interexchange carrier shall not be a cause for disconnection of local exchange] for utility service;

(B)[(2)] violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(C)[(3)] failure to comply with the deposit or guarantee arrangements where required by §23.43 of this title (relating to Applicant and Customer Deposit)

(2) Disconnection of telephone utility service.

(A) Essential local service provided by the LEC may be disconnected after proper notice for any of the following reasons:

(i) failure to pay a delinquent account in full for essential local service or failure to comply with the terms of a deferred payment agreement for essential local service;

(ii) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of non-

standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(iii) failure to comply with the deposit or guarantee arrangements where required by §23.43 of this title (relating to Applicant and Customer Deposit).

(B) In the event an undesignated partial payment is received by a LEC, the full amount of the partial payment shall first be applied to past and current charges for essential local service. If there is a billing dispute, the amount in dispute will be deducted prior to the application of any payment.

(C) Each termination notice issued by a LEC shall contain the following language:

(i) "Your ability to make local calls will not be terminated if you pay (insert appropriate amount) by (insert appropriate date). If your ability to make local calls is terminated, you will also lose the ability to make long distance calls and access certain other telecommunication services."

(ii) "Your ability to use (insert appropriate service(s)) from all providers of (insert appropriate service(s)) may be terminated unless you pay (insert the appropriate amount) by (insert the appropriate date). If termination occurs, you may be able to reestablish (insert appropriate service(s)) by contacting a provider of that service."

(D) The termination notice shall be issued subject to the provisions of subsection (c) of this section.

(e)[(c)] Disconnection without notice. Telephone or electric utility [Utility] service may be disconnected without notice where a known dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service without authority following termination of service for nonpayment or in instances of tampering with the utility company's meter or equipment, bypassing the same, or other instances of diversion as defined in §23.47 of this title (relating to Meters). Where reasonable, given the nature of the hazardous condition, a written statement providing notice of disconnection and the reason therefor shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.



**(f)(d)] Disconnection prohibited.**

**(1) Disconnection of electric utility service prohibited.** Electric utility [Utility] service may not be disconnected for any of the following reasons:

(A)[(1)] delinquency in payment [for utility service] by a previous occupant of the premises;

(B)[(2)] failure to pay for merchandise, or charges for nonutility service provided and/or billed by the utility;

(C)[(3)] failure to pay for a different type or class of utility service unless fee for such service is included on the same bill;

(D)[(4)] failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(E)[(5)] failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billing;

(F)[(6)] failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §23.47 of this title (relating to Meters);

(G)[(7)] failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

**(2) Disconnection of telephone utility service prohibited.**

**(A) Disconnection of essential local service prohibited.** Essential local service provided by a local exchange carrier may not be disconnected for any of the following reasons:

(i) delinquency in payment by a previous occupant of the premises;

(ii) failure to pay for merchandise, or charges for nonutility service provided and/or billed by the utility;

(iii) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(iv) failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billing;

(v) failure to pay charges for services other than essential local service.

**(B) Global Blocking and Unblocking.**

(i) Failure to pay charges for services other than essential local service may result in global blocking of the service(s) for which charges were not paid.

(ii) Each LEC shall file tariffs to allow providers of services other than essential local service to globally block an end-user's access to the service for which charges were not paid. Such blocking shall apply only when the end-user fails to pay a delinquent account or fails to comply with a deferred payment agreement for that service. In the event the end-user pays the delinquent amount or complies with the deferred payment agreement for the service, the end-user's access to the service shall be globally unblocked.

(iii) Providers of services other than essential local service that do not subscribe to billing and collection services from the LEC may request global blocking from the LEC upon submission of the following information:

(I) a copy of the end-user's bill showing the delinquent amount;

(II) an affidavit stating the amount past due, the period for which the amount is past due, that the delinquent amount is not in dispute, and that a disconnection notice has been issued to the end-user; and

(III) a copy of the disconnection notice issued to the end-user.

(iv) If an end-user's access to a service is globally blocked by a provider under clause (iii) of this subparagraph, then the end-user's access to the service shall be globally unblocked by the LEC upon submission by the end-user of proof of payment of the delinquent amount with an attached affidavit stating that the delinquent amount has been paid.

**(C) Selective Unblocking.** Each LEC shall also file tariffs to allow a

specific provider of services other than essential local service, upon request, to selectively unblock an end-user's access for such service to the provider making the request. If a provider requests that an end-user's access to the services for which charges were not paid be globally blocked and the end-user is presubscribed to another provider of that service, then automatic selective unblocking of the end-user's access to the presubscribed carrier shall occur. When automatic selective unblocking occurs, the LEC shall notify the end-user and the current presubscribed carrier of the existence of automatic selective unblocking.

**(D) Tariff Provisions.**

(i) The LEC shall not assess the end-user any charges associated with global blocking and selective unblocking services through existing tariffs or through the tariffs required under subparagraphs (B)-(C) of this paragraph.

(ii) Tariff filings implementing the provisions of subparagraphs (B)-(C) of this paragraph shall be made according to the following schedule.

(I) LECs with 5,000 or more access lines shall file no later than 30 days from the effective date of this section.

(II) LECs with 2,000 or more access lines but fewer than 5,000 access lines shall file no later than 60 days from the effective date of this section.

(III) LECs with less than 2000 access lines shall file no later than 90 days from the effective date of this section.

**(E) Reports and On-Line Access Services.** Where technically feasible, each LEC shall provide, upon request, the following services to an interexchange carrier that subscribes to its billing and collection services:

(i) timely high toll reports of the interexchange carrier's end-user billing records, if an end-user's usage reaches a particular threshold that is predetermined by the interexchange carrier; or

(ii) on-line computer access to the interexchange carrier's end-user records.

(g)[(e)] Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the customer requests disconnection, service shall not be discon-

ected on a day, or on a day immediately preceding a day, when personnel of the telephone or electric utility are not available to the public for the purpose of making collections and reconnecting service.

(h)(f) Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without written notice to its customers therein and all similar neighboring utilities, and approval from the commission.

(i)(g) Disconnection for ill and disabled. No electric public utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a customer seeks to avoid termination of service under this rule, the customer must have the attending physician (for purposes of this rule, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the utility within 16 days of issuance of the bill. A written statement must be received by the utility from the physician within 26 days of the issuance of the utility bill. The prohibition against service termination provided by this rule shall last 63 days from the issuance of the utility bill or such lesser period as may be agreed upon by the utility and the customer or physician. The customer who makes such request shall enter into a deferred payment plan.

(j)(h) Disconnection to energy assistance grantees. No electric public utility may terminate service to a delinquent residential customer for a billing period in which the customer has applied for and been granted energy assistance funds if any agency for administration of these funds has notified the utility, prior to the date of disconnection, of approval of an award sufficient to cover the bill, or a portion of the bill so that the customer can successfully enter into deferred payment plan for the balance of the bill.

(k)(i) Disconnection during extreme weather. On a day when the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports, or in zones where an excessive heat alert is in effect as determined by the NWS and reported by the National Oceanic and Atmospheric Administration (NOAA), an electric utility cannot disconnect a customer until the utility ascertains that no life-threatening condition exists in the customer's household, or would

exist, because of disconnection during severe weather conditions.

(l)(j) Resolution of disputes. Any customer or applicant for service requesting the opportunity to dispute any action or determination of a telephone or electric utility under the customer service rules of the commission §§23.41-23.48 of this title (relating to Customer Service and Protection) shall be given an opportunity for a supervisory review by the utility. If the utility is unable to provide a supervisory review immediately following the customer's request for such review, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected and global blocking shall not be installed pending completion [pending completion] of the review. If the customer chooses not to participate in such review or to make arrangements for such review to take place within five days after requesting it, the company may disconnect service or install global blocking, providing notice has been issued under standard disconnect procedures [procedures]. Any customer who is dissatisfied with the review by the public utility must be informed of their right to file a complaint and/or request a hearing before the appropriate municipal regulatory body or the Public Utility Commission of Texas, whichever is applicable. The results of the supervisory review must be provided in writing to the customer within 10 days of the review, if requested.

(m)(k) Disconnection of master-metered apartments. When a bill for utility services is delinquent for a master-metered apartment complex (defined as a submetered or nonsubmetered building in which a single meter serves five or more residential dwelling units), the following shall apply

(1) The utility shall send a notice to the customer as required in subsection (a) of this section. At the time such notice is issued, the utility shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not rendered before that time.

(2) At least six days after providing notice to the customer and at least four days prior to disconnect, the utility shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be prominently displayed and shall read: Notice to residents of (name and address of apartment complex) electric utility service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)

(n)(l) Disconnection for non-payment of charges for calls placed from combat or war zones. Residential essential

local [exchange telephone] service may not be disconnected for failure to pay any charges for calls placed from combat or war zones, as designated by the federal government, by American military personnel that are billed to a telephone number in Texas, subject to the provisions of paragraphs (1)-(6) of this subsection.

(1) The local exchange carrier must offer a deferred payment plan to any residential customer who expresses an inability to pay that portion of a bill associated with calls placed from a combat or war zone, as designated by the federal government, by American military personnel.

(2) The deferred payment plan must, at the customer's choice, provide either.

(A) that the customer pays current charges other than current charges for calls placed from such combat or war zones, plus one-twelfth each month of the outstanding balance of all charges for calls placed from such combat or war zones; or

(B) that the customer pays current charges, other than current charges for calls placed from such combat or war zones, and upon the return of the calling party or parties from any such combat or war zone or upon conclusion of any such combat or war, whichever occurs later, the customer pays no more than one-twelfth each month of the outstanding balance of all charges for calls placed from any such combat or war zone where such combat or war has concluded.

(3) A deferred payment plan offered by a utility, when reduced to writing, must state, immediately preceding the space provided for the customer's signature and in boldface print at least two sizes larger than any other used thereon, that: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement".

(4) If a customer has not fulfilled the terms of a deferred payment plan under this subsection, the utility is required to offer subsequent negotiation of a deferred payment plan agreement under reasonable terms and conditions no more onerous to the customer than those required in paragraphs (1)-(3) and (5) and (6) of this subsection.

(5) Any local exchange carrier that institutes a deferred payment plan must not refuse a customer participation in such a

program on the basis of race, color, creed, sex, or marital status.

(6) A deferred payment plan may be made by visiting the utility's business office or contacting the local exchange carrier by telephone. If the customer visits the local exchange carrier's business office, the local exchange carrier may ask the customer to sign the deferred payment plan. The local exchange carrier must provide the customer with a copy of the signed plan. If the agreement is made over the telephone, the local exchange carrier must send a copy of the plan to the customer.

(7) Interest or penalties shall not be assessed under any deferred payment plan authorized in this subsection

(o)[(m)] Disconnection for non-payment of electric utility service charges for families with military personnel serving in a combat or war zone and for certain members of the reserve component. An electric utility shall not disconnect a customer's residential electric utility service for the customer's failure to pay for such service, if the customer, a spouse, or the head of the household is serving military duty in a combat or war zone, as designated by the federal government, or is a member of the reserve component who is serving military duty that is directly related to such hostilities, subject to the following provisions of this subsection

(1) The utility will verify with the customer or his or her family member that the customer, a spouse, or the head of the household is serving military duty in such a combat or war zone, or is a member of the reserve component who is serving military duty that is directly related to such hostilities.

(2) A utility must offer a deferred payment plan under this subsection to any residential customer who expresses an inability to pay for electric utility service because of the service of the customer, a spouse, or the head of the household on military duty in such a combat or war zone or as a member of the reserve component on military duty that is directly related to such hostilities. Upon the cessation of hostilities or the return of the person serving military duty, whichever occurs later, and upon request by a customer, a utility will offer subsequent renegotiation of a deferred payment plan agreement under reasonable terms and conditions for the outstanding balance owed for electric utility service charges. Such renegotiation shall include a deferred payment plan under this subsection with terms extending up to 12 months for the unpaid balance.

(3) A deferred payment plan offered by a utility under this subsection, when reduced to writing, must state, immediately preceding the space provided for a customer's signature and in boldface print at least two sizes larger than any other used

thereon, that: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement".

(4) Any electric utility that institutes a deferred payment plan under this subsection must not refuse a customer participation in such a program on the basis of race, color, creed, sex, or marital status.

(5) A deferred payment plan offered under this subsection may be made by visiting the utility's business office or contacting the utility by telephone. If the customer visits the utility's business office, the utility may ask the customer to sign the deferred payment plan. The utility must provide the customer with a copy of the signed plan. If the agreement is made over the telephone, the utility must send a copy of the plan to the customer.

(6) Interest or penalties shall not be assessed under any deferred payment plan authorized in 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 July 1, 1994.

TRD-9443460

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

Earliest possible date of adoption: August 15, 1994

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

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

#### Chapter 78. Talent Agencies

#### • 16 TAC §78.75

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

The Texas Department of Licensing and Regulation proposes repeal of §78.75, in order to adopt a new §78.75, concerning talent agencies. The repeal allows for the adoption of a new section that clarifies and simplifies the acts prohibited to the registrant.

James D. Brush II, director, Policies and Standards Division of the Texas Department of Licensing and Regulation, 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 the repeal.

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

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

The repeal is proposed under Texas Civil Statutes, Article 5221a-9, which authorize the department to license and regulate talent agencies.

The repeal implements Texas Civil Statutes, Article 5221a-9, §3.

#### §78.75. Responsibilities of the Registrant- Prohibited Acts.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443595

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

Earliest possible date of adoption: August 15, 1994

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

#### Subchapter D. Medicaid Home Health Program

#### • 25 TAC §29.312

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed new §29.312, concerning home health services. The purpose of this proposed new section is to expand coverage to include insulin syringes and needles to eligible Medicaid recipients through participating pharmacies. The section is proposed to be effective July 1, 1994.

The proposed new section provides for Medicaid coverage of insulin syringes and needles as approved and authorized by the department.

Gary Bego, health care financing budget director, has determined that for the first five-year period the proposed new section will be in effect, there will be minimal fiscal implication. The fiscal implication for state government will be \$286,310 for fiscal year (FY) 1994; \$1,171,840 for FY 1995; \$1,310,400 for FY 1996; \$1,436,780 for FY 1997 and \$1,565,530 for 1998. There will be no fiscal implications for local governments as a result of enforcing or administering this section. There will be no effect on local employment.

Mr. Bego also has determined that for each year of the first five years this section is in effect the public benefit anticipated will be better access to insulin syringes and needles for the Medicaid recipients. There is no effect on small businesses to comply with the sections. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be sent to Kay Sterling, Health Care Financing, Texas Department of Health, 110 West 49th Street, Austin, Texas 78756, (512) 338-6511 within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This new section will effect the Human Resources Code, §32.021; and Texas Civil Statutes, Article 4413(502), §16.

*§29.312. Coverage of Insulin Syringes and Needles as a Home Health Benefit.*

(a) Effective July 1, 1994, pharmacies enrolled in the Vendor Drug program may dispense insulin syringes and needles to eligible Medicaid clients with a physician's prescription.

(b) Prior authorization is not required for an eligible client to obtain insulin syringes and needles.

(c) Insulin syringes and needles obtained in accordance with this section will be reimbursed through the Vendor Drug Program.

(d) An eligible client is not required to be homebound to obtain insulin syringes and needles under this section.

(e) A physician's plan of care is not required for an eligible client to obtain insulin syringes and needles under 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 July 6, 1994.

TRD-9443546

John T. Richards  
Assistant General Counsel,  
Office of General  
Counsel  
Texas Department of  
Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 338-6511

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**TITLE 30. ENVIRONMENTAL QUALITY**

**Part I. Texas Natural Resource Conservation Commission**

**Chapter 330. Municipal Solid Waste**

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §330.2 and §330.4, concerning definitions and permits required; §330.171, concerning type V storage and processing facilities, and §§330.641-330.643, concerning fees and reporting; and §§330.1001-330.1006, 330.1008, 330.1009, and new §330.1010, Subchapter Y, concerning medical waste management. The amended and new sections are proposed in order to clarify and properly delineate the jurisdiction of the TNRCC in rules that were moved in their entirety from the Texas Department of Health (TDH), as required by 72nd Legislature, 1991.

Throughout Subchapter Y, changes must be made to accommodate references to the definitions section of Chapter 330 that were changed by Subtitle D modifications. The old reference was §330.5. The new reference is §330.2. A similar change is required for the reference to 25 TAC, which contains the Board of Health rules. In those instances where "this title" refers to Title 25, the words "25 TAC" will be added, and "this title" will be deleted. Another change required throughout Subchapter Y will be to delete the term "department" whenever reference is made to the TNRCC, and the term "commission" will be added.

Section 330.2 is proposed to clarify the definition of "special waste from health care related facilities" (SWFHCRF) by referencing to their origin definitions in 25 TAC §1.132.

Section 330.4(i) is proposed to indicate that approved, on-site treatment processes need not be registered or permitted by the TNRCC. This will bring this statement into conformance with §330.4(l) for on-site incinerators.

Section 330.171 is proposed to make receiving facilities of untreated SWFHCRF more responsible for recordkeeping. The requirements will be patterned after those found in 30 TAC §335.12.

Section 330.641, relating to purpose and applicability, §330.642, relating to annual re-

ports, and §330.643, relating to annual registration fees are proposed to address reporting and fees associated with the new §330.1010.

Section 330.1004(a) is proposed to make reference to new 25 TAC §1.134 instead of old §1.135. Exemptions currently stated in 25 TAC §1.134(a) will be moved to 30 TAC §330.1004(a) and will include: single or multi-family dwellings; and hotels, motels or other accommodations which provide lodging and other services for the public.

Section 330.1004(c)(1) is proposed to include additional methods for the treatment of SWFHCRF approved since the last update of the TDH rules, as well as a statement indicating that new technologies will be added to the list as they are approved by TDH.

Section 330.1004(c)(2) is proposed to make reference to required registration of on-site treatment providers, that segment of the medical waste industry which is currently unregulated in Texas.

Section 330.1004(c)(4)(E) is proposed to incorporate routine performance monitoring of all generators of over 50 pounds per month and who treat on site. It will reference the performance standard to be proposed by TDH.

Section 330.1004(c)(5) is proposed to make inappropriate disposal of untreated waste by generators a violation. There is currently no responsibility placed directly on any generator who abandons or dumps untreated regulated medical waste.

Section 330.1004(d)(4) is proposed to address the disposal of shredded sharps. Many new processes incorporate shredding as part of the treatment process and the requirements for disposal of these materials will be that they are made unrecognizable and significantly reduced in ability to cause puncture wounds.

Section 330.1004(f) is proposed to provide an additional provision for the definition of "on-site". This will allow for central waste management in office buildings owned and operated by TDH-licensed facilities.

Section 330.1004(g) is proposed to remove an existing provision requiring the identification of non-SWFHCRF, provided the waste is not contained within recognizable biohazard bags.

Section 330.1004(j) is proposed to delete reference to the "Commissioner of Health" and add to the "Executive Director".

Section 330.1005(d) is proposed to correct the address to which transporter registrations must be sent. The "Bureau of Solid Waste Management" will be deleted, and the "Permits Section of Municipal Solid Waste" will be added.

Section 330.1005(f)(3) is proposed to make transporters subject to administrative penalties set forth by the Solid Waste Disposal Act following revocation or denial of registration by the Commission.

Section 330.1005(g)(1)(D) is proposed to delete "TDH" and add "TNRCC" in the required labelling of medical waste transport vehicles.

Section 330.1005(j) is proposed to incorporate specific information regarding required insurance policies

Section 330.1005(j)(4)(A) is proposed to correct the payee of an irrevocable letter of credit. The "Texas Department of Health" will be deleted and the "Texas Natural Resource Conservation Commission" will be added.

Section 330.1005(k) is proposed to require the medical waste transporter to provide the generator a copy of the waste shipping document indicating receipt by the receiving facility

Section 330.1005(m) is proposed to require the original shipping document to accompany each shipment of untreated waste to its final destination

Section 330.1005(n) is proposed to remove the requirement for concurrence by the TDH for deposition of untreated SWFHCRF at facilities permitted by the Commission.

Section 330.1005(p), paragraphs (1) and (2) are proposed to remove the option of landfill deposition of untreated SWFHCRF

Section 330.1005(q)(4) is proposed to provide the correct address for payment of transporter registration fees to the TNRC at Permits Section of Municipal Solid Waste, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The TDH address will be deleted

Section 330.1005(r) is proposed to provide the correct addressee for submission of the annual waste summary. The "department's Bureau of Solid Waste Management" will be deleted and the "commission's Permits Section of Municipal Solid Waste" will be added

Section 330.1008(b) is proposed to correct the addressee for submission of a registration of a medical waste collection station. The "department's Bureau of Solid Waste Management" will be deleted and the "commission's Permits Section of Municipal Solid Waste" will be added

Section 330.1009(d) is proposed to require medical waste transport vehicles to also refrigerate waste held over 72 hours

Section 330.1009(e) is proposed to clarify what length of holding time constitutes storage, and then, what regulations apply to the permitting of a storage facility

Section 330.1010 is proposed to regulate providers of mobile on-site treatment of SWFHCRF. This is an entirely new section applicable to any person who provides the service of treatment of SWFHCRF on mobile vehicles on the site of generation, but is not the generator of the waste

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections as proposed are in effect there will be fiscal implications as a result of enforcement and administration of the sections. Minor cost increases are anticipated for state government. These cost increases will either be met within existing financial resources or offset by additional revenue from fees assessed certain operators subject to these sections. Revenues to state govern-

ment are anticipated to increase by up to \$5,000. There are no fiscal implications for local governments except those that may operate facilities subject to these sections

These sections will have cost implications for certain generators of medical waste or operators of medical waste management facilities. The most significant effects will be on those commercial operators of mobile on-site waste treatment facilities who are proposed to be regulated for the first time under these sections. The additional costs for these operators would include those associated with registration, recordkeeping, biological and parametric monitoring, and required operating procedures. Exact costs cannot be determined, however, these costs will vary from operator to operator based on the size of the firm and the magnitude of the waste management operations. It is anticipated that costs in most instances for monitoring would not exceed \$1,000 per year. Other costs would vary with the size of the operation and the amounts of waste actually handled. The annual registration fees for these mobile operators will range from \$100 to \$500. Generators of greater than 50 pounds per month of medical waste and who treat on site will be faced with cost increases associated with biological monitoring. These costs will vary with the number of samples subject to analysis but are anticipated to be relatively small. There may be fiscal implications of additional proposed operating requirements, including refrigeration requirements or additional recordkeeping. The actual effects of these provisions will vary with each operator and cannot be determined for any one operator. It is not anticipated that the additional costs for each unit of affected waste will be significant in terms of the overall costs of medical waste management. The fiscal implications of these sections for small businesses will be similar to those for all affected parties in general.

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 enforcing or administering the sections will be improved consistency of regulations governing the management of medical waste with current statutory authority and jurisdiction, enhancements to the regulatory requirements for and management of medical waste, and improved protection of the public health and safety from potential exposure to untreated or improperly managed medical waste. There are no known economic costs anticipated for persons required to comply with these sections as proposed.

Comments on the proposal may be submitted to Dr. Patricia Riley, Industrial and Hazardous Waste, Waste Evaluation Section, Texas Natural Resource Conservation Commission, Building F, 12015 North Interstate 35, Austin, Texas 78753. Comments will be accepted for 30 days after the date of publication in the *Texas Register*.

## Subchapter A. General Information

### • 30 TAC §330.2, §330.4

The amended sections are proposed under the Texas Health and Safety Code, Chapter 361, which provides the commission all pow-

ers necessary and convenient under the chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste

The amended sections are also being proposed in conjunction with the Texas Department of Health under the Health and Safety Code, §§81.081-81.092, 142.012, 241.026, 243.009, 245.009-245.010, 694.001, 773.050, 12.032, and 12.001, which provides the Board of Health the authority to adopt

The amended sections are also being proposed in conjunction with the Texas Department of Health rules, under the Texas Administrative Code, Title 25

**§330.2 Definitions.** Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Other regulated medical waste—Medical waste that is not included within special waste from health care related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (relating to [Occupational Safety and] Radiation Control)

Special waste from health-care-related facilities—Includes animal waste, bulk human blood, [and] blood products, and body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (relating to Definitions)

### §330.4 Permit Required

(a)-(h) (No change)

(i) A permit or registration is not required for the operation of an approved (as provided in §330.1004(c) (1) of this title relating to Generators of Medical Waste) treatment process unit used only for the treatment of on-site (as defined in §330.1004(f)) generated special waste from health care-related facilities. [on-site pathological incinerators used by a hospital, clinic, laboratory, or other similar type facility for incineration of only on-site generated infectious or pathological wastes]

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 July 1, 1994

TRD-9443363

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption August 15, 1994

For further information, please call (512) 239-6087

◆ ◆ ◆  
**Subchapter G. Operational Standards for Solid Waste Processing and Experimental Sites**

◆ ◆ ◆  
• 30 TAC §330.171

The new section is proposed under the Texas Health and Safety Code, Chapter 361, which provides the commission all powers necessary and convenient under the chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste

§330.171 *Recordkeeping Requirements Applicable to Owners or Operators of Type V Storage and Processing Facilities* No owner or operator of a Type V storage or processing facility may accept delivery of special waste from health care-related facilities for which a shipping document is required under §330.1005 of this title (relating to Transporters of Medical Waste) for off site storage, or processing, unless

- (1) a shipping document accompanies the shipment which designates that facility to receive the waste, and
- (2) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter, and
- (3) retains one copy of the shipping document, and
- (4) within 30 days after the delivery, sends a copy of the shipping document to the generator

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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Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 239-6087

**Subchapter P. Fees and Reports [Reporting]**

• 30 TAC §§330.641-330.643

The amendments are proposed under the Texas Health and Safety Code, Chapter 361, which provides the commission all powers necessary and convenient under the chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste

◆ ◆ ◆  
§330.641 *Purpose and Applicability*

(a) Purpose The purpose of the annual registration fee for transporters of untreated medical waste and providers of mobile on-site treatment of special waste from health-care related facilities is to recover costs incurred by the state in operating its regulatory programs related to these services [transporters of medical waste]

(b) Applicability These sections apply only to transporters of untreated medical waste and providers of mobile on-site treatment of special waste from health care related facilities who are required to register with the Texas Natural Resource Conservation Commission [Department of Health]

§330.642 *Annual Reports* Annual summary reports are required in accordance with applicable provisions in §330.1005(r) of this title (relating to Transporters of Medical Waste) and §330.1010(q) of this title (relating to Mobile On-Site Treatment Services)

§330.643 *Annual Registration Fees.* Annual registration fees are required in accordance with applicable provisions in §330.1005(q) of this title (relating to Transporters of Medical Waste) and §330.1010(p) of this title (relating to Mobile On Site Treatment Services)

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

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Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 239-6087

**Subchapter Y. Medical Waste Management**

• 30 TAC §§330.1001-330.1006, 330.1008-330.1010

The new and amended sections are proposed under the Texas Health and Safety Code, Chapter 361, which provides the commission all powers necessary and convenient under the chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste

§330.1001. *Purpose.* The purpose of these sections is to establish procedures and requirements for the handling, transportation, and disposal of special waste from health care-related facilities as defined in 25 TAC §1.132 [§1.132 of this title] (relating to Definitions) which have been identified by the Board of Health as waste which requires special handling to protect human health or the environment.

§330.1002. *Applicability.* These sections are applicable to persons who generate, collect, transport, store, process, treat or dispose of special wastes from health care-related facilities. These sections shall not apply to the entities identified in §330.1004(a) [§1.134(a)] of this title (relating to Generators of Medical Waste [Exemptions]). These sections shall not apply to waste which is subject to 25 TAC Chapter 289 (relating to Radiation Control) [Chapter 289 of this title (relating to Occupational Safety and Radiation Control)]

§330.1003. *Definitions* The following words, terms, and abbreviations, when used in these sections, are defined in 25 TAC §1.132 [§1.132 of this title] (relating to Definitions) and/or in §330.2 [§330.5] of this title (relating to Definitions [Definition of Terms and Abbreviations]). When the definitions found in 25 TAC §1.132 [§1.132 of this title] (relating to Definitions) are changed, such changes shall prevail over the definitions found in §330.2 [§330.5]

◆ ◆ ◆  
§330.1004 *Generators of Medical Waste*

(a) The requirements of this section are applicable to any entity which generates special wastes from health care-related facilities including, but not limited to, the entities identified in 25 TAC §1.134 [§1.135 of this title] (relating to Application), but are not applicable to the entities identified as follows:

- (1) single- or multi-family dwellings; and
- (2) hotels, motels or other accommodations which provide lodging and other services for the public. [in §1.134(a) of this title (relating to Exemptions)]

(b) All entities subject to this section shall identify and segregate special wastes from health care-related facilities, as defined in §330.2 [§330.5] of this title (relating to Definitions [Definition of Terms and Abbreviations]), from ordinary rubbish and garbage produced within or by the entity. Other regulated medical waste, as defined in §330.2 [§330.5], may be combined with special wastes from health care-related facilities or may be identified and segregated as a separate waste stream. Where special wastes from health care-related facilities and other regulated medical wastes are mixed, the mixed waste shall be considered to be special waste from health care-related facilities.

(c) Requirements for special wastes from health care-related facilities, if treated on-site, shall be as follows.

(1) Special waste from health care-related facilities shall be treated in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a) of this title] (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health-Care Related Facilities). The approved treatment methods as defined in 25 TAC §1.132 [§1.132 of this title] (relating to Definitions) are:

- (A) chemical disinfection;
- (B) incineration;
- (C) encapsulation (only for sharps in containers);
- (D) steam sterilization; [and]
- (E) thermal inactivation; [.]
- (F) chlorine disinfection/macération; and
- (G) moist heat disinfection.

(2) An entity which treats waste generated on-site shall comply with the provisions of 25 TAC §1.136(c) [§1.136(c)]. An entity providing mobile on-site treatment services shall register with the Texas Natural Resource Conservation Commission (TNRCC) in accordance with §330.1010 of this title (relating to Mobile On-Site Treatment Services).

(3) (No change.)

(4) An entity which generates more than 50 pounds per calendar month of

special wastes from health care-related facilities and which treats all or part of the wastes on site shall maintain a written record which, at a minimum, contains the following information for each batch of waste treated:

(A)-(D) (No change.)

(E) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using appropriate *Bacillus* species biological indicators (as defined in 25 TAC §1.132) shall be done at least every 40 hours of equipment operation. A minimum 4 log<sub>10</sub>

reduction (as define in 25 TAC §1.132) shall be demonstrated. For those process for which the manufacturer

has documented compliance with the performance standard prescribed in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health-Care Related Facilities) based on specified parameters (for example, pH, temperature, pressure, etc.), routine parameter monitoring may be substituted for biological monitoring. The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. Medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(5) The generator shall make every reasonable effort to provide for appropriate disposal of treated and untreated special waste from health care-related facilities.

(d) Requirements for disposal of special wastes from health care-related facilities which have been treated on-site in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a)] are as follows.

(1) Microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding which have been treated in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a)] may be discarded with routine municipal solid waste provided any markings which identify the waste as a special waste from health care-related facilities are covered with a label which identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the

treated waste or by a label which states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a)].

(2) Carcasses and body parts of animals designated as a special waste from health care-related facilities which have been treated in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a)] may, after treatment, be disposed of in a permitted landfill in accordance with the provisions of §330.136(b)(2). The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than these sections.

(3) Recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4) [§1.136(a)(4)].

(4) Sharps which have been treated in accordance with the provisions of 25 TAC §1.136(a) [§1.136(a)] shall be disposed of as follows.

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

(D) Sharps which have been treated by an approved method which incorporates grinding and/or shredding in the process may be disposed as routine municipal solid waste if the sharps have been made unrecognizable and significantly reduced in ability to cause puncture wounds.

(e) (No change.)

(f) For the purposes of this section, on-site shall mean a facility consisting of:

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

(3) any combination of structures operating as a single entity under a license issued by the Texas Department of Health (department), or; [department.]

(4) any structure owned and managed by a single entity operated under a license issued by the department and meeting the following provisions:

(A) general waste management is provided by the licensee to facilities within the structure;

(B) individual generators within the structure shall maintain records in accordance with subsection (h) (4) and (5) of this section;

(C) waste shall be identified and packaged in accordance with subsection (i) of this section;

(D) waste which must be transported over public roadways (excluding crossing a public roadway) requires compliance with §330.1005 of this title (relating to Transporters of Medical Waste);

(E) waste from any source other than a facility in such structure shall not be accepted as on-site generated waste;

(F) if the waste is not to be treated on site, it must be released only to a registered medical waste transporter. The licensee must provide the transporter with a list of the waste collected including the identity of the waste generator.

(g) Other regulated medical waste which has not been mixed or commingled with special wastes from health care-related facilities and which is not contained within recognizable biohazard bags may be discarded with routine municipal solid waste [provided a label has been affixed to the container which states that the waste within the container is not a special waste from health care-related facilities].

(h) Requirements for shipment of untreated special wastes from health care-related facilities off site are as follows.

(1) (No change.)

(2) Shipments of untreated special wastes from health care-related facilities shall be released only to a transporter who is registered with the commission [department] to transport special wastes from health care-related facilities as required elsewhere in this chapter. Release of untreated waste to unregistered transporters shall be a violation of this paragraph. This requirement shall not be effective until 60 days after the effective date of rules requiring registration of transporters of special wastes from health care-related facilities.

(3) The generator shall obtain from the transporter a signed receipt for each shipment of regulated medical waste using a form provided by, or approved by, the commission [bureau].

(4) The generator shall maintain a file of receipts for shipments of special waste from health care-related facilities for a period of three years following the date of shipment. This time period may be extended by the commission [bureau] for investigative purposes or in case of enforcement action. Failure to maintain the file of receipts in an orderly fashion, destruction of receipts prior to the end of the specified time, or destruction of receipts prior to the expiration of an extended retention time shall be a violation of this paragraph.

(5) The file of receipts for shipments of special wastes from health care-related facilities shall be available for in-

spection by commission [department] personnel during normal business hours without prior notice. Refusal to allow commission [department] personnel to inspect such file during normal hours shall be a violation of this paragraph.

(6) (No change.)

(i) (No change.)

(j) The commission [department] may waive any or all of the requirements in this section when, in the judgment of the executive director [commissioner of health] or his/her designee, a situation exists which requires a waiver of such requirements in order to protect the public health and safety from the effects of a natural or man-made disaster.

#### §330.1005: Transporters of Medical Waste.

(a) (No change.)

(b) Transporters shall register their operations with the commission [department] no later than the effective date of these sections. Persons who plan to transport untreated special waste from health care-related facilities after the effective date of this section shall register with the commission [department] prior to commencing operations. Registration forms will be provided by the commission [department] upon request. The following information must be provided for registration:

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

(c) Persons who apply to the commission [department] for registration and receive said registration shall maintain a copy of the registration form, as annotated by the commission [department] with an assigned registration number, at their designated place of business and in each vehicle used to transport untreated special waste from health care-related facilities.

(d) Registrations shall expire 12 months after the date of issuance. Registrations are required to be renewed annually prior to the expiration date. Applications for renewal must contain the same information as the initial registration and shall be submitted to the commission [department] at least 60 days prior to the expiration date. An application for renewal may be obtained from the Permits Section of Municipal Solid Waste [Bureau of Solid Waste Management].

(e) Transporters shall notify the commission [department], by letter, within 15 days of any changes to their registration if:

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

(f) Revocation or denial of registration procedures is as follows.

(1) The commission [department] may revoke a registration or refuse to issue a registration for:

(A)-(D) (No change.)

(E) failure to comply with any rule or order issued by the commission [department] pursuant to the requirements of this chapter;

(F)-(I) (No change.)

(2) Appeal of revocation or denial procedures are as follows.

(A) An opportunity for a formal hearing on the revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is post-marked within 20 days after a notice of revocation has been sent from the commission [department] to the last known address of the registrant. If the registration is revoked, a transporter shall not transport untreated special waste from health care-related facilities regulated under this subchapter. The period of revocation shall be not less than one year nor more than five years.

(B) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the commission [department] to the address listed on the application. If the registration is denied, a person shall not collect or transport untreated special waste from health care-related facilities regulated under this subchapter.

[(C) The formal hearing shall be in accordance with Chapter 1 of this title (relating to Texas Board of Health)]

(3) Administrative penalties assessed shall be in accordance with the Texas Solid Waste Disposal Act, §361.252.

(g) Requirements for vehicles used to collect or transport untreated medical waste are as follows.

(1) Vehicles used to collect and or transport medical waste shall:

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

(D) have the following identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high. (the name of the transporter) TNRCC [TDH] (the TNRCC [TDH]-assigned registration number) Caution: Medical Waste.

(2) (No change.)



(h) Vehicles used to transport medical waste shall not be used to transport any other material until the vehicle has been cleaned and the cargo compartment disinfected. A written record of the date and the process used to clean and disinfect the vehicle shall be maintained for three years unless the commission [department] shall direct a longer holding period. The record must identify the vehicle by motor vehicle identification number or license tag number. The owner of the vehicle, if not the registrant, shall be notified in writing that the vehicle has been used to transport medical waste and when and how the vehicle was disinfected.

(i) Shipments of untreated special waste from health care-related facilities shall not be commingled or mixed during transport or storage with trash, rubbish, garbage, hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) [Chapter 289 of this title (relating to Occupational Health and Radiation Control)].

(j) Each transporter seeking registration under this chapter shall, unless otherwise exempted, excluded, or prohibited by law, submit [provide] evidence of financial responsibility in conformance with the requirements contained in this subsection. [as follows]

(1) Each transporter must provide evidence of financial responsibility as follows: [a general liability policy with \$1 million per occurrence and \$2 million aggregate limits.]

(A)[(2)] a combined, single-limit automobile liability insurance policy with limits of at least \$1 million per accident, exclusive of legal defense costs, and

(B)[(3)] either a pollution liability policy with a limit of \$500,000 if the transporter registers one to seven vehicles or a limit of \$1 million if the transporter registers more than seven vehicles, limits are exclusive of legal defense costs [flat limit of \$1 million.], or

(C)[(4)] an irrevocable letter of credit made payable to the Texas Natural Resource Conservation Commission in the following amount: [as follows]

(A) Each transporter shall provide an irrevocable letter of credit from a recognized financial institution payable to the Texas Department of Health (department) in the following amount:

(1)-(1v) (No change)

(D) the transporter is responsible for any liability costs that exceed the dollar limits set in this subsection.

[(B) Requests for registration or renewal received after the effective date of this paragraph shall comply with the provisions of this paragraph. Transporters registered with the department prior to the effective date of this paragraph may comply with the requirements of this subsection or comply with the requirements in effect at the time of their registration until their renewal date.]

(2) Insurance requirements.

(A) Evidence of insurance coverage is demonstrated by submitting original certificate(s) of insurance to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section, P. O. Box 13087, Austin, Texas 78711-3087. These certificates must be submitted prior to the registrant receiving approval as a registered transporter.

(B) The registered transporter must be the named insured on the certificate of insurance and the certificate holder must be listed as the Texas Natural Resource Conservation Commission, Attn: Financial Assurance Section.

(C) The cancellation statement on the certificate must read as follows: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail a 60-day written cancellation notice to the certificate holder named to the left."

(D) Upon the executive director's receipt of a cancellation notice, the transporter must seek to obtain alternate insurance coverage and submit evidence of this coverage to this agency before the effective date of the cancellation. Failure to do so will result in revocation of the registration.

(E) Evidence of pollution liability coverage is demonstrated by submitting a MCS 90 form along with the original certificate for automobile coverage.

(F) The Schedule of Insured Vehicles must accompany the certificate of insurance.

(G) Insurance coverage must be issued for at least one year by a carrier rated "B" or better in the most recent edition of AM Best Key Rating Guide. The carrier must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(H) An original or certified copy of the insurance policy must be provided within 30 days from the date requested by executive director of the Texas Natural Resource Conservation Commission.

(3) Letter of credit requirements.

(A) A letter of credit must conform to the requirements of subsection (j)(3) of this section. An original letter of credit must be submitted prior to the registrant receiving approval as a registered transporter. The letter of credit should be mailed to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section, P.O. Box 13087, Austin, Texas 78711-3087.

(B) The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency. The issuing institution must be rated "B" or better per the most recent edition of Sheshunoff.

(C) The wording of the letter of credit must be identical to the wording specified in subsection (j)(4) of this section except that instructions in brackets are to be replaced with the relevant information and the brackets are to be deleted.

(D) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the registered transporter and the executive director by certified mail, return receipt requested, of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the registered transporter and the executive director have received the notice, as evidenced by the return receipts.

(E) Upon the executive director's receipt of a cancellation notice, the transporter must seek to obtain alternate insurance coverage and submit evidence of this coverage to this agency before the effective date of the cancellation. Failure to do so will result in revocation of the registration.

(F) The executive director will return the letter of credit to the issuing institution for termination when:

(i) the registered transporter substitutes and receives approval from the executive director for alternate financial assurance; or

(ii) the executive director releases the registered transporter from the requirements of this section.

(4) Letter of credit wording.

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director

Texas Natural Resource Conservation Commission

P.O. Box 13087

Austin, Texas 78711-3087

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_  
\_\_\_\_\_ in your favor, at the request and for the account  
of (registered transporter's name, address, and registration  
number) up to the aggregate amount of (in words) U.S. dollars \$ \_\_\_\_\_  
\_\_\_\_\_, available upon presentation of

(1) Your sight draft, bearing reference to this letter of  
credit No. \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that  
(registered transporter's name) is not in compliance with the  
Municipal Solid Waste Regulations as they pertain to transporters  
of medical waste."

This letter of credit is effective as of [date] and shall expire  
on (date at least one year later), but such expiration date shall  
be automatically extended for a period of (at least one year) on

(date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify in writing both you and (registered transporter's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (registered transporter's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us and we shall issue a check in the amount of the draft payable to the Texas Natural Resource Conservation Commission.

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

(Signature(s) and title(s) of official(s) of issuing institution)

(Date)

(5) Incapacity of registered transporters or the issuing institutions.

(A) A registered transporter must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under United States Code, Title 11 (Bankruptcy), naming the registered transporter as debtor, within ten business days after the commencement of the proceeding.

(B) A registered transporter who fulfills the financial assurance requirements by obtaining insurance or a letter of credit, will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The registered transporter must establish other acceptable financial assurance coverage within 30 days after such an event.

(k) The transporter shall furnish the generator a signed receipt for each shipment at the time of collection of the waste. The receipt shall include the name, address, telephone number, and registration number of the transporter. The receipt shall also identify the generator by name and address, and shall list the weight of waste collected and date of collection. If certified scales are not available, the number of containers shall be listed, and the transporter must provide the generator with a written statement of the total weight of the containers within 30 days. The transporter shall provide to the generator a copy of the waste shipping document specified in subsection (l) of this section bearing documentation of receipt of the untreated special waste from health care-related facilities by a permitted facility which is not subject to §330.171 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Type V Storage and Processing Facilities) within 30 days of receipt by such facility.

(l) The transporter shall initiate and maintain a record of each waste shipment collection and deposition. Such record shall be in the form of a waste shipping document or other similar documentation approved by the commission [department]. Forms will be provided by, or may be approved by, the commission [department]. The transporter shall retain a copy of all waste shipping documents showing the collection and disposition of the medical waste. Copies of waste shipping documents shall be retained by the transporters for three years in the main transporter office and made available to the commission [department] upon request. The waste shipping document shall include the:

(1) transporter's name, address, telephone number, and commission's [department's] assigned transporter registration number;

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

(m) The transporter must be able to provide documentation of each waste shipment from the point of collection through and including the unloading of the waste at a facility permitted to accept the waste. The original shipping document must accompany each shipment of untreated waste to its final destination. The transporter is responsible for the proper collection and deposition of untreated medical waste accepted for transport

(n) Shipments of untreated special waste from health care-related facilities shall be deposited only at a facility which has been permitted by the commission [department] to accept untreated special waste from health care-related facilities. [Untreated special waste from health care-related facilities may be deposited at facilities permitted by the Texas Water Commission (commission) only with the written authorization of the commission and the written concurrence of the department.] Untreated special waste from health care-related facilities which is transported out of the state must be deposited at a facility which is permitted by the appropriate state agency having jurisdiction to accept such waste

(o) (No change.)

(p) Exemptions are as follows.

(1) Generators who generate less than 50 pounds per month of special waste from health care-related facilities may transport their own untreated waste to a registered medical waste collection station, a transfer station, a storage facility, or a processing facility without complying with the requirements of this section [Untreated waste may be transported to a landfill only in accordance with the provisions of §330.136 of this title (relating to Disposal of Special Wastes).]

(2) Generators who generate more than 50 pounds per month of special waste from health care-related facilities may transport their own waste to a transfer station, a storage facility, or a processing facility and shall comply with subsections (g)-(o) of this section, they shall be exempt from subsections (a)-(f) of this section. These generators must notify the department that they are transporting their own waste and must submit an annual summary report [Untreated waste may be transported to a landfill only in accordance with the provisions of §330.136 of this title (relating to Disposal of Special Wastes)]

(3) (No change.)

(q) Transporter fees are as follows.

(1) Transporters are required to pay an annual registration fee to the commission [department] based upon the total weight of untreated medical waste transported

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

(4) The transporter's annual registration fee shall accompany the applicant's original or renewal registration application and shall be submitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission [Texas Department of Health] and delivered or mailed to: the Permits Section of Municipal Solid Waste, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087. [Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.]

(r) Transporters shall submit to the commission's Permits Section of Municipal Solid Waste [department's Bureau of Solid Waste Management] an annual summary report of their activities through December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period. The report shall include the name(s) and address(es) of the facilities where the waste was deposited/unloaded, the registration/permit number of the facilities, and the amount of waste deposited/unloaded at each facility. The report shall indicate the amount of waste shipped out of state, the amount of waste shipped into the state, and the amount of waste generated and unloaded in the state. Forms for use in submitting the annual report may be obtained from the commission's Permits Section of Municipal Solid Waste [department's Bureau of Solid Waste Management].

§330.1006 *Transfer of Shipments of Medical Waste* Packages of medical waste shall not be transferred between vehicles unless the transfer occurs at and on the premises of a facility permitted as a transfer station, as a storage facility, or as a treatment/processing facility which has been approved to function as a transfer station except as provided in §330.1008 of this title (relating to Medical Waste Collection Stations)

(a) In case of transport vehicle malfunction, the waste shipment may be transferred to an operational vehicle and the commission [department] shall be notified of the incident in writing within five working days. The incident report shall list all vehicles involved in transporting the medical waste and the cause, if known, of the vehicle malfunction

(b) (No change.)

**§330.1008. Medical Waste Collection Stations.**

(a) Certain health care-related facilities, licensed by the commission [department], and located in less populated areas, may register with the commission [department] as a collection station for untreated medical waste from generators of medical waste who generate less than 50 pounds per month of waste and who transport their own waste. Facilities which may request registration to function as a medical waste collection station include:

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

(b) To register with the commission [department] as a medical waste collection station, the following information must be submitted to the commission's Permits Section of Municipal Solid Waste [department's Bureau of Solid Waste Management]:

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

(c) A facility which has been registered by the commission [department] as a medical waste collection station shall comply with the following provisions.

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

**§330.1009. Storage of Medical Waste.**

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

(d) Transfer and storage facilities permitted to accept untreated medical waste, and registered medical waste transport vehicles must maintain a storage temperature of 45 degrees Fahrenheit or less for waste held more than 72 hours.

(e) Off-site generated medical waste held for more than 14 days is considered to be in storage, and a storage facility permit is required. The permit must comply with all applicable provisions of this chapter.

**§330.1010. Mobile On-Site Treatment Services.**

(a) The requirements of this section are applicable to any person who provides the service of treatment of special waste from health care-related facilities on mobile vehicles on the site of generation but is not the generator of the waste.

(b) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall register their operations with the commission no later than the effective date of these sections. Persons who plan to provide on-site treatment of special waste from health care-related facilities on mobile vehicles after the effective date of this section shall register

with the commission prior to commencing operations. Registration forms will be provided by the commission upon request. The following information must be provided for registration:

(1) name, address, and telephone number of registrant;

(2) name, address, and telephone number of partners, corporate officers, and directors;

(3) description of vehicles to be registered, including:

(A) make, model, and year of vehicle;

(B) motor vehicle identification number,

(C) vehicle license plate (tag) number including state and year; and

(D) name of vehicle owner;

(4) name and driver's license number (including the state issuing the license) for all vehicle operators; and

(5) description of intended approved treatment method to be employed as well as routine performance testing/parameter monitoring to be utilized.

(c) Persons who apply to the commission for registration and receive said registration shall maintain a copy of the registration form, as annotated by the commission with an assigned registration number, at their designated place of business and in each vehicle used in treating special waste from health care-related facilities.

(d) Registrations shall expire 12 months after the date of issuance. Registrations are required to be renewed annually prior to the expiration date. Applications for renewal must contain the same information as the initial registration and shall be submitted to the commission at least 60 days prior to the expiration date. An application for renewal may be obtained from the Permits and Registrations Section of the Municipal Solid Waste Division.

(e) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall notify the commission, by letter, within 15 days of any changes to their registration if:

(1) the method employed to treat special waste from health care-related facilities changes;

(2) the office or place of business is moved;

(3) the name of registrant or owner of the operation is changed;

(4) the name of the partners, corporate directors, or corporate officers change; or

(5) additional drivers are employed.

(f) Revocation or denial of registration procedures are as follows:

(1) The commission may revoke a registration or refuse to issue a registration for:

(A) failure to maintain complete and accurate records of waste treated on-site;

(B) failure to maintain vehicles in safe working order as evidenced by citations from the Texas Department of Public Safety or local traffic law enforcement agencies;

(C) falsification of waste treatment records;

(D) treatment of special waste from health care-related facilities which is not in accordance with the provisions of 25 TAC §1.136(a) (relating to Approved Methods of Treatment);

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit required annual reports or pay registration fees;

(G) failure to maintain insurance or provide proof of insurance as required in subsection (j) of this section;

(H) illegal disposal of untreated or treated medical waste; or

(I) treatment or disposal of special waste from health care-related facilities without registration as required in this section

(2) Appeal of revocation or denial procedures are as follows.

(A) An opportunity for a formal hearing on the revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is post-marked within 20 days after a notice of revocation has been sent from the commission to the last known address of the registrant. If the registration is revoked, a provider of on-site treatment of special waste from health care-related facilities on

mobile vehicles shall not treat such waste unless the provider is the generator. The period of revocation shall not be less than one year nor more than five years.

(B) An opportunity for a formal hearing on the denial of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the commission to the address listed on the application. If the registration is denied, a provider of on-site treatment of special waste from health care-related facilities on mobile vehicles shall not treat such waste unless the provider is the generator.

(3) Administrative penalties to be assessed shall be in accordance with the Texas Solid Waste Disposal Act, §361.252.

(g) Requirements for mobile vehicles used in the treatment of special waste from health care-related facilities are as follows.

(1) Vehicles used in the treatment of special waste from health care-related facilities shall:

(A) have a fully-enclosable, leak-proof, cargo-carrying body, such as a cargo compartment, or box trailer,

(B) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leakproof containers or packaging materials

(2) The cargo compartment of the vehicle and any self-contained treatment unit(s) shall:

(A) be maintained in a sanitary condition;

(B) be secured when the vehicle is in motion,

(C) be made of such impervious, non-porous materials as to allow adequate disinfection/cleaning of the compartment or unit(s);

(D) have all discharge openings securely closed during operation of the vehicle

(h) Mobile vehicles used in the treatment of special waste from health care-related facilities shall not be used to transport any other material until the vehicle has been cleaned and the cargo compartment disinfected. A written record of the date and

the process used to clean and disinfect the vehicle shall be maintained for three years unless the commission shall direct a longer holding period. The record must identify the vehicle by motor vehicle identification number or license tag number. The owner of the vehicle, if not the registrant, shall be notified in writing that the vehicle has been used in the treatment of special waste from health care-related facilities and when and how the vehicle was disinfected.

(i) Untreated special waste from health care-related facilities shall not be commingled or mixed with hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) either before or after treatment.

(j) Each provider of on site treatment of special waste from health care-related facilities on mobile vehicles shall, unless otherwise exempted, excluded or prohibited by law, provide evidence of financial responsibility in the form of a general automobile liability policy consistent with that required by the Texas Department of Public Safety.

(k) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall furnish the generator the required documentation as outlined in §330.1004(c)(4) of this title (relating to Generators of Medical Waste) for the generator's records.

(l) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall maintain records of all waste treatment provided to include.

(1) the name, address, and phone number of each generator,

(2) the date of treatment,

(3) the amount of waste treated,

(4) the method/conditions of treatment,

(5) the name (printed) and initials of the person(s) performing the treatment, and

(6) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be done at least every 40 hours of operation in accordance with §330.1004(c)(4)(E) of this title

(m) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall not transport waste. Treated waste must be left on-site for disposal with that facility's routine municipal solid waste and in a form that is suitable for landfill disposal

(n) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall ensure adequate training of all operators in the use of any equipment used in treatment.

(o) Providers of on site treatment of special waste from health care-related facilities on mobile vehicles shall have a contingency plan available in the event of any malfunction of equipment. In the event that there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the site before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.

(p) Fees to be assessed of providers of on-site treatment of special waste from health care-related facilities on mobile vehicles are as follows

(1) Treatment providers are required to pay an annual registration fee to the commission based upon the total weight of special waste from health care-related facilities treated on site

(2) The amount of the annual registration fee shall be based upon the total weight of special waste from health care-related facilities treated on-site under each provider registration.

(3) The fees shall be determined as follows.

(A) For a total annual weight of waste treated on-site of 1,000 pounds or less, the fee is \$100.

(B) For a total annual weight of waste treated on-site greater than 1,000 but equal to or less than 10,000 pounds, the fee is \$250.

(C) For a total annual weight of waste treated on-site greater than 10,000 but equal to or less than 50,000 pounds, the fee is \$400.

(D) For a total annual weight of waste treated on-site greater than 50,000 pounds, the fee is \$500.

(4) The annual registration fee for each provider of on-site treatment of special waste from health care-related facilities on mobile vehicles shall accompany the applicant's original or renewal registration application and shall be submitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered or mailed to: Permits and Registrations Section of the

Municipal Solid Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin Texas 78711-3087.

(q) Providers of on-site treatment of special waste from health care-related facilities on mobile vehicles shall submit to the commission's Permits and Registrations Section of the Municipal Solid Waste Division an annual summary report of their activities for the calendar year from January 1-December 31 of each year. The report shall be submitted no later than March 1 of the year following the end of the report period and shall contain all the information required in subsection (l) of this section.

(r) When a vehicle used to provide on-site treatment of special waste from health care-related facilities has been jointly purchased by two or more health care-related facilities and is used only to treat the waste generated by the facilities included in that purchase, those facilities shall be exempt from subsection (p) of this section. Such facilities shall be subject to all other subsections of this section. The vehicle/treatment unit shall be operated on the premises whereon the waste was generated, and only by a staff member of that facility.

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 July 1, 1994

TRD-9443515

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: August 15, 1994

For further information, please call (512) 239-6087

◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**

**Part IX. Texas Bond Review Board**

**Chapter 181. Bond Review Board**

**Subchapter A. Bond Review Rules**

**• 34 TAC §§181.2, 181.3, 181.12**

The Texas Bond Review Board proposes amendments to §181.2 and §181.3, and new §181.12. The amendments clarify procedures, and the new section provides that the Texas Bond Review Board may charge the amounts set forth in the General Services Commission's rules for copies of public records and that the Executive Director may waive or reduce these charges if it is determined 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.

Albert L. Bacarisse, executive director, has determined that for each year of the first five years that the amended and new sections are in effect, there will be negligible fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Bacarisse also has determined that for each year of the first five years the amended and new sections are in effect, the public benefits anticipated as a result of enforcing the amended sections will be simplification and clarification of procedures and clear rules for charges by the agency for copies of public records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to Albert L. Bacarisse, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amended sections are proposed under Vernon's Texas Civil Statutes, Article 717k-7, which give the Texas Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state bonds. The new section is proposed in compliance with actions taken by the 73rd Texas Legislature in House Bill 1009 in relation to Texas Civil Statutes, Article 6252-17a, which requires agencies to adopt rules specifying charges for copies of open records.

The proposed rules affect Texas Civil Statutes, Article 717-K-7.

*§181.2. Notice of Intention to Issue*

(b) A notice of intention to issue under this section shall include

(1)-(3) (No change)

(4) an agreement to submit the required application set forth herein in §181.3 of this title (relating to application for board approval of state bond issuance) no later than the first Tuesday of the month in which the applicant requests board consideration. [two weeks prior to the requested board meeting date]

(c) (No change)

(d) The requested date for board consideration shall be granted whenever possible, however, if it becomes necessary in the board's discretion to change the date of the board meeting for consideration of the proposed issuance of state bonds, written notice of such change shall be sent to the issuer as soon as possible. Priority scheduling for consideration at board meetings shall be given to refunding issues and to those state bonds which also require a submission to the Bond Review Board to obtain a private activity bond allocation.

*§181.3. Application for Board Approval of State Bond Issuance.*

(a) An officer or entity may not issue state bonds unless the issuance has been approved or exempted from review by the Bond Review Board. An officer or entity that has not been granted an exemption from review by the board and that proposes to issue state bonds shall apply for board approval by filing one application with original signatures and nine [six] copies with the director of the bond finance office. The director of the bond finance office shall forward one copy of the application to each member of the board and one copy to the Office of the Attorney General.

(b)-(f) (No change)

*§181.12 Charges for Public Records.* The charge to any person requesting copies of any public records of the Texas Bond Review Board will be the charge established by the General Services Commission; however, the Texas Bond Review Board will charge the following amounts necessary to recoup the costs of items as follows:

(1) computer resources charges (mainframe and programming time) shall be as determined by the Department of Information Resources

(2) Copies of public records shall be furnished without charge or at a reduced charge if the Executive Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) Any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known.

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

(5) All requests will be treated equally. The Executive Director may waive charges at his/her discretion.

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

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

(8) All open records requests will be referred to the Executive Director or designee before the agency staff will release the information.

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



Issued in Austin, Texas, on July 6, 1994.

TRD-9443566

Albert L. Bacarisse  
Executive Director  
Texas Bond Review Board

Earliest possible date of adoption: August 15, 1994

For further information, please call: (512) 463-1741

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter I. Income

###### • 40 TAC §3.902

The Texas Department of Human Services (DHS) proposes an amendment to §3.902, concerning types of income that are excluded in determining eligibility for Aid to Families with Dependent Children (AFDC) benefits, in its Income Assistance Services rule chapter. The purpose for the amendment is to increase the amount of the exemption from \$375 to \$500 for payments AFDC families receive from Job Training Partnership Act (JTPA) program participation.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be fiscal implications as a result of enforcing or administering the amendment. The effect on state government for the first five-year period the amendment will be in effect is an estimated additional cost of \$17,527 for fiscal year 1995, \$23,156 for fiscal year 1996; \$26,273 for fiscal year 1997; \$30,468 for fiscal year 1998, and \$34,662 for fiscal year 1999. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be eligibility of more JTPA program participants for AFDC benefits. 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 Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-181, 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 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001 and 31.003.

###### §3.902. Types.

(a) (No change.)

(b) Aid to families with dependent children. Exclusions from income for AFDC are:

(1)-(9) (No change.)

(10) job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the AFDC needs standard as stipulated in 45 Code of Federal Regulations, §233.20(a)(3)(vii)(a)-(b). DHS also exempts unearned income payments from the Job Training Partnership Act (JTPA) of 1982 for AFDC children and JTPA payments of \$500 [\$375] or less per month for AFDC adults participating in the Work Experience Program, Limited Work Experience Program, or Summer Youth Program.

(11)-(19) (No change.)

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

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

Issued in Austin, Texas, on July 6, 1994.

TRD-9443518

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

Proposed date of adoption: September 15, 1994

For further information, please call: (512) 450-3765

## Chapter 29. Purchased Health Services

The Texas Department of Human Services (DHS) proposes the repeal of §§29.201-29.207, concerning rehabilitative services for persons with mental illness, and proposes the repeal of §§29.2301-29.2306, concerning diagnostic services for persons with potential of mental retardation, in its Purchased Health Services chapter. The purpose of the repeals is to delete rules from DHS's rulebase, because the sections are now administered by the Texas Department of Mental Health and Mental Retardation. Also in this issue of the *Texas Register*, DHS is proposing similar repeals in Chapter 31, Case Management Services, concerning case management for individuals with mental retardation or related condition and for persons with chronic mental illness, and in Chapter 48, Community Care for Aged and Disabled, concerning home and community-based services and 1915(c) Medicaid home and community-based waiver services for persons with mental retardation and/or related conditions requiring alternatives to nursing facility placement.

Burton F. Raiford, commissioner, 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 proposal.

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a rulebase free of obsolete rules. 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 this proposal may be directed to Jackie Johnson at (512) 450-4971 in DHS's Long-Term Care Department. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-178, 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 C. Rehabilitative Services for Persons with Mental Illness

#### • 40 TAC §§29.201-29.207

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code.

§29.201. Definitions.

§29.202. Eligible Individuals.

§29.203. Rehabilitative Services.

§29.204. Service Limitations.

§29.205. Provider Participation Requirements.

§29.206. Rehabilitative Services Reimbursement Methodology.

§29.207. 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 July 7, 1994.

TRD-9443667

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

Proposed date of adoption: September 15, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Subchapter X. Diagnostic Services for Persons with Potential of Mental Retardation**

• 40 TAC §§29.2301-29.2306

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code.

§29.2301. Definitions.

§29.2302. Reimbursable Diagnostic Services.

§29.2303. Exclusions.

§29.2304. Provider Qualifications.

§29.2305. Conditions for Payment.

§29.2306. Reimbursement Methodology.

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 July 7, 1994.

TRD-9443667

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

Proposed date of adoption: September 15, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Chapter 31. Case Management Services**

The Texas Department of Human Services (DHS) proposes the repeal of §§31.1, 31.3, 31.5, 31.7, 31.9, 31.11, and 31.13, concerning case management for individuals with

mental retardation or related condition, and the repeal of §§31.201-31.205, concerning case management for persons with chronic mental illness, in its Case Management Services chapter. The purpose of the repeals is to delete rules from DHS's rulebase, because the sections are now administered by the Texas Department of Mental Health and Mental Retardation. Also in this issue of the *Texas Register*, DHS is proposing similar repeals in Chapter 29, Purchased Health Services, concerning rehabilitative services for persons with mental illness and diagnostic services for persons with potential of mental retardation, and in Chapter 48, Community Care for Aged and Disabled, concerning home and community-based services and 1915(c) Medicaid home and community-based waiver services for persons with mental retardation and/or related conditions requiring alternatives to nursing facility placement.

Burton F. Raiford, commissioner, 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 proposal.

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a rulebase free of obsolete rules. 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 this proposal may be directed to Jackie Johnson at (512) 450-4971 in DHS's Long-Term Care Services Department. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-178, 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 A. Program Requirements**

• 40 TAC §§31.1, 31.3, 31.5, 31.7, 31.9, 31.11, 31.13

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code.

§31.1. Definitions.

§31.3. Eligible Individuals.

§31.5. Case Management Services.

§31.7. Service Limitations.

§31.9. Provider Qualifications.

§31.11. Reimbursement Methodology for Case Management for Individuals with Mental Retardation or Related Condition.

§31.13. 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 July 7, 1994.

TRD-9443665

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

Proposed date of adoption: September 15, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Subchapter C. Case Management for Persons with Chronic Mental Illness**

• 40 TAC §§31.201-31.205

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code.

§31.201. Target Population.

§31.202. Services.

§31.203. Service Limitations.

§31.204. Provider Qualifications

§31.205. Reimbursement Methodology.

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 July 7, 1994.

TRD-9443664

Nancy Murphy  
Section Manager, Media  
and Policies Services  
Texas Department of  
Human Services

Proposed date of adoption September 15,  
1994

For further information, please call. (512)  
450-3765

◆ ◆ ◆  
**Chapter 48. Community Care  
for Aged and Disabled**

The Texas Department of Human Services (DHS) proposes the repeal of §§48.2201-48.2217, concerning home and community-based services, and proposes the repeal of §§48.2401-48.2416, concerning 1915(c) Medicaid Home and Community-based Waiver Services for Persons with Mental Retardation and/or Related Conditions Requiring Alternatives to Nursing Facility Placement, and the repeal of §48.9802, concerning reimbursement methodology for home and community-based services (HCS), in its Community Care for Aged and Disabled chapter. The purpose of the repeals is to delete rules from DHS's rulebase, because the sections are now administered by the Texas Department of Mental Health and Mental Retardation. Also in this issue of the *Texas Register*, DHS is proposing similar repeals in Chapter 29, Purchased Health Services, concerning rehabilitative services for persons with mental illness and diagnostic services for persons with potential of mental retardation, and in Chapter 31, Case Management Services, concerning case management for individuals with mental retardation or related condition and case management for persons with chronic mental illness.

Burton F. Raiford, commissioner, 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 proposal.

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a rulebase free of obsolete rules. 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 this proposal may be directed to Jackie Johnson at (512) 450-4971 in DHS's Long-Term Care Department. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-178, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

**Home and Community-Based  
Services**

• 40 TAC §§48.2201-48.2217

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the*

*Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code

§48.2201. *Client Eligibility Criteria.*

§48.2202. *Right to Appeal.*

§48.2203. *Provider Claims Payment*

§48.2204. *Delegation of Signature Authority*

§48.2205. *Rejected Claims.*

§48.2206. *Right to Appeal.*

§48.2207. *Cost Report*

§48.2208. *Other Provider Requirements*

§48.2209. *Corrective Action and Provider Sanction*

§48.2210. *Hazards to Health, Safety, and Welfare*

§48.2211. *Level I Action*

§48.2212. *Level II Action*

§48.2213. *Level III Action*

§48.2214. *Unannounced or Intermittent Review Visits*

§48.2215. *Discretionary Certification Sanctions.*

§48.2216. *Calculation of Client Copayment*

§48.2217. *Spousal Impoverishment Provisions*

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 July 7, 1994.

TRD-9443663

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

Proposed date of adoption. September 15,  
1994

For further information, please call. (512)  
450-3765

◆ ◆ ◆  
**Medicaid Home and  
Community-based Waiver  
Services for Persons with  
Mental Retardation and/or  
Related Conditions Requiring  
Alternatives to Nursing Facility  
Placement**

• 40 TAC §§48.2401-48.2416

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement §§22.001-22.024 and 32.001-32.040 of the Human Resources Code

§48.2401. *Introduction*

§48.2402. *Definitions.*

§48.2403. *Client Eligibility Criteria*

§48.2404. *Level-of-Care Criteria*

§48.2405. *Individual Plan of Care for Waiver Services*

§48.2406. *Financial Eligibility Criteria*

§48.2407. *Calculation of Client Copayment*

§48.2408. *Client's Right To Appeal*

§48.2409. *Provider Claims Payment.*

§48.2410. *Delegation of Signature Authority*

§48 2411. *Rejected Claims.*

§48.2412 *Provider's Right to Appeal*

§48 2413 *Cost Report*

§48 2414. *Reimbursement Methodology*

§48 2415 *Other Provider Requirements*

§48 2416. *Spousal Impoverishment Provisions*

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 July 7, 1994

TRD-9443662

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

Proposed date of adoption September 15, 1994

For further information, please call (512) 450-3765

### Support Documents

#### • 40 TAC §48.9802

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

The repeal is proposed 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 provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The repeal implements §§22 001-22 024 and 32 001-32 040 of the Human Resources Code

§48 9802 *Reimbursement Methodology for Home and Community-based Services (HCS)*

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 July 7, 1994

TRD-9443661

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

Proposed date of adoption September 15, 1994

For further information, please call (512) 450-3765

## Part III. Texas Commission on Alcohol and Drug Abuse

### Chapter 147. Approved Drug Offender Education Program

#### General Provisions

##### • 40 TAC §147.1, §147.8

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §147.1 and §147.8, concerning Approved Drug Offender Education Programs. The amendment to §147.1 changes the legal citation for the penalties for driving while intoxicated formerly located at Texas Civil Statutes, Article 6701f-1, and now relocated at Penal Code, §§49 04-49 09, effective September 1, 1994. Section 147.8(e) is also being amended to correct the legal citation for the Administrative Procedure Act.

Denise Hudson, director fiscal services, has determined that there will not be fiscal implications for state or local government as a result of enforcing or administering the sections. For state and local government there is no known basis for calculating costs for each program.

Ms Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each drug offender education program participant. Approximate cost to persons will be \$0-125 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under Texas Civil Statutes, Article 6687b, §24B, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved drug offender education programs for persons convicted of certain drug offenses and who must complete an approved drug offender education program in order to have the driver's license reinstated.

The statute affected by the amendments is Texas Civil Statutes, Article 6687b, §24B.

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

Drug offender-A person convicted of a misdemeanor or felony offense under the Controlled Substances Act (21 United States Code, §321 et seq), a drug offense as assigned by 23 United States Code, §159(c) and includes an offense under [Texas Civil Statutes, Article 6701f-1, or] the Texas Penal Code, §§49.04-49.09 [§19 05(a)(2)], committed as a result of the introduction into the body of any substance the possession of which is prohibited under the Controlled Substances Act, or a felony under the Texas Health and Safety Code, Chapter 481, that is not a drug offense.

§147.8 *Denial, Revocation, or Nonrenewal of Approval*

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

(e) Contested cases, administrative review. A program which has been issued a notice of denial, revocation or refusal to renew program approval shall have the right to contest such action by the commission pursuant to the procedures set forth for administrative review of contested cases in the Administrative Procedure [and Texas Register] Act, Government Code, Chapter 2001 (formerly Texas Civil Statutes, Article 6252-13a), provided, however, within 30 days from the registered or certified mailing of the notice of denial, revocation, or refusal to renew program approval, the program shall be required to give notice to the commission of the program's intent to contest the commission's action.

(f) (No change.)

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

Issued in Austin, Texas, on July 1, 1994

TRD-9443441

J Ben Bynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption August 15, 1994

For further information, please call (512) 867-8720

## Drug Offender Education Program Standards

### • 40 TAC §147.33, §147.42

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §147.33 and §147.42, concerning Approved Drug Offender Education Programs. The amendment to §147.33 changes the legal citation for the penalties for driving while intoxicated formerly located at Texas Civil Statutes, Article 6701f-1, and formerly located at Penal Code, §§49 04-49 09, effective September 1, 1994. Section 147.42(b)(7) is also being amended.

to clarify the period of time in which the number of courses taught by the instructors is reported.

Denise Hudson, director fiscal services, has determined that there will not be fiscal implications for local or state government as a result of enforcing or administering the sections. For state and local government there is no known basis for calculating costs for each program.

Ms. Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each drug offender education program participant. Approximate cost to persons will be \$0-125 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under Texas Civil Statutes, Article 6687b, §24B, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved drug offender education programs for persons convicted of certain drug offenses and who must complete an approved drug offender education program in order to have the driver's license reinstated.

The statute affected by the amendments is Texas Civil Statutes, Article 6687b, §24B.

**§147.33. Program Admission** The following persons are eligible for admission to an Approved Drug Offender Education Program:

(1) any person convicted of a misdemeanor or felony offense under the Controlled Substances Act (21 United States Code, §321 et seq); a drug offense as assigned by 23 United States Code, §159(c) and includes an offense under [Texas Civil Statutes, Article 67011-1, or] the Texas Penal Code, §§49.04-49.09 [§19.05 (a)(2)], committed as a result of the introduction into the body of any substance the possession of which is prohibited under the Controlled Substances Act, or a felony under the Texas Health and Safety Code, Chapter 481, that is not a drug offense; and

(2) (No change.)

**§147.42. Recordkeeping and Reporting.**

(a) (No change.)

(b) The following items shall be submitted to the commission by September 15 of each year:

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

(7) names of all certified instructors employed by the program and number of courses each conducted during the annual reporting [each year of the instructor's certification] period;

(8)-(9) (No change.)

(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 July 1, 1994.

TRD-9443442 J Ben Bynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

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For further information, please call: (512) 867-8720

## Chapter 152. Alcohol Awareness Programs

### General Provisions

#### • 40 TAC §152.1, §152.6

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §152.1 and §152.6, concerning Approved Alcohol Awareness Programs §152.1 is being amended to include the requirement that programs determine and collect the percentage of knowledge increase from the pre-course and post-course test scores. Section 152.6 is being amended to correct the legal citation for the Administrative Procedure Act

Denise Hudson, director fiscal services, has determined that there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections

Ms Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each drug offender education program participant. Approximate cost to persons will be \$0-125 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576

The amendments are proposed under the Alcoholic Beverage Code, Chapter 106, §106.115, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for

the operation of Approved Alcohol Awareness Programs.

The code affected by the amendments is Alcoholic Beverage Code, Chapter 106, §106.115

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

Class roster—A list of class participants for each course. Class rosters shall contain the following information for each participant: individual pre-course and post-course test scores; class averages of pre-course and post-course test scores; average percent of knowledge increase from pre-course and post-course test scores; screening instrument scores, attendance records; and referral recommendations

**§152.6 Denial, Revocation, or Nonrenewal of Approval.**

(a)-(d) (No change)

(e) Contested cases, administrative review A program which has been issued a notice of denial, revocation, or refusal to renew program approval shall have the right to contest such action by the commission pursuant to the procedures set forth for administrative review of contested cases in the Administrative Procedure [and Texas Register] Act, Government Code, Chapter 2001 (formerly Texas Civil Statutes, Article 6252-13a), provided, however, within 30 days from the registered or certified mailing of the notice of denial, revocation, or refusal to renew program approval, the program shall be required to give notice to the commission of the program's intent to contest the commission's action

(f) (No change)

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

Issued in Austin, Texas, on July 1, 1994

TRD-9443443 J Ben Bynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

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For further information, please call (512) 867-8720

## Alcohol Awareness Program Standards

#### • 40 TAC § 152.26, §152.31

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §152.26 and §152.31, concerning Approved Alcohol

Awareness Programs. Section 152.26 is being amended to change the word handicap to disability. Section 152.31 is being amended to include the requirement that programs determine, collect, and report the percentage of knowledge increase from the pre-course and post-course test scores.

Denise Hudson director fiscal services, has determined that there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Ms. Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each drug offender education program participant. Approximate cost to persons will be \$0-125 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576

The amendments are proposed under the Alcoholic Beverage Code, Chapter 106, §106.115, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of Approved Alcohol Awareness Programs

The code affected by the amendments is Alcoholic Beverage Code, Chapter 106, §106.115.

*§152.26. Discrimination Prohibited.* Any action taken or function performed by an approved program pursuant to this chapter or otherwise shall be done without regard to the sex, race, religion, age, national origin, or disability [handicap] of the person affected.

*§152.31. Recordkeeping and Reporting*

(a) (No change.)

(b) The program administrator shall submit the following information to the commission no later than September 15 of each year.

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

(6) average percent of knowledge increase from the pre-course to post-course test scores for all courses conducted during the reporting period.

(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 July 1, 1994

TRD-9443444

J Ben Bynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 15, 1994

For further information, please call (512) 867-8720

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**Chapter 153. General Provisions**

**General Provisions**

- 40 TAC §§ 153.2, 153.3, 153.6, 153.18

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §153.2, 153.3, 153.6, and 153.18, concerning DWI Education Program Standards and Procedures. The proposed amendments to §153.2 and §153.3 provide the correct name for probation, which is now referred to as community supervision. Section 153.6 is also being amended to correct the legal citation for the Administrative Procedure Act. The amendment to §153.18 changes the word handicap to disability.

Denise Hudson, director fiscal services, has determined that there will not be fiscal implications for state or local government as a result of enforcing or administering the sections. For state and local government there is no known basis for calculating costs for each program.

Ms. Hudson 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 section will be the establishment of quality programming in DWI education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each DWI education program participant. Approximate cost to persons will be \$0-250 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.12, §13h, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of the Texas DWI Education Programs which are designed to provide information on

the effects of alcohol and other drugs and driving skills, and to help participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

The code affected by the amendments is Texas Code of Criminal Procedure, Article 42.12, Section 13h

*§153.2 Objective.* The intent of the commission, in cooperation with DPS, TxDOT, and CJAD is to provide the written rules, regulations, and standards reflecting minimum standards for the uniform operation of programs designed to rehabilitate persons who are placed on community supervision [probation] for misdemeanor driving while intoxicated or others who are required to attend such programs. These rules will establish the minimum acceptable level of quality for DWI Education Programs in Texas

*§153.3 Scope of Rules, Regulations, and Standards.* Any agency, organization, or individual which operates a program designed to rehabilitate persons who are placed on community supervision [probation] for misdemeanor driving while intoxicated or others who are required to attend such programs may obtain program certification from the commission. The rules, regulations, and standards should be reasonably enforced and shall not be construed to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission

*§153.6 Denial or Revocation of Certification*

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

(e) The Administrative Procedure [and Texas Register] Act, Government Code Chapter 2001 (formerly Texas Civil Statutes, Article 6252-13a), applies to all earnings authorized by this Act

*§153.18 Discrimination Prohibited.* Any action taken, or function performed by a certified program pursuant to this chapter or otherwise shall be done without regard to the sex, race, religion, age, national origin, or disability [handicap] of the person affected

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 July 1, 1994

TRD-9443445

J Ben Bynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 15, 1994

For further information, please call: (512) 867-8720

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**DWI Education Program Standards**

• **40 TAC §§153.33, 153.36, 153.37, 153.41**

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §153.33, 153.36, 153.37, and 153.41, concerning DWI Education Program Standards and Procedures. The proposed amendment to §153.33 provides the correct name for probation which is now referred to as community supervision and corrects the legal citation for the penalties for driving while intoxicated, from Texas Penal Code, Chapter 49, §49.04-49.08 Texas Civil Statutes, Article 67011-I, effective September 1, 1994. The amendments to §153.36(10)-(15) and §153.37(b) also replace references to probation with the new terminology of community supervision. The amendment to §153.36(14) is proposed to add a participant's driver's license number (or date of birth or social security number) to the class roster for tracking purposes. The amendment to §153.37 also allows the court to grant an extension of time to attend the DWI Education Program. The amendment to §153.41(b)(1) includes the date of birth or social security number in the annual report, for more accurate reporting and § 153.41(7) is amended to require administrators to report the number of courses each instructor taught during the annual reporting period.

Denise Hudson, director fiscal services, has determined that there will not be fiscal implications to state or local government as a result of enforcing or administering the sections. For state and local government there is no known basis for calculating costs for each program.

Ms Hudson 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 section will be the establishment of quality programming in DWI Education Programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each DWI education program participant. Approximate cost to persons will be \$0-250 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.12, § 13h, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of the Texas DWI Education

Programs which are designed to provide information on the effects of alcohol and other drugs and driving skills; and to help participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

The code affected by the amendments is Texas Code of Criminal Procedure, Article 42.12, §13h.

§153.33. Program Admission.

(a) Persons are eligible for admission in the program if they are placed on community supervision [probation] for an offense under Texas Penal Code, Chapter 49, §49.04-49.08 [Texas Civil Statutes, Article 67011 -1, as amended], and, are required as a condition of that community supervision [probation] to attend and successfully complete an approved DWI education program.

(b) The program administrator may allow persons to attend other than those placed on community supervision [probation] for an offense under Texas Penal Code, Chapter 49, § 49.04-49.08 [Texas Civil Statutes, Article 67011 -1, 1925], as amended.

§153.36. Program Operation Requirements. All certified programs designed to rehabilitate persons who have been placed on community supervision [probation] for driving while intoxicated under the provisions of this Act shall:

(1)-(9) (No change.)

(10) administer, evaluate, and formulate a recommendation using the required screening instrument. Additional instruments may be used supplements. The purpose of the testing is to make a written recommendation for further evaluation where indicated. The recommendation shall be forwarded to the appropriate community supervision and corrections [probation] department and/or other referral resource(s) within 10 working days after completion of the course and/or exit interview;

(11)-(13) (No change.)

(14) maintain attendance records and class rosters. Class rosters must contain the following information: date of enrollment in class, date of completion of class, participant's driver's license number (or if participant does not possess a driver's license number, the date of birth and/or social security number); individual pre and post-test scores; pre- and post-test class averages, percent of knowledge increase; screening test scores, the participant's attendance record and evaluation recommendations. Each participant shall be required to attend all classes in their proper order,

(15) ensure that notice of completion of the program, for all participants,

is given to the appropriate community supervision and corrections [adult probation] department or other referral resource(s) within 10 working days after completion of the course for forwarding same to the convicting court clerk for reporting to the Department of Public Safety;

(16)-(17) (No change.)

§153.37. Program Administration.

(a) (No change.)

(b) The administrator of the DWI Education Program shall be the individual ultimately responsible to the court for the proper operation of the DWI Education Program in his or her jurisdiction regardless of whether the program is operated by a community supervision and corrections [probation] department, another agency, organization, or individual.

(c) All probationers ordered to attend the DWI Education Program shall complete their classes before the 181st day after the day community supervision [probation] is granted unless an extension of time was granted by the court.

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

§153.41. Recordkeeping and Reporting.

(a) (No change.)

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

(b) The following items shall be submitted to the commission by September 15 of each year:

(1) driver's license number of each participant completing the program or, if participant does not possess a driver's license number, the date of birth and/or social security number;

(2)-(6) (No change.)

(7) names of all certified instructors employed by the program and number of courses each conducted during the annual reporting [each year of the instructor's certification] period;

(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.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443446 J Ben Brynum  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 15, 1994

For further information, please call (512) 867-8720

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Chapter 154. DWI Repeat Offender Program Standards and Procedures

General Provisions

• 40 TAC §154.1, §154.6

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §154.1 and §154.6, concerning DWI Repeat Offender Program Standards and Procedures. The amendment to §154.1 is proposed because the legal citation for the penalties for driving while intoxicated is being repealed in the Texas Civil Statutes, Article 6701-1 and replaced with Texas Penal Code, §§49.04-49.09, effective September 1, 1994. Section 154.6(e) is being amended to correct the legal citation for the Administrative Procedure Act.

Denise Hudson, director fiscal services, has determined that there will not be fiscal implications for state or local government as a result of enforcing or administering the sections. For state and local government there is no known basis for calculating costs for each program.

Ms Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses will be unknown. There is no known basis for calculating costs. Cost for persons will vary depending on the fees each program chooses to assess each repeat DWI education program participant. Approximate cost to persons will be \$0-250 for fiscal years 1994-1999.

Comments on the proposal may be submitted to Denise F Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.12, §13(j), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for approved DWI Repeat Offender Programs.

The code affected by this amendment is Texas Code of Criminal Procedure, Article 42.12, §13(j).

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

DWI-The offense of driving while intoxicated as defined in the Texas Penal Code, Chapter 49, § 49.09 [Texas Civil Statutes, Article 6701-1].

§154.6 Denial, Revocation or Nonrenewal of Approval.

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

(e) Contested cases, administrative review. A program which has been issued a notice of denial, revocation, or refusal to renew program approval shall have the right to contest such action by the commission pursuant to the procedures set forth for administrative review of contested cases in the Administrative Procedure [and Texas Register] Act, Government Code, Chapter 2001 (formerly Texas Civil Statutes, Article 6252-13a); provided, however, within 30 days from the registered or certified mailing of the notice of denial, revocation, or refusal to renew program approval, the program shall be required to give notice to the commission of the program's intent to contest the commission's action.

(f) (No change.)

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

Issued in Austin, Texas, on July 1, 1994.

TRD-9443447

J Ben Bynum
Executive Director
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption. August 15, 1994.

For further information, please call (512) 867-8720.

DWI Repeat Offender Program Standards

• 40 TAC §154.28, §154.30

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §154.28, to require instructors to conduct a course a minimum of one time during the annual reporting period and to also allow instructors to team-teach, which will count toward this requirement. The amendment to §154.30 would require administrators to report the names of all certified instructors employed by the program and the number of courses each conducted during the annual reporting period.

Denise Hudson, director, fiscal services, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms Hudson 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 section will be the establishment of quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse. The cost of compliance with the sections for small businesses is unknown. There is no known basis for calculating costs. Cost

for persons will vary depending on the fees each program chooses to assess each repeat DWI education program participant.

The anticipated economic cost to persons who are required to comply with the section will vary from \$150-\$350, depending on the course fee charged to participants by each approved DWI Repeat Offender Educational Program.

Comments on the proposal may be submitted to Denise F Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.12, §13(j), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for approved DWI Repeat Offender Educational Programs.

The code affected by these amendments is Texas Code of Criminal Procedure, Article 42.12, §13(j).

§154.28 Program Instructors. Program instructors must.

(1)-(7) (No change.)

(8) Conduct the course a minimum of one time during each annual reporting period. Team teaching can be counted towards the fulfillment of this requirement.

§154.30 Recordkeeping and Reporting.

(a) (No change.)

(b) The program administrator shall submit the following information to the commission no later than September 15 of each year.

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

(6) names of all certified instructors employed by the program and number of courses each conducted during the annual reporting period.

(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 July 1, 1994.

TRD-9443448

J Ben Bynum
Executive Director
Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption. August 15, 1994.

For further information, please call (512) 867-8720.



## Part VII. Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

### Chapter 189. Purchases of Products and Services of Blind and Severely Disabled Persons

#### Organization of the Committee • 40 TAC §189.3

The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons proposes an amendment to §189.3, concerning procedures of the committee. The amendment is being proposed to encourage public comment at regularly scheduled meetings.

Hollis Pinyan, chairman, Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Pinyan 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 improved communication between the public and the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Hollis Pinyan, Chairman, Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons, P.O. Box 12866, Austin, Texas 78711.

The amendment is proposed under the Human Resources Code, §122.010, which provides the committee with the authority to adopt rules for the implementation, extension, administration, or improvement of the program.

The Human Resources Code, §122.019, is affected by this proposed amendment.

#### §189.3 Organization of the Committee

(a)-(c) (No change)

(d) Public access to Committee meetings shall be encouraged. The Committee shall encourage public participation at its regularly scheduled meetings by including in the agenda a provision for "public comment." Such public comment will ensure access and maximum input into the operation of the Committee and the stated purpose for which it exists. Interested parties may speak for a maximum of five minutes if appropriate comment request cards have been completed.

Individuals may supplement their comments through written communication. Individuals requiring more than five minutes may request to be included as an agenda item by responding to the published meeting notice in the *Texas Register*.

(e)[(d)] Regular meetings of the committee shall be held in each calendar quarter at the call of the chairman or his committee member designee unless, in the opinion of the chairman or his committee member designee, the amount of business to be conducted is insufficient to call a regular meeting during a particular quarter.

(f)[(e)] Special meetings may be set at the call of the chairman or his committee member designee for any purpose except for hearings on suspension of a workshop. (See §189.10 of this title (relating to Notice and Hearing Required Prior to Suspension))

(g)[(f)] Committee members who have personal or private interest in any matter pending before the committee or any subcommittee of the committee must disclose that fact publicly in a meeting held under the Open Meetings Act, and they must not participate in the decision. The disclosure and non-participation shall both be a matter of record in the committee or subcommittee minutes.

(h)[(g)] Committee members may not appoint or vote for any person related to that individual within the third degree of consanguinity (related by blood) or the second degree of affinity (related by marriage) to any paid state position.

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 July 1, 1994.

TRD-9443411 Pat D Westbrook  
Executive Director  
Texas Commission for the  
Blind

Earliest possible date of adoption August 15, 1994

For further information, please call. (512) 459-2530

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Management

##### Access to Official Records

###### • 43 TAC §§1.500-1.503

The Texas Department of Transportation proposes new §§1.500-1.503, concerning Access to Official Records. The new sections are necessary to comply with House Bill 1009, 73rd Legislature, 1993, which requires

each agency by rule to specify the charges the agency will make for copies of open records. Section 1.500 describes the purpose and scope of the proposed sections; §1.501 defines words and terms used in the proposed sections; §1.502 describes how a person may request, be provided, and examine official records, and designates department officials as the executive director's authorized representatives for the purpose of certifying official records; and §1.503 lists the standard charges for copies and related services, provides for a personnel charge of \$15 per hour plus an overhead charge of 20% for the copying of more than 50 pages of records, authorizes the department to waive charges for records relating to a grievance proceeding, and authorizes the executive director or designee to waive or reduce charges if waiver would be in the public interest.

Cassie Carlson Reed, deputy executive director, Administrative Services, has determined that for each year of the first five-year period the new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the new sections. The charges for official records listed in the proposed sections are not significantly different than what the department currently charges the public.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Ms. Reed also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be increased public awareness of department procedures concerning public access to official records and charges for providing copies of official records. There will be no effect on small businesses. The economic cost to persons who are required to comply with the new sections cannot be quantified as it depends on the number and type of records requested.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections and the repeal of §21.91 and §27.1. The public hearing will be held at 9:00 a.m. on Tuesday, July 26, 1994, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative mem-

ber where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Ekise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposed amendments may be submitted to Cassie Carlson Reed, Deputy Executive Director for Administrative Services, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on August 15, 1994.

The new sections are proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Government Code, Chapter 552, which provides for access to public information.

The new sections do not affect other statutes, articles, or codes.

**§1.500. Purpose and Scope.** It is the policy of the Texas Department of Transportation to provide the public complete information regarding the affairs of the department in a manner that will facilitate and maximize public access. In compliance with the Texas Open Records Act, the Government Code, Chapter 552, the sections under this undesignated head provide policies and procedures governing public access to official department public records.

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

Code-Government Code, Chapter 552.

Commission-Texas Transportation Commission.

Department-Texas Department of Transportation.

District engineer-The chief administrative officer of a district of the department.

Division director-The chief administrative officer of a division or special office of the department.

**§1.502. Public Access.**

(a) Request for records.

(1) A person seeking public information shall submit a request in writing to the department. A request should be submitted to:

(A) the department's Director of Public Information; or

(B) the district engineer or division director for the district or division of the department responsible for the information.

(2) A request for official records shall include the name, address, and telephone number of the requestor, and a description of the records in sufficient detail to permit efficient gathering of the requested items.

(b) Production of records. Except as provided in subsections (d) and (e) of this section, the department will provide copies or promptly produce official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or in storage, the department will certify this fact in writing to the applicant and specify a date and hour within a reasonable time when the record will be available for inspection or duplication.

(c) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Code, and that the records should be withheld, by the 10th calendar date after the date of receiving the written request, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions

(e) Confidential information. The department will not provide records consid-

ered to be confidential by law or otherwise prohibited from release under the Code or other provisions of law, and will not provide copies of information subject to copyright protection.

(f) Certified records. In accordance with Texas Civil Statutes, Article 6663a, the following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The department's Chief Minute Clerk may certify commission minute orders. In his or her absence, minute orders may be certified by the Executive Assistant to the Executive Director or the Executive Secretary to the Commission. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials

(2) Other official records of the department may be certified by the district engineer, division director, or other department official having official custody of the records. A district engineer or division director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

**§1.503. Cost of Copies of Official Records**

(a) Standard costs. The following table lists charges for copies and related services. Figure 1.43 TAC §1.503

(b) Personnel and overhead charge. A personnel charge of \$15 per hour plus an overhead charge of 20% of the personnel charge will be added to the costs of any request involving the

(1) copying of more than 50 pages, or

(2) retrieval and copying time of more than one hour

(c) Payment

(1) Payment of charges is due prior to release of copies of records

(2) Upon release of copies of records, the department will furnish to the requestor a statement describing all charges

(d) Waiver

(1) The department will provide free of charge copies of records relating to an employee grievance proceeding under Chapter 2, §92 of the department's Human Resources Manual to an official party to the proceeding

(2) The department may waive or reduce the fees charged under subsections (a) and (b) of this section if the executive director or his or her designee determines waiver to be in the public interest because furnishing the records primarily benefits the general good

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 July 11, 1994

TRD-9443770

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption August 15, 1994

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

## Chapter 4. Employment Practices

### Subchapter C. Employment and Education Programs

#### • 43 TAC §§4.20-4.24

The Texas Department of Transportation proposes new Subchapter C, §§4 20-4 24 concerning Employment and Education Programs

It is the policy of the department to encourage education by establishing programs to integrate academic studies with supervised work experience, to increase a student's employment potential by offering employment experience, bring new educational methods into the workplace; enrich secondary institutions' and universities' curricula, help educational institutions retain students, and provide the department with a recruiting source for professional, ethnic and workforce diversity for long-range staffing goals by building an understanding of the department's career opportunities, and

In furtherance of this policy and to comply with Texas Civil Statutes, Article 6669a which mandate that the department create a college cooperative education program, the Texas Transportation Commission deems it necessary and desirable to propose new §§4 20-4 24 to establish a college cooperative program, rename the previously established high school vocational education program to be known as the high school cooperative education program (HSCEP), and establish a college intern program

New §4 20 and §4 21 describe the purpose and scope of the programs to integrate academic studies with supervised work experience and to provide the department with a recruiting source, and furnish definitions

New §4 22 creates the college cooperative education program which combines collegiate classroom education with full-time practical employment experience through alternating periods of work and study; specifies eligibility criteria for the institution, specifies that a student must be the required age, meet the required legal status, be enrolled in a cooperative education program at an eligible institution, be enrolled for the required length of time in an eligible academic program, and meet the required grade point average to be eligible, establishes application procedures,

specifies that the student may be selected based upon current enrollment and participation in a field of study related to the assigned work, the student's skill, knowledge and ability, grade point average, previous work experience, and availability to work; specifies criteria for employment if selected; describes the institution's role in the program; describes the student's role in applying for employment, working with the department, complying with the program's rules and maintaining academic status; stipulates the duration of employment; and establishes an evaluation procedure; and

New §4.23: creates a high school cooperative education program which combines high school classroom education with part-time practical employment experience in an office environment; specifies eligibility criteria for the high school; specifies that a student must be the required age, enrolled in a cooperative program at an eligible high school, and working towards employment in an office environment, establishes application procedures; specifies that the student may be selected based upon current enrollment and participation in a field of study related to the assigned work, the student's skill, knowledge and ability, previous work experience, and grade point average; specifies criteria for employment if selected; describes the high school's role in the program; describes the student's role in applying for employment, working with the department, complying with the program's rules, and maintaining academic status; stipulates the duration of employment; and establishes an evaluation procedure; and

New §4.24: creates an intern program which furnishes a college student with full-time practical employment; specifies eligibility criteria for the institution; specifies that a student must be the required age, meet the required legal status; be enrolled for the required length of time in an eligible academic program; and meet the required grade point average to be eligible, establishes application procedures; specifies that selection may be based upon the student's enrollment and participation in a field of study related to the assigned work, the student's skill, knowledge and ability, grade point average and previous work experience; specifies criteria for employment if selected; describes the institution's role in the program, describes the student's role in applying for employment, working with the department, complying with the program's rules, and maintaining academic status; stipulates the duration of employment; and establishes an evaluation procedure.

Edwin M. Sims, interim director of civil rights, has determined that for the first five-year period the new sections are in effect there will be an estimated increase in cost to the department of \$27,000 for the fiscal year 1995, \$18,000 for the fiscal year 1996 and \$9,000 for the fiscal years 1997-1999 as a result of enforcing or administering the sections. There will be no fiscal implication for local governments.

Mr Sims has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Sims 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 implementing the sections will be to provide an increased awareness of career opportunities in transportation related fields, enrich secondary institutions' and university curricula and provide department managers with an effective recruiting source for meeting long-range staffing goals.

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.

Pursuant to the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. A public hearing will be held at 1:30 p.m. on July 25, 1994 in Room 102 of Riverside Annex, 200 East Riverside, Austin, Texas. The hearing will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternate language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lungren, Director of the Public Information office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new sections may be submitted to Edwin M. Sims, Interim Director of Civil Rights, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on August 15, 1994.

The new sections are proposed under Texas Civil Statutes, Articles 6666 and 6669a, which provide the Texas Transportation Commission with the authority to promulgate rules for

the conduct of the work of the Texas Department of Transportation, and specifically mandate that the department create a cooperative education program with colleges.

Article 6669a is effected by these proposed new sections.

**§4.20. Purpose and Scope.** It is the policy and practice of the Texas Department of Transportation to integrate academic studies with supervised work experience by providing employment in cooperative education and internship programs. These programs increase a student's job potential, while assisting the student financially and bringing new educational methods to the workplace. The programs enrich secondary institutions' and universities' curricula and help the institutions retain students. The programs provide the department's managers with a recruiting source for professional, ethnic and workforce diversity for long-range staffing goals by building an understanding of the department's career opportunities. In keeping with these policies and with the requirements of Texas Civil Statutes, Articles 6668a, 6668b, and 6669a, this subchapter prescribes the policies and procedures by which the department selects students to participate in these programs.

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

**Academic school year**—Two academic semesters (i.e. fall semester and spring semester, or if the educational institution is on a trimester system then fall, winter, or spring quarters).

**Commission**—Texas Transportation Commission

**College cooperative student**—A person who is enrolled in an eligible higher educational institution's cooperative education program.

**Cooperative education program**—A plan of education that provides for alternating periods of study and employment during the academic year; working agreements among the department, educational institution and student, paid supervised work experiences related to the student's academic studies or career goals; and experience sufficient in duration to qualify for career entry level position, if applicable.

**Cooperative Education Program Standards Form**—A form which states the rules of the High School Cooperative Education Program.

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

**Form I-9 Employment Verification**—A form attesting to eligibility to work in the United States in compliance with the Immigration Reform and Control Act of 1986.

**HSCEP**—High School Cooperative Education Program.

**Intern**—A post-secondary school student who is employed for a specific length of time.

**Student cooperative program performance evaluation**—The department's employment evaluation form used to evaluate college cooperative students.

**Student intern program performance evaluation**—The department's employment evaluation form used to evaluate interns.

**§4.22. College Cooperative Education Program.**

(a) **Purpose.** The College Cooperative Education Program is designed to combine collegiate classroom education with full-time practical employment experience through alternating periods of work and study.

(b) **Institution eligibility.** In order to be eligible to participate in the cooperative education program, a higher education institution must:

(1) be located in the United States,

(2) be an institution with a college or graduate, technical, trade, vocational, or business school curriculum that is accredited by an association of colleges and schools, or licensed by a state agency,

(3) have the authority to administer requirements, standards, and credits necessary to award degrees, diplomas, and certificates; and

(4) have a cooperative education program.

(c) **Student eligibility.** In order to be eligible to participate in the cooperative education program, a student must

(1) be at least 17 years of age,

(2) be a United States citizen, lawful permanent resident alien, or a non-citizen with proof of eligibility to work in the United States;

(3) be enrolled in an eligible institution's cooperative education program, other than by correspondence,

(4) have attended that institution for at least one semester,

(5) have passed at least 28 semester hours toward formal degree requirements in a master or doctorate degree program, a baccalaureate degree program, an associate degree program of no less than one academic year, or an undergraduate certificate or diploma program of not less than one academic year; and

(6) have an overall institutional grade point average of at least 2.5 on a four-point scale.

(d) **Application.** To apply for the cooperative education program, the student must.

(1) attend an orientation at the institution concerning the cooperative education program; and

(2) submit a completed application to the institution on a form prescribed by the department

(e) **Interview.** If the institution's cooperative office refers a student to the department, the student must interview with the department

(f) **Selection criteria.** The department's selection is based upon the student's.

(1) current enrollment and participation in a field of study related to the assigned work,

(2) skill, knowledge, and ability as related to the job description,

(3) grade point average,

(4) relevant previous work experience, and

(5) availability to work for three successive alternating periods of employment between three successive alternating periods of study

(g) **Employment eligibility.** If selected, the student must

(1) complete a Form I-9 Employment Verification,

(2) pass a physical exam, and

(3) if the cooperative employment requires driving, pass a driver's record check

(h) **Role of eligible institution.** The institution will

(1) provide an orientation briefing which will include application instructions,

(2) screen and refer the student to the department based on the criteria in the job description,

(3) schedule the student's initial interview with the department,

(4) forward the student's application, degree plan, and transcript to the department,

(5) enter into a written cooperative education agreement with the department,

(6) visit the department as requested, and

(7) review supervisor reports and evaluations

(i) **Role of department.** To implement this program, the department will

(1) provide the eligible institution with a job description;

(2) interview and select the student;

(3) enter into a written cooperative agreement with the institution;

(4) determine the work assignment;

(5) consider the cooperative student eligible for the same benefits and training as a full-time employee;

(6) retain the college cooperative student for three successive alternating periods of employment between three successive alternating periods of study as long as the student's performance is satisfactory; and

(7) evaluate the college cooperative student as provided in subsection (i) of this section.

(j) Role of the college cooperative student. The college cooperative student must:

(1) abide by the program's rules and the department's policies and procedures;

(2) adhere to the established work schedule;

(3) notify the institution's cooperative education office and the department of any changes in academic status;

(4) meet the academic and conduct standards set forth by the institution;

(5) maintain at least an overall grade point average of at least 2.5 on a four-point scale during the cooperative education period;

(6) meet the conduct standards set forth by the department; and

(7) notify his or her department supervisor in writing if the overall job assignment is significantly incompatible with the academic degree.

(k) Duration A college cooperative student is eligible to work as a regular full-time employee during alternating academic semesters or quarters. A college cooperative student must apply separately to participate in the department's summer program as a regular employee.

(l) Evaluation. The department will evaluate the performance of the college cooperative student at the end of work semester or quarter by:

(1) using the department's student cooperative program performance evaluation;

(2) discussing the evaluation with the college cooperative student;

(3) submitting the evaluation to the institution for inclusion in the institution records; and

(4) conducting a student exit questionnaire to assess the overall education experience

#### *§4.23. High School Cooperative Education Program.*

(a) Purpose. The High School Cooperative Education Program is designed to combine high school classroom education with part-time practical employment experience in office and industrial arts environments.

(b) High school eligibility. In order to be eligible to participate in the HSCEP, a high school must:

(1) be located in Texas; and

(2) have a cooperative education program.

(c) Student eligibility. In order to be eligible to participate in the HSCEP, a high school student must be:

(1) at least 17 years of age

(2) attending an eligible high school; and

(3) working towards employment as an accounting clerk, business data entry operator, clerk-typist, file clerk (records management), general office clerk, information communications clerk, insurance clerk, receptionist, word processing operator, or industrial equipment operators

(d) Application. To apply for the HSCEP, the high school student must submit a completed application to the high school on a form prescribed by the department.

(e) Interview. If the high school's cooperative office refers a student to the department, the student must interview with the department.

(f) Selection criteria. The department selection is based upon the student's:

(1) current enrollment and participation in a field of study related to the assigned work;

(2) skill, knowledge, and ability as related to the job description;

(3) relevant previous work experience; and

(4) grade point average

(g) Employment eligibility. If selected, the student must:

(1) complete a Form I-9 Employment Verification, and

(2) pass a physical exam

(h) Role of eligible high school. The high school will:

(1) screen and refer the student to the department based upon the criteria in the job description;

(2) forward the high school student's application to the department;

(3) schedule the high school student's interview with the department;

(4) provide the department with the independent school district's approved cooperative training plan;

(5) visit each student's workplace station at least once during a grading period; and

(6) provide the department with the independent school district's evaluation form

(i) Role of department. To implement this program, the department will:

(1) provide the high school with a job description, general information brochures about the department, a copy of the HSCEP procedure and employment applications;

(2) interview and select the HSCEP student;

(3) enter into a cooperative training plan;

(4) determine the work assignment according to the department's functional classification system;

(5) consider the HSCEP student eligible for the same benefits as a part-time employee; and

(6) evaluate the student as provided for in subsection (l) of this section

(j) Role of HSCEP student. The student must:

(1) sign a cooperative education program standards form;

(2) abide by the program's rules and the department's policies and procedures;

(3) adhere to the established work schedule;

(4) notify the high school's cooperative education office and the department of any changes in academic status;

(5) meet the academic and conduct standards set forth by the high school; and

(6) meet the work performance and conduct standards set forth by the high school and the department

(k) Duration. A HSCEP student is eligible to work as a regular part-time employee (15 to 25 hours a week) during the

academic semesters. A cooperative high school student must apply separately to participate in the department's summer program as a regular employee.

(l) Evaluation. The department will evaluate the HSCEP student every six weeks by:

(1) using the evaluation form prescribed by the student's independent school district; and

(2) submitting the evaluation to the high school every six weeks

#### §4.24. College Intern Program.

(a) Purpose. The college intern program is designed to furnish a college student with full-time practical employment.

(b) Institution eligibility. In order to be eligible to participate in the intern program, a higher education institution must:

(1) be located in the United States;

(2) be an institution with a college or graduate, technical, trade, vocational, or business school curriculum that is accredited by an association of colleges and schools, or licensed by a state agency; and

(3) have the authority to administer requirements, standards, and credits necessary to award degrees, diplomas, and certificates.

(c) Student eligibility. In order to be eligible to participate in the intern program, a student must:

(1) be at least 17 years of age;

(2) be a United States citizen, lawful permanent resident alien, or a non-citizen with proof of eligibility to work in the United States;

(3) be enrolled in an eligible institution's intern program, other than by correspondence;

(4) have attended that institution for at least one semester;

(5) have passed at least 28 semester hours toward formal degree requirements in a master or doctorate degree program, a baccalaureate degree program, an associate degree program of no less than one academic year, or an undergraduate certificate or diploma program of not less than one academic year,

(6) have an overall institutional grade point average of at least 2.5 on a four-point scale if an undergraduate student, and

(7) have an overall institutional grade point average of 3.0 on a four-point scale if a graduate student

(d) Application. To apply for the intern program, the student must submit a completed application to the institution on a form prescribed by the department.

(e) Interview. If the institution's placement office or student advisor refers a student to the department, the student must interview with the department.

(f) Selection criteria. The department selection is based upon the student's

(1) current enrollment and participation in a field of study related to the assigned work;

(2) skill, knowledge, and ability as related to the job description;

(3) grade point average; and

(4) relevant previous work experience

(g) Employment eligibility. If selected, the student must:

(1) complete a Form I-9 Employment Verification,

(2) pass a physical exam, and

(3) if the internship requires driving, pass a driver's record check.

(h) Role of eligible institution. The institution

(1) may provide an orientation briefing to prospective interns which will include application instructions,

(2) may screen and refer the student to the department based on the criteria in the job description;

(3) may schedule the student's initial interview with the department;

(4) will forward the student's application, degree plan, and transcript to the department,

(5) may visit the department as requested, and

(6) will review supervisor reports and evaluations.

(i) Role of department. To implement this program, the department will:

(1) provide the institution with a job description,

(2) interview and select the student,

(3) determine the work assignment,

(4) consider the intern eligible for the same benefits and training as a full-time employee, and

(5) evaluate the intern as provided in subsection (l) of this section

(j) Role of the intern. The intern must:

(1) abide by the program's rules and the department's policies and procedures,

(2) adhere to the established work schedule,

(3) notify the institution's department chair and the department of any changes in academic status,

(4) meet the academic and conduct standards set forth by the institution,

(5) maintain an overall grade point average of at least 2.5 on a four-point scale if an undergraduate student,

(6) maintain an overall grade point average of at least 3.0 on a four-point scale if a graduate student;

(7) meet the conduct standards set forth by the department; and

(8) notify his or her department supervisor in writing if the overall job assignment is significantly incompatible with the academic degree

(k) Duration. An intern is eligible to work as a regular full-time employee during three months of the summer or up to five months during the semester. The intern must apply separately to extend employment beyond that period in accordance with the needs of the department

(l) Evaluation. The department will evaluate the performance of the intern at the end of the work tour by:

(1) using the department's student performance evaluation,

(2) discussing the evaluation with the intern,

(3) providing a copy of the evaluation to the institution, and

(4) conducting a student exit questionnaire to assess the overall education experience

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 July 11, 1994

TRD-9443774

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption August 15, 1994

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

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## Chapter 21. Right-of-Way

### Division Manuals and Subscription Services

#### • 43 TAC §21.91

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

The Texas Department of Transportation proposes the repeal of §21.91, concerning Sales of Division Manuals and Subscription Services. Section 21.91 requires the department to make division manuals and subscription services available to the public for a fee. This section is no longer necessary due to the concurrent adoption of new §1500-1503, concerning Access to Official Records, which are comprehensive rules governing public access to official records.

Cassie Carlson Reed, deputy executive director, Administrative Services, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

Ms. Reed 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 section will be increased public awareness of department procedures governing public access to department official records. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9:00 a.m. on Tuesday, July 26, 1994, in Room 101, Building 200 of the Riverside Annex, located at 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue

being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th St., Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposed repeal may be submitted to Ms. Cassie Carlson Reed, Deputy Executive Director for Administrative Services, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on August 15, 1994.

The repeal is proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Government Code, Chapter 552 which provides for access to public information.

The repeal does not affect other statutes, articles, or codes.

#### §21.91 Sales of Division Manuals and Subscription 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 July 11, 1994.

TRD 9443772

Diane L. Northan  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: August 15, 1994.

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

## Chapter 27. Automation Division

#### • 43 TAC §27.1

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

The Texas Department of Transportation proposes the repeal of §27.1, concerning Non-certified Photographic Reproductions. Section 27.1 requires the department to make non-certified photographic reproductions available to the public for a fee. This section is no longer necessary due to the concurrent adoption of new §1500-1503, concerning Access

to Official Records, which are comprehensive rules governing public access to official records.

Cassie Carlson Reed, deputy executive director, Administrative Services, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

Ms. Reed has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

Ms. Reed 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 section will be increased public awareness of department procedures governing public access to department official records. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9:00 a.m. on Tuesday, July 26, 1994, in Room 101, Building 200 of the Riverside Annex, located at 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th St., Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposed repeal may be submitted to Ms. Cassie Carlson Reed, Deputy Executive Director for Administrative Services, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on August 15, 1994.





# WITHDRAWN RULES

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

## TITLE 16. ECONOMIC REGULATION

### Part III. Texas Alcoholic Beverage Commission

#### Chapter 45 Marketing Practices

#### Subchapter D. Advertising and Promotion—All Beverages

##### • 16 TAC §45.103

The Texas Alcoholic Beverage Commission has withdrawn from consideration for permanent adoption a proposed amendment §45 103 which appeared in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3881) The effective date of this withdrawal is July 7, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443633      Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 7, 1994

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

##### • 16 TAC §45.106

The Texas Alcoholic Beverage Commission has withdrawn from consideration for permanent adoption a proposed new §45 106 which appeared in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3882) The effective date of this withdrawal is July 7, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443634      Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 7, 1994

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

##### • 16 TAC §45.109

The Texas Alcoholic Beverage Commission has withdrawn from consideration for permanent adoption a proposed new §45 109 which appeared in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3883) The effective

date of this withdrawal is July 7, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443635      Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 7, 1994

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

##### • 16 TAC §45.110

The Texas Alcoholic Beverage Commission has withdrawn from consideration for permanent adoption a proposed new §45 110 which appeared in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3884) The effective date of this withdrawal is July 7, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443636      Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 7, 1994

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

##### • 16 TAC §45.111

The Texas Alcoholic Beverage Commission has withdrawn from consideration for permanent adoption a proposed new §45 111 which appeared in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3885) The effective date of this withdrawal is July 7, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443637      Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 7, 1994

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

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 263. General Rules

##### • 30 TAC §263.35

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed amendment to §263 35, which appeared in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885) The effective date of this withdrawal is July 6, 1994

Issued in Austin, Texas, on June 29, 1994

TRD-9443571      Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date July 6, 1994

For further information, please call (512)  
239-0615

#### Chapter 265. Procedures Before Public Hearings

#### Subchapter C. Special Proce- dures for Freezing the Pro- cess

##### • 30 TAC §265.25

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed new §265 25, which appeared in the February 4, 1994, issue of the *Texas Register* (19 TexReg 765) The effective date of this withdrawal is July 6, 1994

Issued in Austin, Texas, on July 7, 1994

TRD-9443589      Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date July 6, 1994

For further information, please call (512)  
463-8069

Subchapter E. Special Sanctions Rules Relating to Freezing the Process

• 30 TAC §265.52

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed new §265.52, which appeared in the February 4, 1994, issue of the *Texas Register* (19 TexReg 775). The effective date of this withdrawal is July 6, 1994.

Issued in Austin, Texas, on July 6, 1994

TRD 9443585 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date July 6, 1994

For further information, please call (512) 463-8069



Chapter 305 Consolidated Permits

Subchapter R. Petition for Groundwater Protection Information

• 30 TAC §§305.601-305.604

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§305.601-305.604, concerning Petition for Groundwater Protection Information, submitted by the Texas Natural Resource Conservation Commission has been automatically withdrawn, effective July 6, 1994. The new §§305.601-305.604 as proposed appeared in the January 4, 1994, issue of the *Texas Register* (19 TexReg 57).

TRD 9443562



# 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 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 91. Texas Register

##### Filing of Documents

###### • 1 TAC §91.26

The Office of the Secretary of State, *Texas Register*, adopts new §91.26, concerning policies and procedures, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register*.

The section is being adopted to implement a new provision, concerning cross-reference to statute, that was added to the Administrative Procedure Act, Texas Government Code, §§2001.004, 2001.024, and 2002.011. This provision, as House Bill 2057, General and Special Laws Chapter 482, was passed during the 72nd Legislature Regular Session, 1991, effective September 1, 1993.

This new section is being adopted because the Secretary of State's Office is required to keep a cross index of agencies' rules to the statutes that are affected by the rules.

One comment was received from the Texas Department of Human Services (DHS). In its interpretation of the Texas Government Code, §2001.024(3), as amended by House Bill 2057, DHS said that a state agency cannot have an effect on a statute passed by the legislature. In House Bill 2057 the reference to "code affected" means the Texas Administrative Code. The Register disagrees. For the legislature to require a reference to the Administrative Code would be redundant as this information is already contained in an agency's notice. The Register interprets the reference to "code affected" to mean the section of the code or statute upon which the agency is taking action by adopting a rule to implement its provisions. By requiring the agency to include in its notice a statement that the rule acts upon a specified law assures the public that the rule is tied to and implements a particular code or statutory provision and that the agency is not legislating by rule.

The new section is adopted under the Government Code, Chapter 2002, Subchapter B, *Texas Register*, §2002.017, which provides

the secretary of state with the authority to promulgate rules consistent with the Code

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

Issued in Austin, Texas, on July 7, 1994

TRD-9443594 Machree Garrett Gibson  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date July 28, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-5561

## TITLE 4. AGRICULTURE

### Part II. Texas Animal Health Commission

#### Chapter 35. Bovine Brucellosis

##### Subchapter A. Eradication of Brucellosis in Cattle

###### • 4 TAC §35.1

The Animal Health Commission adopts an amendment to §35.1 without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3398)

It was necessary to amend the rule to remove the requirement for an adult vaccination permit for cattle since such a permit is no longer needed

No adult vaccination permit will be required for cattle.

No comments were received regarding adoption of the amendment.

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

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 June 23, 1994

TRD-9443452 Terry Beale, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date July 22, 1994

Proposal publication date May 6, 1994

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

###### • 4 TAC §35.2

The Texas Animal Health Commission adopts an amendment to §35.2 with changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3399).

It was necessary to amend the rule to require heifers in infected herds to be tested prior to being vaccinated for brucellosis and if classified as reactors to be handled as any other reactors. The amendment was also necessary to remove obsolete language regarding adult vaccination.

Heifers in infected herds will be tested prior to being vaccinated for brucellosis. If classified as reactors, the heifers will be handled as any other reactors.

No comments were received regarding adoption of the amendments.

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

##### §35.2. General Requirements.

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

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

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

(5) The plan will consist of the following:

(A) Testing Procedures

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

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

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

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

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

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

(B) Vaccination Procedures

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

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

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

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

(6)-(8) (No change)

(m) Official vaccination requirements

(1) All official vaccinations will be conducted by Approved Personnel only

(2) Calfhood vaccinated animals shall be permanently identified as vaccinates by tattoo and by official vaccination eartag. Vaccination tattoos will be applied to the right ear. The tattoo will include the United States Register Shield and "V" which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Official vaccination eartags will be applied to the right ear. The eartag will include the State prefix and a "V," followed by two letters and four numbers. Individual animal registration tattoos or brands may be substituted for official eartags.

(3) Adult vaccinated cattle shall be permanently identified as vaccinates by tattoo or by hot "V" brand and by official eartag. Tattoos will be applied to the right ear. The tattoo will include the letters AV, which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Hot "V" brands will be applied to the right jaw, or high on the hip near the tailhead, open end of the "V" up. An official eartag will be placed in the right ear.

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

(n)-(u) (No change.)

This agency hereby certifies that the 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 June 23, 1994

TRD-9443453

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date July 22, 1994

Proposal publication date May 6, 1994

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

• 4 TAC §35.4

The Texas Animal Health Commission adopts an amendment to §35.4 without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3400)

The amendment is necessary to specify that the type of permit required to enter from a foreign country as an "E" Permit and to up-

date language regarding requirements for calfhood vaccination in Texas that had previously been changed.

Cattle entering Texas from foreign countries must obtain an "E" permit prior to entry. It is recommended that all female cattle between four and twelve months of age that are purchased or sold be officially vaccinated.

No comments were received regarding adoption of the amendment.

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

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 June 23, 1994

TRD 9443454

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date July 22, 1994

Proposal publication date May 6, 1994

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

Chapter 41. Fever Ticks

• 4 TAC §41.2

The Texas Animal Health Commission adopts an amendment to §41.2, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3400)

The amendment is necessary to expand the tick quarantine line in Webb County. The double fence, which encompasses the H. B. Zachary Ranch, is no longer believed to be an effective barrier against the spread of ticks.

The H. B. Zachary Ranch, known as the Rancho Blanco, located south of Laredo will be included inside the permanent tick quarantine line.

No comments were received regarding adoption of the amendment.

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

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 June 23, 1994

TRD 9443451

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date July 22, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 719 0714

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

**Part III. Texas Alcoholic  
Beverage Commission**

**Chapter 35. Enforcement**

• 16 TAC §35.11

The Texas Alcoholic Beverage Commission adopts 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, and adding the new brewpub license to the section, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3873)

The justification for this section is to remove the prohibition of possession of bottle-capping devices

The section will allow possession of bottle-capping devices by retail license or permit holders, but will still prohibit their being used for any illegal purpose

No comments were received regarding adoption of the rule

The section is adopted under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage Code

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

Issued in Austin, Texas, on July 7, 1994

TRD-9443672

Doyle Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date July 28, 1994

Proposal publication date May 20, 1994

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

**Part VIII. Texas Racing  
Commission**

**Chapter 303. General  
Provisions**

**Subchapter F. Licensing Per-  
sons with Criminal Back-  
grounds**

• 16 TAC §303.202

The Texas Racing Commission adopts an amendment to §303.202, concerning guide lines for licensing persons with criminal backgrounds, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2813)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of licensees, patrons, and race animals will be secure

The amendment adds offenses to the list of crimes the Commission finds directly relate to the types of occupational licenses issued by the Commission and revises the chart that correlates the various types of licenses of the offenses

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §7.02, which authorizes the Commission to adopt rules specifying the qualifications and experience required for licensing, and Texas Civil Statutes, Article 6252-13d, which requires the Commission to adopt guidelines relating to criminal offenses and occupational licenses

The adopted rule implements Texas Civil Statutes, Article 6252-13d as it relates to the Texas Racing Commission

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

Issued in Austin, Texas, on July 6, 1994

TRD-9443692

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 791 8461

**Chapter 305. Licenses for  
Pari-mutuel Racing**

**Subchapter B. Individual Li-  
censes**

**Specific Licensees**

• 16 TAC §305.43

The Texas Racing Commission adopts an amendment to §305.43, concerning lessees and lessors of race animals, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2818)

The amendment is adopted to ensure the commission's occupational licensing program will operate efficiently and effectively

The amendment deletes the requirement that a lease for a race animal be in a format subject to Commission approval

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §7.02, which authorizes the Commission to adopt rules specifying the qualifications and experience required for licensing

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994.

TRD-9443693

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 791 8461

◆ ◆ ◆  
**Chapter 309. Operation of  
Racetracks**

**Subchapter B. Horse Race-  
tracks**

**Facilities for Horses**

• 16 TAC §309.152

The Texas Racing Commission adopts an amendment to §309.152, concerning the isolation area at pari-mutuel horse racetracks, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2818)

The amendment is adopted to ensure horses racing at Class 1 facilities will have quality care at an economical cost.

The amendment decreases from eight to four the minimum number of stalls required in the isolation area of a Class 1 racetrack

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443694 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

## Chapter 311. Conduct and Duties of Individuals

### Subchapter A. General Provisions

#### • 16 TAC §311.1

The Texas Racing Commission adopts an amendment to §311.1, concerning the applicability of Chapter 311 of the Commission's rules without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2819).

The amendment is adopted to ensure the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the provisions in Chapter 311 apply to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race.

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443695 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

#### • 16 TAC §311.2

The Texas Racing Commission adopts an amendment to §311.2, concerning the use of best effort in pari-mutuel races, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2819)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the section applies to include patrons and other people on the grounds of pari-mutuel racetracks and clarifies its applicability to pari-mutuel races

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD-9443696 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

#### • 16 TAC §311.4

The Texas Racing Commission adopts an amendment to §311.4, concerning prohibition of bribes relating to pari-mutuel racing, with-

out changes to the proposed text published in the April 19, 1994 issue of the *Texas Register* (19 TexReg 2819)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the section applies to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443697 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

#### • 16 TAC §311.5

The Texas Racing Commission adopts an amendment to §311.5, concerning illegal wagering at pari-mutuel racetracks and pari-mutuel wagering by certain licensees, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2819).

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the prohibition of illegal wagering applies to include patrons and other people on the grounds of pari-mutuel racetracks. The amendment also deletes references to race-track and association officials to be consistent with other Commission rules

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting

racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, §11.04, which authorizes the Commission to adopt rules regulating wagering by occupational licensees, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD-9443698 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

◆ ◆ ◆  
• 16 TAC §311.6

The Texas Racing Commission adopts an amendment to §311.6, concerning the prohibition against improperly influencing the outcome of a race, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (13 TexReg 2820).

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure.

The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks.

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race.

The adopted rule implements Texas Civil Statutes, Article 179e.

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 authority.

Issued in Austin, Texas, on July 6, 1994

TRD-9443699 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

◆ ◆ ◆  
• 16 TAC §311.8

The Texas Racing Commission adopts an amendment to §311.8, concerning the prohibition against giving false information regarding a race animal's performance or eligibility, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2820)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD-9443700 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

◆ ◆ ◆  
• 16 TAC §311.9

The Texas Racing Commission adopts an amendment to §311.9, concerning the prohibition against giving false information to the commission or its agents, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2820)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and Government Code, §2001.004, which authorizes the Commission to adopt rules of practice for all formal and informal procedures

The adopted rule implements Government Code, Chapter 2001

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD-9443701 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461

◆ ◆ ◆  
• 16 TAC §311.10

The Texas Racing Commission adopts an amendment to §311.10, concerning the conduct of individuals on association grounds, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2821)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the requirements apply to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14.03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443702 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794 8461



#### • 16 TAC §311.11

The Texas Racing Commission adopts an amendment to §311.11, concerning the prohibition against possessing weapons on association grounds without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2821)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment expands the group of people to whom the prohibition applies to include patrons and other people on the grounds of pari-mutuel racetracks

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety, and §14 03, which authorizes the Commission to adopt rules to prohibit the illegal influencing of a race

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD-9443703 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461



## Subchapter B. Specific Licensees

### Licensees for Horse Racing

#### • 16 TAC §311.157

The Texas Racing Commission adopts an amendment to §311.157, concerning the procedure for appointing a substitute trainer, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2822)

The amendment is adopted to ensure that the integrity of pari-mutuel racing will be assured and the health and safety of occupational licensees, patrons, and race animals will be secure

The amendment requires the substitution to be approved by the Commission

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443704 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794-8461



## Chapter 313. Officials and Rules of Horse Racing

### Subchapter A. Officials

#### General Provisions

#### • 16 TAC §313.1, §313.2

The Texas Racing Commission adopts amendments to §313.1 and §313.2, concerning the officials at horse racetracks, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2822)

The amendment is adopted to ensure that the Commission's rules are consistent with state law, are more easily understood by licensees, and are more effectively enforced

The amendments eliminate the distinction between racetrack and association officials, thereby making all officials racetrack officials

No comments were received regarding the proposal

The amendments are adopted under Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §3 02, which authorizes the Commission to adopt rules specifying the authority and duties of each official, and §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety

The adopted rules implement Texas Civil Statutes, Article 179e

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 authority

Issued in Austin, Texas, on July 6, 1994

TRD 9443705 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date August 1, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 794 8461



## Subchapter A. Officials

### Duties of Other Officials

#### • 16 TAC §313.41

The Texas Racing Commission adopts an amendment to §313.41, concerning the duties of the racing secretary, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2822)

The amendment is adopted to ensure that the Commission's rules are internally consistent

The amendment deletes the reference to "association official" to remain consistent with other Commission rules

No comments were received regarding the proposal

The amendment is adopted under Texas Civil Statutes, Article 179e, §3 02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, §3 07, which authorizes the Commission to adopt rules specifying the authority and duties of racetrack officials, and §6 06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety.

The adopted rule implements Texas Civil Statutes, Article 179e

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 authority



Issued in Austin, Texas, on July 6, 1994.

TRD-9443706 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: August 1, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512)  
794-8461

◆ ◆ ◆  
**Chapter 321. Pari-mutuel  
Wagering**

**Subchapter C. Simulcast Wa-  
gering**

**Simulcasting at Horse Race-  
tracks**

• **16 TAC §321.234**

The Texas Racing Commission adopts an amendment to §321.234, concerning the allocation of purses and funds from simulcast wagering for Texas Bred Incentive programs, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2823)

The amendment is adopted to ensure that the horse breeding industry in Texas will be enhanced, thereby enhancing all supporting and collateral agricultural industries

The amendment requires an association that sells a simulcast signal to an out-of-state receiving location to set aside for Texas Bred Incentive programs at least 10% of the gross amount paid for the signal.

No written comments were received regarding the proposal. Representatives from the Texas Horsemen's Benevolent and Protective Association, the Texas Thoroughbred Breeders' Association, the Texas Quarter Horse Association, Sam Houston Race Park, and Retama Park spoke in favor of the amendment at the commission meeting held on June 27, 1994. A representative from Lone Star Park asked the commission to defer consideration of the amendment until a later date.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of a racetrack to preserve and protect the public health, welfare, and safety; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adopted rule implements Texas Civil Statutes, Article 179e.

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 authority.

Issued in Austin, Texas, on July 6, 1994.

TRD-9443707 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: August 1, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512)  
794-8461

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**

**Part XXV. Structural Pest  
Control Board**

**Chapter 591. General  
Provisions**

• **22 TAC §591.11**

The Structural Pest Control Board adopts an amendment to §591.11 without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1765)

The justification is the rule will reduce abuse of the administrative hearing process.

The rule allows the cost of hearing to be assessed as penalties on requestors who then fail to appear.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control 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 June 20, 1994.

TRD-9443174 Benny M. Mathis, Jr.  
Executive Director  
Structural Pest Control  
Board

Effective date: July 20, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512)  
835-4066

◆ ◆ ◆  
**Chapter 593. Licensing**

• **22 TAC §593.5**

Structural Pest Control Board adopts an amendment to §593.5 without changes to the proposed text as published in the March 22, 1994, issue of the *Texas Register* (19 TexReg 2048).

The justification is the rule gives noncommercial employees greater opportunity to become fully licensed applicators.

The rule allows noncommercial technicians with specified experience to take the noncommercial applicator examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control 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 June 20, 1994.

TRD-9443176 Benny M. Mathis, Jr.  
Executive Director  
Structural Pest Control  
Board

Effective date: July 20, 1994

Proposal publication date: March 22, 1994

For further information, please call: (512)  
835-4066

◆ ◆ ◆  
• **22 TAC §593.6**

The Texas Structural Pest Control Board adopts an amendment to §593.6 without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1765)

The justification is the rule prevents abuse of expired licenses.

The rule requires return of any license for which there is a name or address change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control 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 June 20, 1994.

TRD-9443177 Benny M. Mathis, Jr.  
Executive Director  
Structural Pest Control  
Board

Effective date: July 20, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512)  
835-4066

◆ ◆ ◆  
• **22 TAC §593.24**

The Structural Pest Control Board adopts an amendment to §593.24 without changes to the proposed text as published in the March 22, 1994, issue of the *Texas Register* (19 TexReg 2048).

The justification is the rule clarifies requirements for course submission for continuing education.

The rule requires learning objectives as a part of the course submissions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control 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 June 20, 1994.

TRD-9443175

Benny M. Mathis, Jr.  
Executive Director  
Structural Pest Control  
Board

Effective date: July 20, 1994

Proposal publication date: March 22, 1994

For further information, please call: (512) 825-4066

## Chapter 595. Compliance and Enforcement

### • 22 TAC §595.3

The Texas Structural Pest Control Board adopts an amendment to §595.3 without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1765).

The justification is the rule clarifies when the technician training course is required for technicians.

The rule allows technician-apprentices to operate without physical supervision before they take the technician training course.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control 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 June 20, 1994.

TRD-9443178

Benny M. Mathis, Jr.  
Executive Director  
Structural Pest Control  
Board

Effective date: July 20, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 835-4066

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

##### Subchapter G. Hospital Services

###### • 25 TAC §29.609

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits an adopted amendment to §29.609, with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2826).

The section covers reimbursement methodology for disproportionate share hospital programs. Specifically, the section defines words and terms commonly used within the document; sets the conditions of participation; identifies qualifying formulas for determining disproportionate share status; establishes methods for reimbursement; allows for review of agency determination of eligibility that may be affected by the state's ongoing review of data elements used in the formulas for determining eligibility; and allocates disproportionate share funds held in reserve.

The amendment is adopted to clarify rules in response to questions from the public and as a result of the department's experience in operating the new program. Specifically, the amendment expands and clarifies definitions, conditions of participation, current administrative practices relating to low income utilization rates, agency determinations regarding data changes that may affect a hospital's eligibility, and the closure and loss of licensure/certification of a disproportionate share hospital. Also, the amendment includes guidelines for use when disproportionate share hospitals merge.

The department received no public comments during the comment period for these amendments. However, the department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

CHANGE: Concerning adopted subsection (b),(1), 4),(6),(10),(18), the department changed these definitions to read exactly as the definitions for disproportionate share hospital program rule read in Senate Bill 427.

CHANGE: Concerning adopted subsection (b)(18), two changes were made. The reference to the Maternal and Infant Health Improvement Act was deleted because the Act is obsolete. In addition, the last two sentences of the paragraph concerned calculating inpatient revenues and were found to be redundant. One of the sentences was deleted for clarity.

CHANGE: Concerning adopted subsection (b)(2), the definition of charity charges was inadvertently deleted. The department is retaining the definition.

CHANGE: Concerning adopted subsection (b)(15)-(16), the number of months after the end of the fiscal year for calculating total Medicaid inpatient days and total Medicaid inpatient hospital payments has been changed from ten months to nine months.

CHANGE: Concerning subsection (c)(5), the phrase "Or group of hospitals" has been added to the conditions of participation to clarify what is required of hospitals participating in the program.

CHANGE: Concerning subsection (d)(3), information concerning a hospital's low income utilization rate has been moved to this paragraph. The information was previously found in subsection (f).

CHANGE: Concerning subsection (g), language was changed for clarity and to correct redundancies.

CHANGE: Concerning subsection (h)(4), language was changed for clarity and accuracy.

The amendment is adopted under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

#### §29.609. Additional Reimbursement to Disproportionate Share Hospitals.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital fund. The single state agency or its designee establishes each hospital's eligibility for and amount of reimbursement as specified in this section. For purposes of Medicaid disproportionate share eligibility determination, a multisite hospital is considered as one provider unless it has separate Medicare cost reports for each site. To verify data referred to in this section, hospitals must allow state personnel access to the hospital and its records.

(b) Definitions. For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Charity care—The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent or providing, funding, or otherwise financially supporting health care services provided to financially indigent patients

through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(2) Charity charges (excluding bad-debt charges)—Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. The total inpatient and outpatient charity charges attributable to charity care do not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as, but not limited to, Health Maintenance Organizations (HMOs), Medicare, or Blue Cross. The amount of total charity charges must be consistent with the amount reported on the Texas Department of Health's (department's) annual hospital survey.

(3) Cost-to-charge ratio—Hospital's overall inpatient cost-to-charge ratio, as determined from its Medicare cost report it submitted for its fiscal year ending in the previous calendar year.

(4) Financially indigent—An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(5) Gross inpatient revenue—Amount of gross inpatient revenue (charges) reported by the hospital in the appropriate part of the Medicare cost report it submitted for its fiscal year ending in the previous calendar year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, and other revenue that is unidentified.

(6) Hospital eligibility criteria—The financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system includes income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system that sets the income level eligible for charity care lower than that required by counties under the Texas Health and Safety Code, §61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(7) Low-income days—Number of days derived by multiplying a hospital's total inpatient census days by its low-income utilization rate.

(8) Low-income utilization rate—The result of the following computation: ((Title XIX inpatient hospital payments plus total state and local revenue)

divided by (gross inpatient revenue multiplied by cost-to-charge ratio)) plus ((total inpatient charity charges minus total state and local revenue) divided by (gross inpatient revenue)).

(9) Medicaid inpatient utilization rate—Title XIX inpatient days divided by total inpatient census days.

(10) Medically indigent—A person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(11) Medicare inpatient utilization rate—Medicare inpatient days divided by total inpatient census days.

(12) Rural area—Area outside a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA). MSA and PMSA are defined by the Office of Management and Budget.

(13) Total inpatient census days—Total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year.

(14) Total inpatient charity charges (excluding bad debt charges) —Total amount of the hospital's charges for inpatient hospital services attributed to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period. The total inpatient charges attributable to charity care will not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross. The amount of total inpatient charity charges must be consistent with the amount reported on department's annual hospital survey.

(15) Total Medicaid inpatient days—Total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients entitled to Title XIX benefits. Total Medicaid inpatient days includes days with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31).

(16) Total Medicaid inpatient hospital payments—Total amount of Title XIX funds, excluding Medicaid disproportionate share funds, a hospital received for admissions during the latest available state fiscal year for inpatient services. Total Medicaid inpatient hospital payments includes payments associated with dates of

admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31).

(17) Total operating costs—Total inpatient operating costs of a hospital during its fiscal year ending in the calendar year before the start of the current federal fiscal year, according to the hospital's Medicare cost report (tentative, or final audited cost report, if available).

(18) Total state and local revenue—Total amount of state and local revenue a hospital received for inpatient care, excluding all Title XIX payments, during its fiscal year ending in the previous calendar year. Sources of state and local revenue include but are not limited to County Indigent Health Care, Chronically Ill and Disabled Children, Kidney Health Care, and tax funds. Sources of revenue that are not included in state and local inpatient revenue include but are not limited to Office of Substance Abuse Program, Ryan White Title II, Ryan White Title III, State Legalization Impact Assistance Grant, Civilian Health and Medical Program of the Uniformed Services, Medicare, and Medicare/Medicaid contractual funds and allowances. The department adjusts inpatient tax revenues for hospitals that report all of their tax revenues as inpatient revenue. To make adjustments, the hospital uses the appropriate parts of the Medicare cost report that the hospital submitted for its fiscal year ending in the previous calendar year.

(19) Urban—Area inside an MSA or PMSA.

(20) Weighted low-income days—Low-income days multiplied by an appropriate weighting factor.

(21) Weighted Medicaid days—Medicaid days multiplied by an appropriate weighting factor.

(c) Conditions of participation. Before the beginning of each state fiscal year, which begins September 1, the single state agency or its designee surveys Medicaid hospitals to determine which hospitals meet the state's conditions of participation. Hospitals must allow state personnel access to the hospital and its records to ensure compliance with the conditions of participation. Failure to meet all of the conditions of participation results in ineligibility for participation in the program. These conditions of participation do not apply to state-owned teaching hospitals as specified in §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals). The conditions of participation are as follows.

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

(5) Community health care assessment. Each hospital, or group of hospitals, must annually furnish to the state Medicaid director a copy, developed at the direction of the hospital's governing board, of its assessment of the health care needs of its community. The assessment must contain a socioeconomic and demographic description of the hospital's service area and an assessment of the service area's existing health care resources. The assessment must demonstrate how the hospital is using its disproportionate share funds to address its community health needs. Exceptions: State mental hospitals and state chest hospitals are exempt because their expenditures are governed by state law.

(6) Alternative access to primary care. Each hospital must annually report to the state Medicaid director the availability of alternative access (other than emergency care) to primary care in its community. Alternative access to primary care includes, but is not limited to, primary care physician offices, minor emergency centers, and primary care clinics. Hospitals must have plans to arrange for nonemergency patients to receive care that is not in their emergency rooms, unless they can demonstrate that there is no feasible alternative in the community. This kind of plan includes, but is not limited to, a hospital-based clinic for nonemergent patients referred to after triage. Hospitals also must report their progress in treating nonemergency patients apart from their emergency rooms. Exceptions. The following hospitals are exempt from this condition: State mental and state chest hospitals; psychiatric hospitals licensed by the Texas Department of Mental Health and Mental Retardation (TXMHMR); and certain hospitals licensed as "special" by the Texas Department of Health (department) (i.e., long term care hospitals, ventilator hospitals, burn institutes, and alcohol-chemical dependency hospitals); rehabilitation hospitals; maternity hospitals; college infirmaries; contagious disease hospitals; and hospitals for the terminally ill

(7)-(9) (No change.)

(d) Qualifying formulas for determining disproportionate share status. The single state agency or its designee identifies the qualifying Medicaid disproportionate share providers from among the hospitals that meet the two-physician requirement and the state's conditions of participation, as specified in subsection (c)(1)-(8) of this section, by using the following formulas. In the case of hospitals that have merged to form a single Medicaid provider, the single state agency or its designee aggregates the data points from the individual hospitals that now make up the single provider to determine whether the single Medicaid provider qualifies as a Medicaid disproportionate share hospital. Medicaid disproportionate share hospitals receive payments if they merge with other hospitals

during the fiscal year, if they continue to meet the two-physician requirement, and if they meet the other conditions of participation. Children's hospitals that do not otherwise qualify as disproportionate share hospitals are deemed disproportionate share hospitals. The formulas are as follows.

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

(3) A low-income utilization rate exceeding 25% but not more than 100%. For a hospital, the low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated as follows:

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

(4) (No change.)

(e) (No change.)

(f) Reimbursing Medicaid disproportionate share hospitals. The single state agency reimburses Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Payments will be made in the following manner.

(1) (No change.)

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The single state agency weights each hospital's total inpatient Medicaid days and low income days by the appropriate weighting factor. The state defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs would receive weights based proportionally on the MSA population according to the 1990 United States census. MSAs with populations greater than or equal to 150,000, according to the 1990 census, are considered as the "largest MSAs." Children's hospitals also receive weights because of the special nature of the services they provide. All other hospitals receive weighting factors of 1.0. The inpatient Medicaid days of each hospital will be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund is divided into two parts. Two-thirds of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-third of the available fund will reim-

burse each qualifying hospital by its percent of the total low income days. Reimbursement for the remaining hospitals is determined monthly as follows.

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

(g) Review of agency determination. The single state agency or its designee notifies hospitals of their tentative eligibility or ineligibility and the estimated amount of payment before the beginning of the state fiscal year. Any hospital, including those hospitals that do not qualify or that contend the amount of payment is incorrect, is allowed to request a review by the single state agency or its designee. The actual amount of payment also may vary if a successful review request by one or more hospitals necessitates an adjustment in the amount of payments to the other hospitals in the program. Because of the state's ongoing review of data elements used in the formulas before the first monthly payment, it is possible that a hospital may either gain or lose eligibility after receiving tentative notification, which would also affect payment amounts.

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

(h) Disproportionate share funds held in reserve.

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

(4) If a hospital that is already receiving Medicaid disproportionate share funds closes, loses its license, loses its Medicare or Medicaid eligibility, that hospital's disproportionate share funds are reallocated among the remaining disproportionate share hospitals. If the hospital reopens, as the same hospital type, regains similar licensure or Medicare and Medicaid eligibility during the same fiscal year, that hospital receives monthly disproportionate share payments for the remaining months in the state fiscal year, as determined by the appropriate reimbursement formula and from available funds.

(i) (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 authority

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## Subchapter CC. Lone Star Select Contracting Program

### • 25 TAC §29.2801

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adopted new §29.2801, with changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 Tex. Reg. 2358).

The new section implements Senate Bill 79, 73rd Texas Legislature, 1993, which mandates medical assistance selective contracting for non-emergency inpatient hospital services. The department will have increased ability to assure adequate access to appropriate, high quality, cost effective services for all medical assistance beneficiaries; containment of overall expenditures for hospital inpatient services reimbursed by the Medical Assistance Program; and the facilitation of an orderly transition to a Medical Assistance Program design philosophy using an approach emphasizing primary care to minimize unnecessary use of hospital care.

Generally, the new section enables the department to contract selectively with hospitals for non-emergency inpatient services for Medicaid recipients, thereby improving the department's ability to act as a prudent purchaser of services and manage the program in a more effective and efficient manner. Specifically, the section includes its purpose, definition, and the department's requirements associated with the general design, proposal process for selective provider agreements, evaluation criteria and methodology, and the execution of provider agreements used in the selective contracting process.

The department received verbal and written comments from a total of 18 commenters. The department conducted a public hearing on the proposed rules on April 18, 1994. A summary of comments received and the department's responses are as follows.

COMMENT: Concerning the proposed rules in general, six of the commenters stated that while selective contracting could save the state \$35 million, it will result in the loss of an additional \$65 million in federal matching funds. The additional cuts which will be imposed on the hospital industry may discourage providers from participating in the Medicaid program.

RESPONSE: The department acknowledges the concern of the commenters but the legal mandates found in Senate Bill 79 and in Senate Bill 5, Article V, State Appropriations Act require the department to implement selective contracting in the Medicaid program.

COMMENT: Concerning the proposed rules in general, a number of commenters stated that the department should clarify how it will reimburse the hospitals (contracted and non-contracted) for services to patients who are admitted through the emergency room.

RESPONSE: The department agrees with the comment and has made the following changes to clarify how the department intends to reimburse contracted and non-

contracted hospitals for services to patients that are admitted through the emergency room. New subsection (h)(1) and (2) provides the clarification. Further clarifications of the reimbursement procedures for patients requiring transfer and/or hardship exemptions in non-contracting hospitals have been added in subsection (h)(2)(A) and (B).

COMMENT: Concerning subsection (b), one commenter requested that the department define "hardship exemption procedure."

RESPONSE: The department agrees and has added an appropriate definition.

COMMENT: Concerning subsection (b), one commenter requested that the department define "emergency inpatient services" and "non-emergency inpatient services."

RESPONSE: The department agrees and has added appropriate definitions.

COMMENT: Concerning subsection (b)(4), one commenter recommended that the term "adult psychiatric services" be replaced by the term "psychiatric services" because the proposed term is too restrictive.

RESPONSE: The department agrees and has removed the word "adult."

COMMENT: Concerning subsection (b)(9), one commenter stated that the term "health care provider" should be replaced with the term "hospital."

RESPONSE: The department disagrees. The definition of "health care provider" indicates that only hospitals providing inpatient services are affected by this rule. The department feels that the definition is sufficient as proposed.

COMMENT: Concerning subsection (c), one commenter has stated that the rule is unclear as to how and why the department will divide the market areas into two groups for solicitation purposes.

RESPONSE: The department has limited resources available to conduct the solicitation workshops and proposal analyses. The department will decide which markets to enter and when to enter them based on what the department deems to be the most efficient and cost-effective use of these limited resources. Dividing the market areas into two solicitations refers more directly to the timing of when the department sends out solicitation packages and then conducts workshops for hospitals interested in the LoneSTAR Select Contracting Program (i.e., 12 Metropolitan Statistical Area's (MSA's) in the middle of July and then 12 MSA's in the middle of August).

COMMENT: Concerning subsection (c)(2), one commenter suggested that requiring each hospital to submit a separate proposal in conjunction with its cooperative bid proposal is meaningless.

RESPONSE: The department disagrees. The provisions of subsection (c)(2) are designed to ensure that joint efforts by hospitals to submit cooperative proposals do not limit the department's ability to obtain independent, competitive proposals from each hospital applying for a selective provider agreement.

COMMENT: Concerning subsection (d)(2), one commenter questioned whether the department was suggesting that a selected hospital "provide care above its proposed level of services".

RESPONSE: The department needs the information to assess the capability that each hospital seeking a contract has to provide the necessary resources to provide care to its Medicaid eligible patients. The information will also be used to assure that the contracted network of hospitals will have a combined service capacity equal to at least 115% of the most recently available historic service volume experience for the market.

COMMENT: Concerning subsection (d)(2), one commenter requested that this paragraph be revised to protect the confidential nature of the data from all hospitals.

RESPONSE: The department does not believe the data it needs will require hospitals to submit data that is either confidential or proprietary in nature; however, the department will keep data confidential to the extent authorized by Senate Bill 79.

COMMENT: Concerning subsection (e), one commenter stated that the provision requiring hospitals to respond to the proposal package within one month is unrealistically short.

RESPONSE: The department, upon obtaining necessary federal waiver approvals, will transmit a solicitation package to each hospital in the market areas selected for the first round of contracting, following the process described in subsection (c)(1). Within seven days thereafter, the department intends to conduct workshops for potential submitters of proposals, at which department officials will answer questions about the LoneSTAR Select Contracting Program, and about the procedures established for submitting a proper application. Applications, for each of the markets selected for each round of contracting, will be due on a defined date that will be established in the solicitation package. As provided in this rule, that date will be approximately 30 days after the date of transmittal of solicitation packages to hospitals. Since the department will not require elaborate or lengthy proposals from hospitals, the department believes that this time frame should be more than adequate for hospitals to evaluate the information required to prepare and submit the required applications. As the majority of information the department is going to request was published in the waiver and/or included in this rule, hospitals may rely on that information if they wish to begin preparation of their applications prior to the release of the submission packages. Hospitals are particularly encouraged to consider the requirements of subsection (d)(6), which will require hospitals to offer evidence that the submission of a binding application for a selective provider agreement has been duly authorized by the corporate governance of the hospital.

COMMENT: Concerning subsection (e)(2), one commenter stated that the full disclosure of the evaluation criteria is essential in order to make the proposal process meaningful and to assure hospitals that the selection process will be fair.

RESPONSE: Subsection (e) describes the evaluation methodology to be employed, and provides a general description of the criteria that will be used to evaluate hospital submissions in each market. The solicitation packages that will be transmitted to hospitals under subsection (c) will provide an explicit listing of the criteria to be employed in evaluating hospital submissions in light of the department's requirements to ensure recipient access to services. The department does not, however, plan to disclose the scoring methodology that will be employed to evaluate each hospital's application against those criteria.

COMMENT: Concerning subsection (f), one commenter stated that the department should request a second proposal from all hospitals that submitted a proposal originally rather than allowing the department to selectively negotiate with individual hospitals.

RESPONSE: The department disagrees. The department maintains that it needs and has the flexibility to accept or reject any initial offer and to proceed to the negotiation phase, or any phase applicable in the rule, if it were in the department's best interest.

COMMENT: Concerning subsection (f), one commenter stated that the department should specify a time frame for the evaluation and negotiation process.

RESPONSE: The department will conclude the evaluation and negotiation process as quickly and efficiently as possible in order to fully consider all of the numerous factors and to implement selective contracting in each market.

COMMENT: Concerning subsection (f), one commenter stated that the rule should specify that the department will provide all applicant hospitals that are not awarded a contract with a full explanation of the reason(s) why the hospital was not selected.

RESPONSE: The department disagrees. Senate Bill 79 provides that upon completion of all negotiations and selection decisions, data submitted by hospitals, and the reimbursement terms arrived at between the department and each selected hospital, will be available for public inspection. The department believes that hospitals whose applications are not accepted will, under this requirement, have access to substantially more information about the reason for their non-selection than would be contained in the notice this commenter suggests.

COMMENT: Concerning subsection (f), one commenter suggested that the rule should provide an appeal process by which a non-selected hospital might question the department's rejection of its proposal.

RESPONSE: The department disagrees. The language of Senate Bill 79 makes no provision for an appeal process once negotiations have been completed and selective provider agreements have been executed.

COMMENT: Concerning subsection (g)(2), one commenter suggested that the rule be amended to make clear that any extension of any agreement with a selected hospital could be amended only on the mutual consent of both the hospital and the department.

RESPONSE: The department disagrees since the language of the rule is clear regarding the nature of the department's right to execute options to extend the contract. The pricing terms of the options will be negotiated with each hospital prior to execution of the initial selective provider agreement. The provisions of that agreement will govern any subsequent proposal by either party to amend any provision of the agreement affecting the terms under which the option would be executed.

COMMENT: Concerning the proposed rules in general, one commenter stated that in the department's request for federal waivers, the department states that it is seeking waivers "to enable the state to contract selectively with hospitals for non-emergency inpatient services." The department has now publicly stated its intention to selectively contract for all inpatient services for Medicaid recipients. This represents a substantial expansion of the selective contract program, an expansion not contemplated in the waiver request.

RESPONSE: The department disagrees. The waiver, page 4, states that: "Hospitals with contracts will be paid contract rates for all Medicaid recipients they treat as inpatients." As stated in both the waiver application and the proposed rules, however, restrictions on recipient freedom of choice of provider will be limited to non-emergency services only.

COMMENT: Concerning the proposed rules in general, three commenters stated the department should consider access and quality of care, beyond "minimally acceptable" standards, in assessing network combinations.

RESPONSE: The department agrees with the intent of this comment, and has designed its process to ensure that there will be no diminution in recipient access to high quality medical services. For the purposes of evaluation, however, the department finds it necessary to establish minimum criteria to ensure that this objective will, in fact, be met. It is these defined minimum criteria for service access to which the phrase "minimally acceptable" in the proposed rule refers.

COMMENT: Concerning the proposed rules in general, one commenter stated that the department should modify the rule to include evaluation of provider networks based upon participation by disproportionate share hospitals.

RESPONSE: The department disagrees with the specific approach recommended in the comment. The language of Senate Bill 79 requires the department to offer each disproportionate share hospital the opportunity to negotiate for a contract. The process established in this rule will, in fact, afford each disproportionate share hospital that opportunity. Under the federal rules for obtaining selective contracting waivers under §1915(b)(4) of the Social Security Act, the Health Care Financing Administration (HCFA) will not approve a selective contracting program that discriminates among providers on the basis of differing classes of providers.

COMMENT: Concerning the proposed rules in general, one commenter stated that the department should modify the rule to provide

that the department during its Phase Two analysis, rank networks on the basis of the number of participating disproportionate share hospitals.

RESPONSE: As noted in its response to the preceding comment, the department disagrees with this comment, since the department believes that the process established in this rule is fully consistent with both Senate Bill 79, and applicable federal law and regulations.

COMMENT: Concerning the proposed rules in general, three commenters stated that the proposed rules should be amended to designate a limited number of high volume disproportionate share hospitals as "essential community providers" (ECP's); and that the "essential community providers" then would automatically receive a contract.

RESPONSE: The department disagrees and will not designate hospitals as ECP's which must then be contracted within the selective contracting program.

COMMENT: Concerning the proposed rules in general, one commenter stated that in order to allow for a fair comparison of comparable standard dollar amounts (SDA's), teaching costs should be excluded from SDA's in evaluating proposed discounts. Selective contracting should not endanger or undermine the teaching mission of academic medical centers.

RESPONSE: The department disagrees that, for financial comparison purposes, teaching costs should be removed from the evaluation of the proposals. This type of proposal process would result in unnecessarily complex proposals and the same argument could be applied to every type of specialty care provided by any provider. The resulting implementation delays would diminish the program's ability to achieve the necessary savings.

COMMENT: Concerning the proposed rules in general, two commenters stated that there currently was a wide variation in the SDA's in each MSA that the department was contemplating entering; and that a hospital with a much smaller SDA might not be able to offer as large of a discount off their SDA as a hospital with a much larger SDA. As such, the department should not primarily consider the size of a hospital discount during the evaluation phase of the selective contracting process.

RESPONSE: The department disagrees with the specific recommendation of this comment. The department cannot ignore the magnitude of potential budget savings in selective contracting without violating the intent of Senate Bill 79. It should be noted, however, that the evaluation methodology described contained in this rule does not call for making decisions to include or exclude hospitals solely on the grounds of the percentage discount offered by a hospital. Rather, the department intends to select a network of hospitals which, taken together, offers the department the most cost-effective network of service providers consistent with the overall objectives of the Medicaid program.

COMMENT Concerning the proposed rules in general, one commenter stated that they felt it was not appropriate nor fair for large urban hospitals to be able to bid against a small rural hospital for the patients outside the urban hospital's MSA

RESPONSE. Nowhere in the rule does it indicate that an urban hospital will be allowed to submit a proposal against a rural hospital for the patients in a rural county

COMMENT. Concerning the proposed rules in general, two commenters stated that the outpatient reductions that have already been put in place by the program were creating disincentives for physicians to treat Medicaid recipients and that the new rule pertaining to selective contracting could adversely affect physicians willingness to continue to treat Medicaid patients

RESPONSE The department intends to retain most, if not all, of the physicians who are currently providing services to Medicaid recipients The department will be working with state medical associations and local county medical societies to provide information to all of the physicians in the communities affected by the new LoneSTAR Select Contracting Program A physician's ability to apply for hospital privileges must be maintained in accordance with any requirements mandated by the HCFA

COMMENT Concerning subsection (b)(5)(C), one commenter believes that the definition of "specialized services" should include "rehabilitation services and psychiatric services" for children and adolescents

RESPONSE. The department disagrees The department considers the rehabilitation services and psychiatric services offered by acute medical/surgical hospitals as normal services to be contracted for in the waiver Inpatient psychiatric services in freestanding facilities will be contracted for under a separate waiver

COMMENT Concerning subsection (b)(5)(A), one commenter stated the selective contracting should assure that hospital services are as conveniently located for Medicaid recipients as possible

RESPONSE. The department will apply reasonable access standards for Medicaid recipients when entering into selective contracting agreements with hospitals

COMMENT Concerning subsection (b)(5)(B), one commenter suggested that instead of basing future capacity on past usage, capacity should be defined and evaluated by the Medicaid Programs' actual need for hospital services in the market area The use of historical data paints an inaccurate picture of future hospital capacity because it does not account for changes in available hospital services in the market Accordingly, the department should review actual capacity - not past capacity

RESPONSE. The department disagrees The department will be considering the total service capacity in a market area and also the actual capacity available in the market through the receipt of offers from hospitals desiring to be in the program The depart-

ment believes utilizing data on historical usage patterns is sufficient for the LoneSTAR Select Contracting Program.

COMMENT: Concerning subsection (b)(5)(B), one commenter suggested an excess capacity of only 15% (115% total) is not enough to assure that Medicaid recipients have adequate access to in-patient hospital care. As such, the rule should be changed to reflect the combined service capacity to equal 300% of Medicaid recipients' need for hospital care in a market area.

RESPONSE: The department disagrees with the comment Given current projections of Medicaid program growth, hospital capacity greater than or equal to 115% of recent historic utilization appears to the department to be more than adequate to serve the needs of Medicaid recipients Should unanticipated program growth (e.g., the result of new federal eligibility mandates) result in a finding that the provider capacity actually selected in each market may not prove adequate, the process described in this rule provides the department with the flexibility to reopen the competition at the end of each contract year in order to obtain agreements with a wider network of providers

COMMENT: Concerning the proposed rules in general, one commenter stated that the rules should be changed to provide limited state action immunity from antitrust liability and joint bids should be encouraged.

RESPONSE: The department disagrees with this comment The rules do provide for joint bids in subsection (c)(2) and the department believes that no further encouragement is necessary Further, state law already provides for situations in which cooperative agreements among hospitals are considered lawful and not in violation of antitrust laws (See Health and Safety Code, §313.001 et seq.) Limited state action immunity from antitrust liability is not necessary or appropriate for this situation.

COMMENT: Concerning the proposed rules in general, two commenters suggested that the rules be changed to not allow the state to include contiguous counties surrounding an MSA because they felt this would limit the access of care for Medicaid recipients, that it could create such a healthcare vacuum that all patients located in these counties could experience a loss of access as the local hospitals could be forced to close their doors and physicians and other health care providers would possibly leave the area

RESPONSE The department disagrees In those markets (if any) where the department elects to expand the market area beyond the boundaries of an MSA to include contiguous counties, the evaluation methodology proposed in these rules would explicitly take into account the service needs of Medicaid recipients presently being served by hospitals located in such counties

COMMENT Concerning the proposed rules in general, one commenter urged that the proposed rules be amended so as to explicitly require that any contracting hospital must give an assurance that it will accept every Texas Medicaid recipient needing the hospital's services and seeking them

RESPONSE: The department currently expects hospitals to provide services to Medicaid recipients subject to capacity limitations and ability to provide services The department's "requirements for access to services" referenced in subsection (f)(2) includes that expectation. In addition, the department will require hospitals to provide assurances in their proposals, as required in subsection (d)(4), that the hospital will provide services to Medicaid recipients subject to capacity limitations and ability to provide the service Such assurances will be included in any provider agreement entered into with the hospital under selective contracting

COMMENT: Concerning subsection (b)(10) one commenter stated that nurse hotlines do not seem to be an appropriate Medicaid expenditure because it is not possible to determine if callers are Medicaid recipients The commenter wants the department to clarify whether it intends to finance nurse hotlines or if they are included in the proposed rules as an example of activities that the department may consider in evaluating selective contracting offers.

RESPONSE: The department intends to have optional volume management programs such as nurse hotlines be one of the items that will be considered in evaluating offers from hospitals

COMMENT: Concerning subsection (f), one commenter recommended that the department should evaluate the percentage of physicians who accept Medicaid and who have privileges at each hospital and include that measure as one of the evaluation criteria in determining which network of hospitals is chosen.

RESPONSE: The department disagrees The department believes that sufficient criteria are included in the rule to make informed decisions

COMMENT. Concerning subsection (f), one commenter suggested that the department evaluate how long Medicaid recipients must wait at each hospital to get services that Medicaid recipients use frequently and include that measure as one of the evaluation criteria in determining which network of hospitals is chosen

RESPONSE: The department disagrees The department believes that sufficient criteria are included in the rule to make informed decisions

COMMENT: Concerning the proposed rules, in general, one commenter stated that Medicaid recipients should not be required to travel more than 30 minutes for general inpatient hospital care and that standards may vary for specialized services because facilities are fewer and farther apart

RESPONSE: The department disagrees During the course of the development of the program implemented by this rule, the department considered, and rejected, access standards defined as maximum permissible travel times Instead, the department elected to judge the accessibility of each hospital's services to Medicaid recipients residing in each zip code area of the market based on empirical evidence that Medicaid recipients residing

in those zip code areas have, in fact, been served by that hospital. The department believes that this approach is more inclusive of all the factors that affect access to hospital services than an approach based solely on travel time. In particular, it takes into account those circumstances where Medicaid recipients face non-geographic barriers to care.

COMMENT: Concerning the proposed rules in general, one commenter stated that if a Medicaid recipient's provider certifies that contracting hospitals cannot provide care that a Medicaid recipient needs, the Medicaid recipient should be allowed to seek appropriate care at non-contracting facilities. Also, if appropriate care is not available within the market area, Medicaid recipients should be able to seek care outside of their market area.

RESPONSE: The department has a hardship exemption procedure that would allow a Medicaid recipient to seek non-emergency inpatient services at a non-contracted hospital if an undue travel burden will be experienced by the Medicaid recipient. The appropriate subsection to review is adopted subsection (h)(2)(B). Although the department anticipates that needed services will be available from contracting hospitals, if that is not the case, the hardship exemption for undue travel burden does include the situations referenced in the comment.

COMMENT: Concerning the proposed rules in general, one commenter stated that if a Medicaid recipient's provider certifies that contracting hospitals cannot provide timely care—even though they in theory can provide the needed service eventually—a Medicaid recipient should be able to receive care at a non-contracting hospital that can provide care in a timely manner.

RESPONSE: The department disagrees. While it is the desire to have services provided in a timely manner, circumstances which are out of the control of the department are constantly being experienced by providers which make some service delays unpredictable and/or unavoidable.

COMMENT: Concerning the proposed rules in general, one commenter stated that if a Medicaid recipient seeks care from a provider who does not have admitting privileges at an appropriate contracting hospital, the Medicaid recipient should be allowed to receive care at the non-contracting hospital where the physician can admit.

RESPONSE: The department disagrees. The department believes that concerns about hospital admitting privileges for Medicaid providers can be better addressed by a policy under which contracted hospitals would be required to accept applications for admitting privileges from Medicaid providers who meet the requirements of each hospital's medical staff by-laws for staff privileges. The department believes that this policy, described more fully in the department's federal waiver application, obviates the need for an exception based solely on physician staff privileges.

COMMENT: Concerning the proposed rules in general, one commenter suggested that the department establish a system to approve requests for non-emergency inpatient care at

non-contracting hospitals. The system should include an automatic approval if a denial is not received within 24 hours of the request for approval.

RESPONSE: The department disagrees. Additional explanation of the hardship exemption procedure can be found at subsection (h)(2)(B).

COMMENT: Concerning the proposed rules in general, one commenter recommended that the department require all selective contracting hospitals grant admitting privileges to any provider who accepts Medicaid.

RESPONSE: The department disagrees. Under Texas law, hospitals have an affirmative responsibility to create, or direct the creation of, medical staff credentialing requirements to meet their duty to ensure quality medical care to the public. The department believes that establishing contractual rules that would require hospitals to override those quality safeguards and admit all applicant physicians regardless of their qualifications would not be in the interest of Medicaid recipients, or other patients in the State of Texas.

COMMENT: Concerning the proposed rules in general, one commenter recommended that the department should require contracting hospitals to assist patients to apply for benefits to which they may be entitled.

RESPONSE: The department disagrees. All hospitals face significant financial incentives to ensure that uninsured patients who are eligible for medical assistance are enrolled in the Medicaid program, so that reimbursement for their services can be obtained.

COMMENT: Concerning the proposed rules in general, one commenter suggested that the department should require contracting hospitals to care for all Medicaid recipients who seek care at the facility unless a bed is not available or the hospital does not offer the needed service.

RESPONSE: The department currently expects hospitals to provide services to Medicaid recipients subject to capacity limitations and ability to provide the service. The department's "requirements for access to services" referenced in subsection (f)(2) includes that expectation. In addition, the department will require hospitals to provide assurances in their proposals, as required in subsection (d)(4), that the hospital will provide services to Medicaid recipients subject to capacity limitations and ability to provide the service. Such assurances will be included in any provider agreement entered into with the hospital under selective contracting.

COMMENT: Concerning the proposed rules in general, one commenter recommended that the department should not institute "caps" or limits on the number of reimbursable Medicaid patient days for each contracting hospital. Contracting hospitals should receive Medicaid reimbursement for needed inpatient services provided to any Medicaid recipient at any time, as long as the services are otherwise subject to reimbursement by the Medicaid program.

RESPONSE: The department agrees and has never intended that the program limit the

number of patient days that a hospital could provide or be reimbursed for, as long as the services rendered were otherwise reimbursable by the Medicaid program.

COMMENT: Concerning the proposed rules in general, one commenter suggested that the department should require all hospitals in market areas that received Hill-Burton funds to become selective contracting hospitals.

RESPONSE: The department will not make this a requirement. Many hospital's Hill-Burton obligations have long since been completed. Senate Bill 79 authorizes and directs a selective contracting program under which the department and hospitals would mutually agree to the terms and conditions of an agreement. The department has no authority to direct a hospital to offer a proposal, or to agree to particular payment terms, without its consent.

COMMENT: Concerning the proposed rules in general, one commenter stated that the department must make reasonable decisions about reimbursement to contracting hospitals for planned care and other hospitals for emergency care. Reimbursement should be sufficient to allow hospitals to remain Medicaid providers.

RESPONSE: The department agrees, and believes that the program implemented under this rule achieves the intent of this comment. By definition, the terms and conditions of a selective provider agreement will be established by mutual agreement between the department and each hospital. The department expects that hospitals will propose, and/or accept after negotiations, payment terms that are adequate to ensure their continued financial viability.

COMMENT: Concerning the proposed rules in general, one commenter suggested that the department and contracted hospitals should make coordinated, aggressive efforts to inform Medicaid recipients and providers about the new contracting hospitals and the purpose that they serve. As part of this effort, the department should develop a logo that easily identifies contracting hospitals.

RESPONSE: The department agrees with the intent of this comment. The department plans an active communication initiative designed to inform every Medicaid recipient and provider about the LoneSTAR Select Contracting Program. At the present time, the department has no plans to devise a logo to facilitate identification of contracted hospitals. It is expected that hospitals themselves will make active efforts to inform Medicaid recipients and other providers about their designation as participating providers.

COMMENT: Concerning the proposed rules in general, one commenter requested that the regulations should provide that non-contracting hospitals that admit Medicaid recipients in emergencies should provide care as required by the Emergency Medical Treatment and Active Labor Act and according to the state laws concerning emergency care.

RESPONSE: The department agrees. Nothing in the LoneSTAR Select Contracting Program will relieve any hospital in Texas of its duties to emergency patients under applica-



ble State laws. These rules prescribe requirements for handling emergency admissions at non-contracted hospitals that are fully consistent with all of these requirements.

COMMENT: Concerning the proposed rules in general, one commenter suggested that the department should incorporate much of the information that was included in the waiver into the rule.

RESPONSE: The department disagrees. Many elements of the department's waiver application to HCFA address issues at a level of detail that is inappropriate for a rule making designed to inform the public about the requirements of the program. In those instances where information elements in the waiver, as finally approved by HCFA, affect providers or patients, the department will undertake affirmative efforts, through amendments to its provider manuals and direct communications with Medicaid recipients, to inform such individuals regarding these elements of the program.

COMMENT: Concerning the proposed rules in general, one commenter stated the department should establish a valid method to study the quality of care that Medicaid recipients receive at contracting and non-contracting hospitals.

RESPONSE: The department agrees. The waiver application to the Health Care Financing Agency (HCFA) contains assurances that the department will actively monitor critical indicators of hospital performance under this initiative and take corrective action wherever quality problems are identified.

COMMENT: Concerning the proposed rules in general, one commenter recommended that the department should develop a system to evaluate the ongoing capacity and effectiveness of contracting networks. The department should regularly evaluate waiting times, number of requests for services at non-contracting hospitals, and the number/percent of physicians who accept Medicaid and who also have admitting privileges at contracting hospitals to determine if networks have adequate capacity. In addition, the department should require contracting hospitals to log all Medicaid recipients' complaints and forward complaint logs to the department for review. Further, the department should survey Medicaid recipients, physicians who care for them, contracting and non-contracting hospitals and key community leaders who are familiar with the needs of the Medicaid population in each market area. The surveys should inquire into satisfaction with the network system, problems and potential improvements.

RESPONSE: The department agrees and has provided assurances to HCFA that it will actively monitor hospital performance. Contracting hospitals will be required to maintain grievance procedures, and make available to the department evidence of how complaints are handled. HCFA may also commission, or require the department to commission, an independent program evaluation that would address many of the issues, such as the effects of the program on recipient satisfaction, of concern in this comment.

COMMENT: Concerning the proposed rules in general, one commenter suggested that due to the potential and unknown impact of selective contracting on the Medicaid popula-

tion, the department should implement the initiative in only one or two market areas at first. Cautious implementation will allow the department and others to assess the impact of selective contracting before implementation occurs in all major metropolitan areas in the state.

RESPONSE: The department disagrees. The provisions of Senate Bill 5, Article 5, State Appropriations Act require the department to undertake a selective contracting program of sufficient scope as to be able to achieve the budgetary targets for selective contracting established in that legislation. Limiting application of the program to only one or two markets would prevent the department from complying with this legislative mandate.

COMMENT: Concerning the proposed rules in general, one commenter requested a more clear definition of the Executive Oversight Committee and the role the committee was to perform in approving the contracts with hospitals.

RESPONSE: The department has clarified the role of the Executive Oversight Committee in subsection (b)(3) and (g)(1).

COMMENT: Concerning subsection (e)(1), one commenter requested a more clear description of what exactly would be considered as the release date as it relates in the following statement "Hospital proposals shall be due to the department within one month of the release of proposal packages."

RESPONSE: As indicated in subsection (e)(1), the department intends to send solicitation packages to hospitals in each market selected for selective contracting as soon as is practicable after HCFA approves the requested waiver. Those solicitation packages would, in significant part, establish a specific calendar date on or before which hospitals interested in applying for selective provider agreements must return applications for such agreements. As stated in this rule, the department intends to establish a date for submission of the required responses that provides a 30-day period, after the date on which the solicitation package is sent by the department to hospital, during which hospital may prepare their responses.

COMMENT: Concerning subsection (g)(2), one commenter wanted more clarification as to if a selective contract is not renewed, what are the capabilities of the hospital to continue under the original hospital provider agreement? What termination and appeal procedures will be used for selective contracts that are not renewed?

RESPONSE: Under the LoneSTAR Select Contracting Program implemented by these rules, hospitals whose contracts were not extended by the department would receive reimbursements in the manner provided under the State Plan in effect for the period following the period during which the hospital was bound by the selective provider agreement. Procedures to be followed in the event of contract termination will be established by the terms of the selective provider agreement, the department does not contemplate establishing any independent mechanism governing terminations or appeals. If the department

elects to continue selective contracting with other hospitals in that market, a hospital whose agreement had not been extended would become a non-contracted hospital within the meaning of this rule. In the event that the department elected to completely discontinue selective contracting in a market, however, recipient freedom-of-choice limitations would no longer apply to such a hospital.

COMMENT: Concerning the proposed rules in general, one commenter requested that the department review both the Federal and the state transfer laws and rules to make sure that the rules relating to selective contracting are written accordingly.

RESPONSE: The department has reviewed applicable state and federal laws and believes that the selective contracting program to be in compliance. Nothing in the selective contracting waiver and this rule is intended to modify existing legal requirements concerning transfer of Medicaid patients.

The department made minor editorial changes throughout the rule for clarification purposes. The following organizations provided comments on the proposed rules: Texas Association of Public and Nonprofit Hospitals, Texas Hospital Association, Texas Organization of Rural and Community Hospitals, Texas Rural League Aid, Inc., Texas Legal Services Center on behalf of the Houston Welfare Rights Organization, Parkland Memorial Hospital-Dallas, Providence Memorial Hospital-El Paso; AMI Park Plaza Hospital-Houston, Brackenridge Hospital-Austin; San Jacinto Methodist Hospital-Baytown; East Texas Medical Center-Athens; and Parkview Center-Houston. Several other individuals also provided written and/or oral comments, and while none of the commenters were against the rules in their entirety, they expressed concerns, questions, and made recommendations.

The new section is adopted under the Human Resources Code, §32.027 which provides authority for the adoption of rules on selective contracting, the Human Resources Code §32.021, and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate purchased health services programs and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

#### *§29.2801 Lone Star Select Contracting Process for Inpatient Hospital Services.*

(a) Introduction. This section implements the provisions of Senate Bill 79, 73rd Texas Legislature, Regular Session, 1993, mandating selective contracting for non-emergency inpatient hospital services.

(b) Definitions. The following words and terms, when used in this section,

shall have the following meanings, unless the context clearly indicates otherwise.

(1) Market area—A geographic subdivision of the State of Texas defined as a group of geographically contiguous counties in which the Texas Department of Health (department) determines that hospitals will be invited to apply for selective contracting agreements. In general, each Metropolitan Statistical Area (MSA) in the state will be considered for designation as a market area. Where warranted by historical patient migration patterns, the department may designate certain non-MSA counties that are geographically contiguous to an MSA to be included with MSA counties within a market area.

(2) Effective service area—For each hospital in a market area, the geographic area, as defined on a zip code basis, in which the hospital has historically provided inpatient hospital services to Medicaid patients. For purposes of subsection (f) of this section, the effective service area will be determined based on historical Medicaid inpatient claims data.

(3) Executive Oversight Committee—The executive committee established by the department to direct the selective contracting initiative.

(4) Hospital capacity to provide specialized service offerings—The presence or absence of specific hospital services, including but not limited to, trauma centers, burn units, neonatal intensive care unit services, and psychiatric services, that are required to be available in the market to ensure adequate access to quality care.

(5) Potential network—Any combination of applicant hospitals (whether the result of a joint proposal or determined by the department) that offer a:

(A) combined effective service area that provides geographic coverage of the market area to the same extent that coverage is provided under current practice;

(B) combined service capacity equal to at least 115% of the most recently available historic service volume experience for the market area, and

(C) combination of specialized services available within the market area that is at least as broad as the range of specialized services presently available to Medicaid recipients in that market area.

(6) Selective contracting—A method of contracting, granted through waivers of certain provisions of the Social Security Act, that allows the department to contract selectively with hospitals for non-emergency inpatient services, thereby im-

proving its ability to act as a prudent purchaser of services and to manage the Medical Assistance Program in a more effective and efficient manner, as required by Senate Bill 79.

(7) Selective provider agreement—An agreement which includes an amendment to a hospital's existing provider agreement with the department and involves selective contracting.

(8) Disproportionate share hospital—A hospital participating in the Medicaid program that, according to state Medicaid criteria, meets the conditions of participation and serves a disproportionate share of indigent patients. Additional requirements for disproportionate share hospitals are specified in § 29.609 of this title (relating to Additional Reimbursement to Disproportionate Share Hospitals) and §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals).

(9) Health care provider—Any hospital that is eligible to provide inpatient hospital services to Medicaid recipients.

(10) Optional volume management activities—Those activities that hospitals may propose to furnish to Medicaid recipients in a market area to expand access to primary care services and ensure more appropriate use of hospital facilities. Such activities may include, but not be limited to, furnishing ambulatory primary care clinic services to Medicaid recipients and furnishing nurse hotlines which Medicaid recipients may call to receive professional advice about the most appropriate means to obtain medical care.

(11) Hardship exemption procedure—A method for non-contracted hospitals to obtain prior authorization from the department to provide non-emergency inpatient services to Medicaid recipients who would experience an unreasonable travel burden under the LoneSTAR Select Contracting Program.

(12) Emergency inpatient services—An admission into a hospital with a diagnosis meeting the definition of a medical emergency.

(13) Non-emergency inpatient services—An admission into a hospital with a diagnosis not meeting the definition of a medical emergency.

(c) General design. The department shall select that subset of market areas that appears to indicate the most effective competition for selective provider agreements to serve Medicaid patients. The market areas shall be divided into two groups of solicitations that will avoid an overlap of contract evaluation and negotiation of solicitations.

(1) The department shall implement selective contracting by executing amendments to each hospital's existing provider agreement with the department. Hospitals that were not parties to provider agreements before implementation of the department's selective contracting are eligible to apply; however, they must enter into a provider agreement that ensures they are subject to all terms and conditions of the Medical Assistance Program. The amendments to the provider agreements, and the process by which the department solicited, evaluated, negotiated, and executed the amended agreements with hospitals under selective contracting are not subject to the laws and regulations governing acquisition of goods and services by state agencies.

(2) Hospitals shall be required to apply for selective provider agreements on an individual basis. Proposals by combinations of hospitals under common ownership in a market area shall be considered as individual proposals if the hospitals elect to apply on that basis. Proposals by combinations of hospitals in a market area that are not under common ownership will also be considered, provided that each hospital that is a party to a joint application in a market area also submits an independent application for a selective contracting agreement in that market area; and each such hospital provides written assurances that the terms of its individual proposal were arrived at independently without consultation with any other hospital or combination of hospitals, and have not been communicated to any competitor or group of competitors. The department does not intend any action by the State of Texas in the contracting process to require or sanction any form of communication or joint action by competitors in the market for inpatient hospital services (with respect to either individual or joint applications) that fails to comply with the provisions of this section.

(3) The department shall send solicitation packages, inviting proposals for selective provider agreements, to each health care provider serving residents of the counties selected for participation. Hospitals will be required at all times to be eligible to participate in the Medicare and Medicaid programs. Hospitals that are not sent solicitation packages for Medicaid recipients of a particular market will be able to request a package after demonstrating their intent to offer services to Medicaid recipients in those markets.

(d) Proposals for selective provider agreements. Hospitals seeking selective provider agreements shall be required to submit the following information in their proposals:

(1) a schedule of proposed payment rates to be applied to all covered hospital inpatient services during the term of the agreement;

(2) a proposed level of volume of services to Medicaid recipients that the hospital would agree to serve during the contract period (this proposed level shall serve only as an estimate of services to assist the department in evaluating the availability of services within the relevant market area; it shall not serve as a limit on the amount of reimbursable services to be supplied by a contracting hospital);

(3) data to assist the department in evaluating the effective service area and specialized service offerings of the hospital;

(4) assurances and certifications required to ensure hospital compliance with the requirements of Federal and Texas law and regulations, and the requirements of the department's selective contracting process;

(5) a narrative description of the proposed plans (if any) of the hospital to furnish optional volume management programs for Medicaid recipients; and

(6) evidence that the application of the hospital constitutes a binding quotation authorized by the corporate governance of the hospital.

(e) Evaluation of proposals for selective provider agreements. The department shall evaluate hospital proposals according to the following criteria.

(1) Hospital proposals shall be due to the department within one month of the release of proposal packages. All hospital materials submitted to the department during the proposal process, and materials developed by the department or its contractors during the course of evaluation and negotiation, shall be confidential until all agreements are executed for all market areas in the state.

(2) The department shall evaluate hospital proposals on a market-by-market basis and determine a negotiation strategy to pursue in each market area following its evaluation of all market areas. Based on the application of pre-specified evaluation criteria for each market area, the department shall prepare a recommended strategy for contracting in each market area. Each market area strategy shall be subject to approval by the Executive Oversight Committee established by the department.

(3) The department shall retain the option to make awards without negotiation. In some circumstances, the department may accept the proposals offered by every hospital in the market area. In most cases, however, the department expects to enter into negotiations with those hospitals whose proposals, taken together, appear to represent the best combination of providers consistent with the overall objectives of the Medical Assistance Program. After negotiation, the department reserves the right not to award an agreement in a specific market area. In most cases, however, the department shall proceed to finalize and execute agreements with some subset of the hospital

providers in each market area. In that event, coverage restrictions associated with the use of non-contracted hospitals by Medicaid recipients shall apply.

(f) Evaluation criteria and methodology. The department's evaluation of proposals for selective provider agreements for each market area shall be conducted in two phases. Phase One shall include determining minimally acceptable network combinations and Phase Two shall include cost evaluation. A description of each phase follows.

(1) In Phase One, the department shall enter the information included in hospital proposals in each market area into a personal computer based (PC-based) micro-simulation model designed to aid in the evaluation of the department's contracting options for each market. Data from hospital proposals shall be combined with data from the department's eligibility systems and claims processing records to construct the data base required for this phase of the evaluation. Each hospital's record in the data base shall contain information necessary to determine each hospital's:

(A) effective service area for Medicaid recipients in that market area; and

(B) capacity to provide specialized hospital services required by Medicaid recipients in the market area.

(2) The PC-based micro-simulation model shall be used to test all possible combinations of hospitals applying for selective provider agreements to determine potential networks that shall meet the department's requirements for access to services for Medicaid patients. Where hospitals have submitted a joint proposal for selective provider agreements, the department shall evaluate the proposed provider network and the proposed network in all possible combinations with remaining hospitals that submitted proposals.

(3) In Phase Two, each potential network shall be eligible for further consideration. If the Phase One evaluation fails to identify a potential network of applicant hospitals that meet the department's specified criteria, the department reserves the right to enter into direct negotiations with any hospital serving the market area. The purpose of these negotiations shall be to develop a minimally acceptable potential network, and allow the department to initiate negotiations with a hospital that failed to submit a proposal during the proposal period.

(4) In Phase Two, each potential network identified in a market area in Phase One shall be evaluated to determine the estimated reduction in program costs that

would result from entering into selective provider agreements with all of the hospitals in that potential network, while excluding all other hospitals from serving non-emergency cases. The department shall use the PC-based micro-simulation model to produce an estimate of the total change in Medicaid program costs that would result by entering into agreements with those hospitals during the base contract period. The estimate by the department shall consider:

(A) changes in unit prices to be paid to providers for inpatient services;

(B) changes in the distribution of service volumes (and case mix) across hospitals that would result from the reallocation of service volume from non-selected to selected providers; and

(C) savings in Medicaid program costs likely to result from the changes in service volumes induced by optional volume management activities proposed by hospitals, including both savings in aggregate hospital service use and offsetting increases in non-hospital service costs.

(5) The result of the evaluation by the department will be a range of values for each potential network. The ranges shall be constructed using best case, worst case, and expected value assumptions about the distribution of service volumes across hospitals in the network.

(6) Following the evaluation, the department shall prepare a recommendation to the Executive Oversight Committee that includes the outcome of both phases of the evaluation for each market area, as well as a proposed strategy for the department to meet the best interests of the Medical Assistance Program. Department options shall include:

(A) making an award without negotiations, including an award at the proposed price schedules to all hospitals in the market;

(B) entering into negotiations with hospitals in a single potential network to improve proposed pricing, if possible, and to finalize an agreement about key program features; or

(C) entering into negotiations with one or more hospitals to influence the department's choice among multiple potential networks by lowering the pricing terms offered by individual hospitals. These negotiations may result in identifying a single potential network that would differ in its hospital composition from potential networks initially identified in Phase One.

(g) Execution of selective provider agreements. The department shall execute selective provider agreements at the conclusion of negotiations by:

(1) requesting applicants to submit a binding revised application including the terms and conditions agreed to during negotiations with the department. The best and final offer of each hospital shall be forwarded to the department for approval. The provider agreements shall be executed following the approval of the department, and

(2) structuring the agreements as one year amendments to the provider agreement of each hospital, with an option to the department of extending the amendments for up to two option years. The effective date of the reimbursement rates under the amendments may, by mutual agreement, be made retroactive to a date before the date of execution. At the conclusion of the first year, the department may adjust its exercise of options on a market-by-market basis so as to place the system on a three-year rolling system of renegotiations. If the performance of any hospital under the contract is considered unsatisfactory, however, the department may elect not to exercise any subsequent options, even if it exercised options with all other selected hospitals in the market.

(h) Reimbursement. Hospitals in MSA's where the LoneSTAR Select Contracting Program awards amended provided agreements will have their inpatient services reimbursed as follows:

(1) Hospitals awarded selective provider agreements will be reimbursed for all inpatient services (emergency and non-emergency) according to the proposed rates they submitted with their proposals or according to the final negotiated rates that all parties agree will serve as the reimbursement mechanism for all inpatient services rendered by the hospital.

(2) Hospitals not awarded selective provider agreements will be reimbursed for emergency inpatient services as currently stated in the State Plan until the patient is stabilized. After a patient is stabilized in a non-contracted hospital, inpatient services are no longer covered unless the non-contracted hospital receives an exception for the remaining number of days of stay required. A non-contracted hospital will not be reimbursed for non-emergency inpatient services to Medicaid recipients unless it receives a hardship exemption from the department. Further explanation of the payment methodology for emergency patients in non-contracted hospitals and the hardship exemption policy are as follows:

(A) After a patient is stabilized in a non-contracted hospital, after being admitted with a diagnosis meeting the definition of a medical emergency, addi-

tional inpatient services are no longer covered, unless the non-contracted hospital receives an exception for the remaining number of days required. Any and all DRG's with an average length of stay less than three days (72 hours) will be eligible to be paid the full reimbursement amount without an exception being granted. Any and all DRG's with an average length of stay in excess of three days (72 hours) will be eligible to be paid the full reimbursement amount without an exception being granted if the patient is stabilized and discharged home within 72 hours from the initial admission. If an exception is not granted by the department, the hospital will no longer be eligible to receive reimbursement for services rendered to the patient.

(i) A non-contracted hospital must contact the department prior to patient stabilization or as soon as is practicable after stabilization for determination of further reimbursable services provided by the non-contracted hospital.

(ii) If a non-contracted hospital does not contact the department before the patient is discharged, the non-contracted hospital will be reimbursed on a per diem basis as though the patient were transferred upon stabilization.

(I) The non-contracted hospital will not receive full reimbursement for the inpatient services rendered to the patient.

(II) The initial claim will be denied; the non-contracted hospital will then be required to submit a complete copy of the patient's medical record to the department or its designee.

(III) The department or its designee will determine when the patient was stabilized and establish a per diem reimbursement amount.

(iii) As in current policy, each case will continue to be subject to all utilization review criteria.

(B) Non-contracted hospitals will not be reimbursed for the non-emergency inpatient services provided to Medicaid recipients as stated in the current State Plan unless the hospital receives prior authorization from the department through a hardship exemption procedure. The hardship exemption procedure is developed for Medicaid recipients who might experience an unreasonable travel burden under the LoneSTAR Select Contracting Program. The exemption procedure requires the non-contracted hospital or the admitting physician to contact the department by telephone, facsimile or written communication and provide an explanation as to the particular circumstances that the department should be

considering in determining the prior authorization of the non-emergency inpatient service(s) being requested. The Medicaid patient can not be admitted for reimbursable non-emergency inpatient services unless a hardship exemption is granted by the department. In all circumstances, the Medicaid patient must be subject to an unreasonable travel burden under the Medicaid program for the request to be considered. The department will provide a decision on all requests for the hardship exemption procedure as soon as is practicable after receiving the request (usually within 36 hours). The department will contact the requesting non-contracted hospital or attending physician by telephone with the decision; and subsequently provide a written communication.

(i) The non-contracted hospital will be responsible for including the particular circumstances to be considered by the department in the patient's medical record; with this information being a permanent part of the medical record.

(ii) Should a medical condition develop or be discovered that necessitates a change in the original admitting diagnosis to a more severe diagnosis, which would require additional hospital services above and beyond the non-emergency inpatient services authorized through the initial hardship exemption procedure, any additional inpatient services rendered will not be covered unless the hospital receives an authorization for subsequent inpatient services to be rendered.

(I) Should an emergency medical condition develop or be discovered, the procedures for a non-contracted hospital providing emergency inpatient services as explained at subparagraph (A) of this paragraph must followed.

(II) Any emergency case in a non-contracted hospital with a normal DRG Length-of-Stay of 72 hours or less; or any normal DRG Length-of-Stay over 72 hours that is stabilized and discharged home within 72 hours from the initial admission will be granted an automatic exception.

(III) Should a medical condition develop or be discovered that necessitates a transfer of the patient to a contracted hospital, the non-contracted hospital will be reimbursed, utilizing the current transfer methodology.

(iii) As in current policy, each case will continue to be subject to all relevant utilization review criteria.

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 July 6, 1994

TRD-9443545 John T. Richards  
Assistant General Counsel  
Texas Department of  
Health

Effective date July 27, 1994

Proposal publication date April 5, 1994

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

## Chapter 41. Utilization Review Waiver for Utilization Review Procedures

### • 25 TAC §§41.102, §41.104

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts amendments to §41.102 and §41.104 without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2829)

The sections cover waivers for utilization review procedures. Specifically the sections cover the case selection process and the Texas Medical Review Program, and the diagnosis related group assignment for secondary diagnoses in newborns.

The amendments improve the sampling methodology for utilization review and conform to guidelines of the American Hospital Association.

The amendments include the Texas Medical Review Program which will review cases where admission denials for a given diagnosis-related group are 5.0% or greater. The amendments will also more closely follow Coding Clinic Guidelines published First Quarter 1994 by the American Hospital Association.

The department received one written comment on the proposed amendments during the public comment period.

**COMMENT** The commenter expressed concern that the proposed rules were not specific enough to communicate what conditions defined a normal newborn. The comment attempted to define, through examples, these conditions, however, the department believes that the comment did not address routine procedures that are disregarded for diagnosis related group assignment.

**RESPONSE** The department contends that the proposed wording is appropriate and adequate and made no changes as a result of the comment.

The comment was received from the Texas Hospital Association.

The amendments are adopted under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules

to administer the state's medical assistance program and is submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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

Issued in Austin, Texas, on July 6, 1994.

TRD-9443544 John T. Richards  
Assistant General Counsel,  
Office of General  
Counsel  
Texas Department of  
Health

Effective date: July 27, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512)  
338 6511

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 103. Procedural Rules

The Texas Natural Resource Conservation Commission (Commission) adopts the repeal of §§103.1-103.6, 103.11, 103.12, 103.21-103.24, 103.31-103.34, 103.41-103.66, 103.71-103.74, 103.81-103.87, and 103.91-103.94, concerning procedural rules of the former Texas Air Control Board (TACB), which continued in effect after that agency's merger with the Texas Water Commission (TWC) to become the Commission, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885).

The repeal of Chapter 103 was necessitated by the statutorily-mandated survival of the rules of both the TACB and the TWC upon the merger of the two agencies. The purpose of this refinement of the rules is to eliminate confusion and create one broad set of rules to cover the procedure of hearings under the enabling statutes of both former agencies. As a consequence, these changes are expected to aid in the speedy and orderly progression of hearings while preserving the due process rights of the parties.

A public hearing was held February 28, 1994, in Austin. The comment period closed on March 14, 1994.

There was no oral testimony given during the public hearing. However, the Commission received written testimony on the repeal proposal from two commenters, Brown McCarroll and Oaks Hartline and the Texas Chemical Council. The commenters took the position

that one rule from Chapter 103 should be retained, §103.33(b)-(d), and relocated to proposed new §263.37. Proposed §263.37 provides the criteria for determining an air hearing request while §103.33(b)-(d) is a process by which the Commission staff gathers information on hearing requests. The commenters suggested the proposed new section be changed by the addition of the text of the former TACB rule. The commenters suggested the retention and relocation would complete the new section by adding a necessary process.

The Commission disagrees and does not believe that the process described in §103.33(b)-(d) is necessary. Hearing requests in the consolidated agency are not determined by the staff but instead, by the Office of Hearings Examiners, and where appropriate, reviewed by the Commission.

#### General

### • 30 TAC §§103.1-103.6

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter.

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

Issued in Austin, Texas, on May 25, 1994

TRD-9443580 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: July 27, 1994

Proposal publication date February 8, 1994

For further information, please call (512)  
239-0615

#### Public Hearing—General

### • 30 TAC §§103.11, §103.12

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter.

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

Issued in Austin, Texas, on May 25, 1994.

TRD-9443579

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date February 8, 1994

For further information, please call (512) 239-1500

### Rulemaking Hearings

#### • 30 TAC §§103.21-103.24

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter

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

Issued in Austin, Texas, on May 25, 1994

TRD-9443578

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date February 8, 1994

For further information, please call (512) 239-0615

### Initiation of Other Than Rulemaking Hearings

#### • 30 TAC §§103.31-103.34

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter

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

Issued in Austin, Texas, on May 25, 1994

TRD-9443577

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call: (512) 239-0615

### Adjudicative Hearings

#### • 30 TAC §§103.41-103.66

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter.

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

Issued in Austin, Texas, on May 25, 1994.

TRD-9443576

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 239-0615

### Board Agenda

#### • 30 TAC §§103.71-103.74

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter

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

Issued in Austin, Texas, on May 25, 1994

TRD-9443575

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date February 8, 1994

For further information, please call: (512) 239-0615

### Miscellaneous

#### • 30 TAC §§103.81-103.87

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5,

§5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter.

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

Issued in Austin, Texas, on May 25, 1994.

TRD-9443574

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date: February 8, 1994

For further information, please call (512) 239-0615

### Alternate Dispute Resolution Procedures

#### • 30 TAC §§103.91-103.94

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission. The repeals are also adopted under the Health and Safety Code, Subtitle B, Chapter 382, §382.017, which authorizes the Commission to adopt rules consistent with that chapter.

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

Issued in Austin, Texas, on May 25, 1994

TRD-9443573

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date. February 8, 1994

For further information, please call: (512) 239-0615

### General Rules

#### • 30 TAC §§263.2, 263.25, 263.36, 263.37

The Texas Natural Resource Conservation Commission (Commission) adopts amend-

ments to §263.2 and §263.25 and new §263.36 and §263.37, concerning the procedure of hearings; specifically, providing for authority to the hearings examiners to align parties, set preliminary conferences and require preliminary orders, establish time for presentation and confine testimony to subjects within the jurisdiction of the Commission, and require transcripts. The rules are adopted with changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885).

The proposed changes are necessitated by the merger of the Texas Air Control Board and the Texas Water Commission in order to combine and refine the rules to meet the needs of a broad range of hearing types at the new agency. The proposed changes are consistent with current practices at the agency.

A public hearing was held on February 28, 1994, in Austin. The comment period closed March 14, 1994.

There was no oral testimony given during the public hearing. Written comments were received from the Texas Lone Star Chapter of the Solid Waste Association of North America, USA Waste Services, Inc., the City of Arlington, the City of Irving, the City of Garland, ASARCO, Inc., Texas Chemical Council, Valero Petroleum Company, Henry, Lowerre, Hess and Frederick, Kelly, Hart and Hallman, and Brown McCarroll and Oaks Hartline.

No written testimony was received regarding the proposed changes to §263.2 or §263.36.

Some commenters did not support adoption of §263.25(e) and challenged the basis for this rule. This provision states that in contested hearings expected to last three days or more, the applicant may be required by the examiner or the Commission to pay for the hearing transcript up front, subject to reimbursement from other parties upon assessment of costs. Two commenters stated that the Commission already has authority to assess transcript costs, that all parties benefit from transcripts, and that the result will be that applicants will pay the full cost in all hearings. One commenter suggested that it is arbitrary to impose this cost on applicants.

The Commission responds that in a lengthy hearing, a transcript provides a written record for the examiner to review in order to prepare the best proposal for decision; and the parties to prepare briefs and replies. The comment that the Commission already has the authority to assess transcript costs is correct (§263.25(d) and §263.27), and the addition of §263.25(e), which is not a mandatory provision, serves primarily to allow that the transcript be prepared early in the process so that it can be made available to the examiner and the parties prior to final Commission decision. Section 263.27(c) allows the parties an opportunity to present evidence and argument on this cost assessment. This provision is not changed. Examiners will—as they have in the past—assess costs if warranted. The effect of the rule relates more to the timing of the preparation of the transcript rather than putting an additional burden on any party.

Several commenters urged the deletion of §263.35. The proposed changes to §263.35 are withdrawn and this issue will be addressed in a subsequent rulemaking proceeding.

Section 263.36 is changed so that the process for appeal of decisions on air quality permits will generally conform to that of other program areas.

Several commenters urged the Commission to retain the rules in §103.33(b)-(d) relating to the reasonableness of the hearing request.

The Commission responds that the repeal of §103.33 is intended to make the procedures for determination on requests for hearings on air quality applications consistent with procedures in the other program areas. In doing so, the Commission does not forego the authority to inquire as necessary to make objective, reasoned decisions regarding the reasonableness of a hearing request.

One commenter opposed adoption of §263.37, a rule listing seven factors to be considered in determining the reasonableness of the hearing request on air quality permit applications, stating that it provides no guidance, and that the factors have been inconsistently applied and improperly used by the Commission to deny hearing requests. Further, the commenter stated that application of the §263.37 factors would result in denial of public participation in a hearing.

The Commission responds that the rule is intended to implement the statute by establishing objective criteria for determining whether hearing requests are reasonable. A request alleging potential adverse impact on the requestor will be evaluated fairly, and the request and not the requestor will be evaluated, except insofar as information about the requestor is relevant to the factors, e.g., the extent to which the requestor is likely to be impacted by the emissions and the project's location. According to one commenter, §263.27(1), whereby net emissions reductions is a factor to be considered, does not address net reductions due to combined facility expansion, where such proposals often involve complex issues deserving review. The Commission responds that all relevant facts will be reviewed to ascertain whether other factors or issues in such a case warrant a contested case hearing.

One commenter urged that §263.37(2)-(4) are of little value because they provide no guidance as to what significance and weight are to be given to each factor, and whether other factors can be more or less important in the determination.

The Commission responds that the factors are of value in making a determination regarding an air quality hearing request, as they provide guidance regarding relevant issues that should be considered.

Several commenters noted the omission of the word "air" in §263.37(5), a provision that contains factors relevant only in the decision to grant or deny a hearing request for air quality permits. The Commission has corrected the rule in accordance with these comments and added the word "air."

One commenter stated that §263.37(5) requires speculation in determining the requestor's motivation, and could lead to harassment of persons in the guise of determining motivation. In response, the Commission intends §263.37(5) for use only where it may be determined that the sole motivation for the hearing request is unrelated to air pollution concerns. The Commission has reworded the rule accordingly.

One commenter objected to §263.37(6), stating that any person alleging air pollution impacts has a right to prove that interest, and that it is improper to have the Commission decide, without calling a contested case hearing, whether to allow the person to present evidence of a justiciable interest.

The Commission responds that such a hearing would be necessary only to resolve disputed facts.

One commenter argued that §263.37(7) provides no guidance on the underlying issues regarding the applicant's compliance history. This commenter states that this factor does not go to the issue of whether a request is reasonable.

In response, the Commission believes that if there is a known compliance history, it is a factor which should be considered along with all the other factors in deciding whether to call a hearing.

The amendments and new rules are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its power and duties under the code and other laws of this state and to establish and approve all general policy of the Commission.

*§263.2. Powers of the Examiner.* The presiding examiner shall have authority to do the following:

- (1) set hearing dates,
- (2) convene the hearing at the time and place specified in the notice for the public hearing;
- (3) establish the jurisdiction of the Commission concerning the subject matter under consideration,
- (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (5) designate and align parties and establish the order for presentation of evidence;
- (6) administer oaths to all persons presenting testimony,
- (7) examine witnesses,
- (8) issue subpoenas when required to compel the attendance of witnesses, or the production of papers and documents related to the hearing,
- (9) commission and require the taking of depositions, to compel other forms

of discovery in accordance with these sections, and to issue sanctions under these sections for noncompliance with discovery rulings;

(10) set prehearing conferences and require prehearing orders;

(11) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of presentation without prejudicing any rights of parties to the proceeding.

(12) limit testimony to matters under the Commission's jurisdiction;

(13) recess any hearing from time to time and from place to place;

(14) reopen the record of a hearing, prior to issuance of a proposal for decision, for additional evidence where necessary to make the record more complete; and

(15) exercise any other appropriate powers necessary or convenient to carry out his or her responsibilities.

#### §263.25 Requests for Hearings Reporter Services

(a)-(d) (No change)

(e) In hearings expected to last three days or more, the applicant may be required to pay for the transcript up front, by the hearings examiner or the Texas Natural Resource Conservation Commission, subject to reimbursement from other parties upon assessment of costs

#### §263.36 Appeal of Air Quality Permits.

(a) Any person, including the applicant, affected by a decision of the executive director made under the Texas Health and Safety Code, §§283.051-382.055, may appeal any such decision to the Texas Natural Resource Conservation Commission (Commission), with the exception of a decision regarding a federal operating permit, not later than the 30th day after the date on which notice of the decision was mailed. Any person filing an appeal under this section must identify with specificity the issues that form the basis of the appeal.

(b) The Commission, at the hearing held to consider the appeal, may take appropriate action, including:

(1) affirm, modify, stay, or reverse the executive director's decision;

(2) remand the matter to the Office of Hearings Examiners for an evidentiary hearing;

(3) remand the matter for alternative dispute resolution or mediation;

(4) remand the matter to the executive director; or

(5) continue the matter to a future date.

(c) A decision made by the executive director, including a permit issued by the executive director, is not affected by the filing of an appeal under this section unless expressly so ordered by the Commission. A final order by the Commission reversing or modifying the executive director's decision takes effect when it becomes final and appealable.

§263.37. *Factors for Consideration in Calling Air Quality Hearings Prior to Issuance of Permit.* Upon receipt of a request for an air quality hearing prior to issuance of a permit, the Office of Hearings Examiners shall consider at least the following factors in determining whether to grant a request for such hearing:

(1) whether the project is an emissions reduction project including

(A) whether there are no increases in emissions of any contaminants and the reduction project is not driven by a non-compliance situation; and

(B) whether the project will have both emission reductions and incidental increases where the net effect is an emission reduction;

(2) whether the project is mandated by Texas Natural Resource Conservation Commission rule;

(3) the location of the proposed project;

(4) whether the applicant requests authority to substitute an equivalent or more efficient control device;

(5) whether the request for a contested case hearing is based solely on something other than concerns about air pollution;

(6) the extent to which the person requesting a hearing is likely to be impacted by the emissions; and

(7) the applicant's compliance history.

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 25, 1994

TRD-9443572

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: July 27, 1994

Proposal publication date: February 8, 1994

For further information, please call. (512) 239-0615

## Chapter 265. Procedures Before Public Hearing

### • 30 TAC §265.6, §265.20

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §265.6 and §265.20, concerning hearing procedures and matters preliminary to hearings; specifically, providing for additional prehearing conferences and allowing, within the reasonable discretion of the hearings examiner, admission of "new evidence" not previously disclosed during discovery procedures. Section 265.20 is adopted with changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register*. Section 265.6 is adopted without changes and will not be republished (19 TexReg 885)

The proposed changes are necessitated by the merger of the Texas Air Control Board and the Texas Water Commission in order to combine and refine the rules to meet the needs of a broad range of hearing types at the new agency. The proposed changes are consistent with current practices at the agency.

A public hearing was held on February 28, 1994 in Austin. The comment period closed March 14, 1994. Comments were received from the City of Arlington and the City of Irving.

No written testimony was received regarding the proposed changes to §265.6. The commenters stated that §265.20(c)(8)-(9) would authorize an examiner to impose two additional types of sanctions after finding a party has abused discovery. Both stated that the rule needs to be made clear that it is to allow a victim of discovery abuse to present such evidence or witnesses. The Commission concurs and amends the proposed rules as follows. §265.20(c)(8) allows evidence to be introduced against a party abusing discovery which would otherwise be excluded for not meeting the deadline for exchange of such evidence. Section 265.20(c)(9) allows the testimony against a party abusing discovery which would otherwise be excluded for not meeting the deadline for listing potential witnesses.

The amendments are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its power and duties under the code and other laws of this state and to establish and approve all general policy of the Commission.

#### §265.20. *Sanctions for Failure to Comply with Discovery Ruling*

(a)-(b) (No change)

(c) If the presiding officer finds a party is abusing compelled discovery initiated pursuant to §§265.11(b), 265.16, or



265.19 of this title (relating to Compellable Discovery; Discovery of Documents and Things; or Requests for Information); (or the Administrative Procedure Act, the Government Code, Chapter 2001), in seeking, making, or resisting discovery, the presiding officer may do any of the following:

(1)-(7) (No change.)

(8) allow evidence to be introduced against a party abusing discovery which would otherwise be excluded for not meeting the deadline for exchange of such evidence; and

(9) allow testimony against a party abusing discovery which would otherwise be excluded for not meeting the deadline established for listing potential witnesses.

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 25, 1994

TRD-9443570 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: July 27, 1994

Proposal publication date. February 8, 1994

For further information, please call: (512) 239-0615



The Texas Natural Resource Conservation Commission (Commission) adopts new §§265.21-265.24, 265.26-265.35, concerning Special Procedures for Freezing the Process, §§265.36-265.49, concerning Discovery; and §§265.50, 265.51, 265.53-265.55, concerning Sanctions Sections 265.21-265.24, 265.26-265.29, 265.31, 265.33-265.34, 265.36-265.37, 265.42, 265.45, 265.49-265.55 are adopted with changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 763). Sections 265.30, 265.32, 265.35, 265.38-265.44, and 265.46-265.48 are adopted without changes and will not be republished. Sections 265.25 and 265.52 are withdrawn.

Current §§265.1-265.20 have been divided into Subchapters A and B, with Subchapter A, §265.1-265.9, entitled "General Procedures" and Subchapter B, §265.10-265.20, entitled "General Discovery Rules."

The rules as proposed in the February 4, 1994, issue of the *Texas Register* were based on recommendations of the Permit Hearing Task Force (Task Force), a group composed of attorneys, representatives for industry-related interests, individuals representing environmental interests and other interested persons. The purpose of the

revisions is to streamline and expedite the hearing process for complex cases, reduce the costs associated with the process and promote certainty and fairness in the process. The rules serve these goals by requiring parties to list and narrow issues during the discovery process, and by freezing the process prior to hearing. It is anticipated that generally the contested hearing process will take from 156 to 343 days. In some cases the process may take much less time. It should be noted that the longer time periods provided for in these rules are envisioned as the maximum time-frames in the most complex cases. It is anticipated that most cases will not require the maximum time allowable.

Most changes to text of rules as published in the February 4, 1994, issue of the *Texas Register* were made as a result of commentary. Other changes, however, were made by commission staff for an improved and fairer process, or to provide for internal consistency or for proper reference and grammar.

Comments were received orally or in writing from the following commenters: City of Arlington; Asarco; Texas Chemical Council; Texas Lone Star Chapter of the Solid Waste Association of North America; City of Brownwood; Brown McCarroll and Oaks Hartline; Citizens to Save Lake Waco; Kelly, Hart and Hallman; North Texas Municipal Water District; Waste Management of Texas, Inc.; USA Waste Services, Inc.; City of Garland; GASP; City of Wilmer; City of Carrollton; Henry, Lowerre, Hess and Frederick; Coastal Bend Council of Governments; City of Plano; Harris County Attorney Mike Driscoll; Texas Municipal League; City of Lubbock; City of Brownwood; Phillips Petroleum Company; Ladlaw Waste Systems, Inc.; City of Irving; City of Tyler; Texas Mid-Continent Oil and Gas Association; City of Beaumont; City of Argyle; Sanders, Mumm, O'Hanlon and Motley, and the Public Interest Counsel of the Texas Natural Resource Conservation Commission.

Comments received regarding the overall effect of the proposed rules are as follows.

Many commenters voiced strong support in favor of streamlining the permit process and indicated that the proposed rules will improve the process. Such efforts may be especially critical once the State begins issuing Title V Clean Air Act permits, according to one commenter. One commenter noted that streamlining the hearing process will address concerns of all parties. On the one hand, according to one commenter, applicants have been concerned about proceeding in good faith to identify problems with their application and proposed facility, only to have a fatal issue raised at the last moment with no chance to respond. On the other hand, protestants have been justifiably concerned about exhausting their financial and other resources, only to see an application amended at the last moment to address issues known to the applicant from the beginning. The rule changes address both concerns.

Some commenters critiqued the option of freezing the hearing process under the proposed rules. Some commenters observed that the existing hearing process is complex and expensive, however, they also expressed concern about "Freezing the Process," as im-

posing new obstacles to the permitting of facilities such as municipal landfills. One commenter opposed the concept of freezing the hearing process because it could have the effect of requiring an applicant to pay costs to protestants in order to withdraw its application. Another commenter noted that the freezing process could cause delays and thereby cause excessive expense to applicants, especially in the highly technical area of municipal solid waste. The commission would note that the new rules and particularly §265.24 as now revised, are intended to streamline the hearing process and avoid costly delays.

Some commenters praised the existing hearing process which has allowed amendment to an application throughout the hearing. They perceive that the new rules may lengthen the process and add risk such that companies will be discouraged from making applications. One commenter noted that Subtitle D (Federal Resource Conservation and Recovery Act (RCRA) issued by the EPA on October 9, 1991) currently provides for a reasonable freeze while not disrupting a process that can be enhanced to the benefit of the environment. Nor does Subtitle D, in its view, preclude improvements as they become available or known. The commission would note that these rules do allow for some amount of flexibility with regard to amendments and limit amendments where such amendments would be disruptive of the process.

Some commenters disagreed with the concept of streamlining the hearing process. Some opposed any acceleration of the process, which they believe could result in inhibiting effective public participation. They concluded that efforts to accelerate the hearing process could adversely affect persons not represented by an attorney. The commission intends that the new rules will apply fairly to all parties. Further, because the new rules bring greater certainty to the hearing process, participation will be facilitated.

Some commenters disagreed with the fiscal impact of the proposed rules, stating that rules which include three discovery periods could subject applicants to burdensome costs. One commenter recommended that the cost analysis should be re-evaluated and republished for comment, stating that applicants, especially small businesses, will experience increased costs.

The commission disagrees with these commenters and concludes that the revised rules will streamline the process and produce cost savings for all affected participants.

In §265.21, some commenters suggested that the provision allowing the examiner to include or exclude applications for "good cause" should be more narrowly defined. They added that the term "lack of complexity" should also be defined. They also suggested that permit hearings be exempted from this rule if the number of parties is small or, added two commenters, where technical issues are relatively straightforward. It is finally suggested that §265.21(b) delineate the specific rules that do not conflict with Subchapter C, particularly any procedural rules dealing with discovery.

The commission responds by amending the rule to clarify the applicability of the subchapter, and by preserving the provision allowing the examiner to include or exclude applications for good cause.

Some commenters provided opinions on proposed §265.22(a)(1) which requires the executive director to develop an initial position on the application and also to specify in a separate document any provisions that are different from those espoused in its initial position. Many of these commenters recommended that the rule explicitly state that all parties may offer evidence in support of or in opposition to such provisions, which resemble special provisions. Certain commenters expressed concern that the rule allows the executive director to take a position on a permit and still reserve his right to make a final decision after all evidence is heard.

Another commenter noted that this paragraph also seems to require the executive director to prepare a permit even if he is recommending denial. The commenter recommended that the rule require the executive director to prepare an "initial draft recommendation" rather than a "proposed permit."

Another commenter suggested that §265.22(a)(1), which requires the executive director to issue a document summarizing the basis for his position if his recommendation is that a permit be denied, be clarified to require the executive director to either issue a draft permit or a statement denying the application once the application is deemed technically complete. The commenter further favored explicit language that issuance of a draft permit is not an endorsement of the application by the executive director.

The commission responds that because the executive director must tender special provisions prior to commencement of the procedural schedule and hearing on the merits, any proposed special provisions are thereby subject to discovery and evidence during the hearing process. The intent of the rule is that the executive director will take a position insofar as possible after technical review and prior to commencement of the hearing. Should the executive director subsequently change his position, the executive director is required to timely notify all parties on the record or in writing and the other parties are afforded an opportunity to respond.

Regarding the comment that the rule should require the executive director to issue a draft permit or issue a statement declining to issue a permit, the commission disagrees. The rule provides for the preparation of a proposed permit that is based on the contents of the application submitted. The proposed permit is to be prepared based on the application and may or may not, depending on the circumstances, embody the position of the executive director. In any event, the executive director's position will be made clear so that all parties understand whether the executive director's initial position is to issue the permit, issue the permit with additional or different permit provisions or deny the permit.

Several comments were received regarding §265.22(a)(2), providing that the executive director may change his position based on evidence or other new information. One commenter noted that the executive director should be allowed to change his position if environmental and public health concerns are rethought and greater risks perceived as well as for "new" information, as currently provided for in the rule.

Some commenters requested that "timely" notification of a change in the executive director's position be more clearly defined. They suggested that an applicant be allowed to respond to changes in the executive director's staff position with revised proposed findings of fact and, if appropriate, a major amendment or a proposed special permit provision. Further, they proposed that the executive director be allowed to change position only for good cause.

The commission believes that the rule's provision authorizing the executive director to change his position based "on evidence or other new information" allows for a change in position if environmental and public health concerns are rethought and greater risks perceived. TNRC notes that the term "timely" as used in the rule is sufficiently clear. The commission believes that allowing the executive director to change position for "good cause" may broaden the rule rather than restricting its use.

The commission agrees that all parties should be kept abreast of the executive director's position during prehearing discovery where there is opportunity for amendment. To this extent the commission adds language to §265.23 related to first preliminary hearing, allowing the executive director to file responses or issues lists in accord with the time periods set out in §265.24.

Comments were also received on §265.22(b), which provides that the Public Interest Counsel shall comply with all time-frames and procedures required of protestants pursuant to this chapter. The commenters recommend that the Public Interest Counsel as a statutory party be given all rights afforded all other statutory parties.

The commission responds that this rule is promulgated only for procedural convenience and is in no way meant to abrogate any rights of the Public Interest Counsel. The commission has, however, amended §265.22(b) to provide that the Public Interest Counsel shall comply with all time-frames relevant to protestants, rather than just those required of protestants, unless otherwise determined by the examiner.

In connection with §265.23, some commenters noted that the rule may force parties immediately into discovery rather than allowing a period of time for mediation under Chapter 264. One commenter recommended a 21-day mediation period rather than the 45-day period currently provided for in Chapter 274. Some commenters further observed that mediation, in some instances, is an appropriate way to address issues without going to full hearing.

Two commenters state that the rule seems to be inconsistent with the recent practice of taking early jurisdiction over municipal solid waste applications. They claim that the taking of early jurisdiction may limit the amount of time to respond to reviewing agencies and force reviewing agencies to become parties to a hearing without the opportunity to adequately consider the application. Other commenters concurred, stating that jurisdiction should only be taken after an application is technically complete. The commission notes that the promulgation of these rules incorporates a process whereby jurisdiction is taken after technical review is completed.

Some commenters noted that no mention is made of the public meeting required by §3261.088(d) of the Texas Health and Safety Code.

The commission notes that the public meeting requirement contained in the Texas Health and Safety Code does not apply to all hearings held pursuant to these rules and therefore the provision will not be incorporated into these rules.

The commission also states that parties may engage in mediation from receipt of earliest filed protest letters and throughout the prehearing and hearing process. A formal provision within the rules for a 21-45-day period for mediation would be in conflict with the rules' purpose of streamlining the process. It is envisioned that the process may be abated on agreement of all parties for purposes of mediation and serious movement toward resolution of all issues in controversy.

In §265.23, where there were references to findings of fact, reference to conclusions of law has been added.

Many commenters provided opinions on §265.23(3), which has been redesignated as §265.23(4), recommending that an applicant should not be forced to incur the substantial cost of preparing proposed findings of fact prior to the jurisdictional hearing. They reasoned that this rule implies that a person requesting a public hearing will be able to prove standing. It is agreed that if no persons are admitted as protesting parties, then the applicant should not be forced to prepare proposed findings of fact. Some commenters concurred that applicants should submit proposed findings of fact later in the process, and emphasized that protestants may wish to have their own findings of fact. Three commenters state that they believe all findings of fact should be submitted after the evidence is heard.

Similarly, these commenters believe that §265.23(5), which has been redesignated as §265.23(6), unfairly requires applicants to identify witnesses at the jurisdictional hearing without any knowledge of the scope of the opposition to the application, potentially resulting in unnecessary costs to all parties. Accordingly, these commenters suggested that the deadline for the applicant to file its witness list should occur later in the process, at least after parties have been admitted.

The commission acknowledges that the applicant is required to prepare findings of fact and conclusions of law and identify witnesses at the jurisdictional hearing for applications proceeding under these rules. The commission notes, however, that these rules will generally apply to more complex cases and cannot be held to be applicable until invoked with reasonable notice. It is intended that reasonable notice that the application will proceed under Subchapter C of Chapter 265, will be provided prior to the jurisdictional hearing, where there is a large degree of certainty that the matter will go to the hearing. Otherwise, findings of fact and conclusions of law and witness lists will be required to be submitted only after the rules have been invoked with reasonable notice.

Many comments were received on §265.23(4), which has been redesignated as §265.23(5), which requires the applicant to identify at the First Preliminary Hearing what constitutes the application and to provide two copies for use by all of the protestants. One commenter argued that this section does not relieve the applicant of the responsibility to provide a copy of the application in a public location when filed.

Certain commenters stated that a copy of the application, each notice of deficiency by the executive director and the applicant's response to each notice should be provided to each protesting party (or representative of aligned protesting parties) and the Office of Public Interest Counsel. Another commenter maintained that a copy of the application should be provided to all protestants and one copy each should be provided to local governments within which the proposed facility lies.

The commission agrees that the rule in no way abrogates other statutory and regulatory requirements. The requirement of two copies for all protestants was negotiated in the Task Force as a reasonable requirement of the applicant.

In §265.24, where there were references to findings of fact, reference to conclusions of law has been added and various time-frames have been modified in order to streamline and expedite the process. Section 265.24(o) has been added, which provides for the sake of fairness that no party may raise new issues in its motion for rehearing, except those related to procedural irregularity or changed circumstance.

Many comments were received in reference to §265.25(b)(3) and §265.24. The rule originally provided for three discovery periods with the protestant identifying issues based on the proposed findings of fact submitted by the applicant on the last day of the first discovery period. Many commenters viewed §265.25, as originally drafted, as allowing protestants to intentionally delay raising new issues until the point at which the applicant's ability to respond is limited to "minor amendments." While §265.25 is now withdrawn, §265.24 now makes it clear that parties who do not identify issues, make amendments, propose findings of fact and conclusions of law or submit responses in accord with the schedules established under this subchapter and with the examiner's orders implementing it will be regarded as waiving the right to pursue them in an evidentiary

hearing conducted pursuant to this subchapter.

Section 265.24(d) and (i) have been amended to specifically address these concerns.

Four new subsections have been added to §265.24. The first new provision is §265.24(f), which requires protestants to submit a second list of issues on the last day of the third discovery period limited in scope to any amendments made by the applicant prior to the third discovery period. In turn, §265.24(g) allows the applicant to respond with a minor amendment upon a showing of good cause and by leave of the examiner.

To further ensure that parties raise issues in a timely manner as contemplated by these rules, the commission has added §265.24(o), providing that a party may not raise for the first time in motion for rehearing an issue not included in that party's issue list except for procedural irregularity or changed circumstance. As previously mentioned, §265.23(8) has also been amended to allow the examiner to set a procedural schedule for the executive director to file responses or issues lists in accord with the time period set out in §265.24.

Some commenters also took the position that Senate Bill 2 prohibits amendments "after the 31st day before the date on which a public hearing on the application is scheduled to begin."

In contrast, another commenter noted that the preamble to the rules should address the issue of §12.016 of the Texas Health and Safety Code, which precludes amendments of municipal solid waste applications within 30 days of hearing. The commenter asserted that the statutory prohibition does not apply to hearings held at the commission.

The commission responds that the provisions of these rules are not precluded by either Senate Bill 2 or §12.016 of the Texas Health and Safety Code.

One commenter reported its concern that the allowance for three discovery periods will cause needless and lengthy delays even where the protestant may have no factually-based concerns to bring before the hearing examiner. Another commenter maintained that proposed §265.24(j), which has now been redesignated as §265.24(n), authorizing the examiner to extend the time periods, has the effect of inhibiting the establishment of time limits or constraints. It argued that any option to extend may be abused over time once the means for getting extensions becomes known. Other commenters recommended that this section also, be modified to allow discovery periods to be shortened as well as lengthened for good cause.

In response, the commission amends §265.24(n) to provide that the time limits for scheduled periods may be, for good cause, "modified" rather than merely "extended" when the examiner determines that the complexity or lack thereof merits modification. This would mean that time-frames may be shortened as well as lengthened. In addition, the presumptive time limits have been reduced from 60-90 days to 30-80 days.

One commenter suggested that the first discovery period contained in §265.24, during which the applicant conducts limited discovery of the nature and funding of the protestant, should be carefully monitored so that applicants are prevented from using discovery to intimidate protestants.

The commission responds that it has more clearly defined the applicant's limited discovery of protestants in §265.36(a)(1) to avoid chilling effects on citizen involvement in the process.

Another commenter stated that §265.24(a)(2), which has been renumbered to §265.24(b), may result in requiring protestants to formulate, and later adhere to, a list of issues within 60-90 days after the jurisdictional hearing with no provision for amending the list of issues at any time.

In response, commission has amended §265.24 to provide for protestants' second list of issues on the last day of the third discovery period.

Another commenter stated that the rule as drafted does not make it clear that protestants may expand the issues beyond those raised by the applicant.

The commission notes that adopted §265.24(b) states, "In addition, on the last day of the first discovery period, protestants may also raise new issues and proposed findings of fact and conclusions of law."

One commenter believes that §265.24 may burden protestants, invade the attorney work product, and unconstitutionally invade a protestant's right of privacy where each protestant is to include a statement as to the basis of the protestant's dispute on each issue. The commission disagrees.

A commenter noted that several of the time periods established in §265.24 may be unworkable. The requirement that the applicant may amend its application and respond to issues raised by the protestants no later than the last day of the second discovery period, may mean, according to the commenter, that the applicant has less than the full discovery period to explore and evaluate the merits of the protestants' issues. Further, it is argued that proposal, requiring the third discovery period to begin immediately following the second discovery period, is inconsistent, which authorizes further technical review of amendments by the executive director.

The commission has amended §265.24(d) to conclude that the deadlines should remain as provided for in these rules, noting that the discovery periods are more than adequate and may be modified for good cause. If amendments require further technical review by the executive director, the schedule may be suspended by ruling of the examiner.

Many comments were received on §265.25(a)(1), now reorganized into §265.24(d), which provides that the applicant may amend its application and proposed findings of fact on the last day of second discovery period and the application may be subject to remand or additional notice. The commenters

assert that this provision should more specifically define the circumstances under which an application would be subject to additional notice. If the applicant's proposed change is a minor amendment, they argue that additional notice should not be required.

The commission concludes that language remain as drafted in current §265.24(d) to provide for all circumstances that may appropriately require further notice, regardless of whether there is a major amendment.

Three commenters suggested that the prehearing meeting required to be held within three working days of the conclusion of the third discovery period pursuant to proposed §265.24(d), now §265.24(h), occur seven calendar days after the conclusion of the third discovery period. In addition, the commenters believe that the rule should require parties to exchange exhibits at the prehearing meeting so that parties can prepare objections before the prehearing conference. Other commenters oppose the prehearing meeting as unnecessary.

The commission has amended proposed §265.24(e), which has now been redesignated as §265.24(h), to delete "prepared for submission of" and to add "bring for submission to the examiner and exchange among parties" to clarify that parties must exchange findings of fact, stipulations, and exhibits. The commission has also amended §265.24(h) to make the prehearing meeting discretionary among parties. Language has also been added to provide that if parties do not convene a prehearing meeting, they shall still exchange findings of fact, stipulations, and exhibits.

One commenter noted that protestants should not be required to submit exhibits at the prehearing meeting, since they do not have the same resources as sophisticated applicants.

While sympathetic to the limitations of protesting parties, the commission states that the hearings are legal proceedings in which all participants should be afforded due process and rules should be applied on a non-discriminatory basis.

A commenter requested clarification of the terms contained in §265.24(f), which has now been redesignated as §265.24(i), related to when objections to exhibits must be raised or timing of rulings on objection.

The commission has amended §265.24, which provides only that exhibits would be submitted and marked. Section 265.24(i)(2) now provides clearly that exhibits will be "offered and marked, and the examiner will rule on their admissibility insofar as possible." The last sentence of the rules has been changed and now provides that the examiner will incorporate all "rulings and determinations in a written prehearing order."

As previously discussed, proposed §265.25 has been withdrawn, but some of its provisions have been reorganized into §265.24.

Some commenters disagreed with the requirement in proposed §265.26(1) that the

applicant submit its witness list at the jurisdictional hearing. These commenters suggested that all parties be required to submit their witness lists simultaneously or, in the alternative, that protestants be required to submit witness lists much sooner than the end of the first discovery period as specified in §265.26(2), such as at least 15 days before the first discovery period is scheduled to end.

The commission responds that the plan for exchange of witness lists, findings of fact and issues among parties was carefully considered by the Task Force to provide for fairness and equity for all parties. The provision of witness lists by the applicant at the first prehearing conference is discussed earlier in these comments as it related to §265.23. It is not recommended that §265.26(2) be amended to provide for submission of witness lists sooner than the end of the first discovery period because the second discovery period is considered more than adequate time, up to 80 days, to depose witnesses and respond. The commission further notes that §265.26(4) allows any party to amend its witness list upon a showing of good cause. A provision has been added to allow parties to conduct discovery on newly added witnesses as authorized in subsections (1)-(3).

In response to concerns about whether the executive director, when it is the only protestant, is subject to the deadlines applicable to the executive director or the protestant, the commission notes that, under §265.21, applications may be excluded from applicability of this subchapter or any portion thereof by agreement of the parties with examiner approval or for good cause. This language would allow the examiner and parties to make necessary adjustments to the schedule or to exclude the application altogether from applicability when there are no protesting parties and when there is disagreement only between the executive director and applicant.

Comments were received on §265.26(3) and (4) expressing the view that the subsections need to be expanded beyond allowing other parties to conduct additional discovery if the applicant identifies rebuttal witnesses. Commenters suggest that the applicant should be allowed reasonable additional discovery if a witness is added by the protestants or executive director.

To provide for internal consistency, the commission deletes the last sentence of current §§265.26(1) and (2). It also revises the second sentence of current §265.26(4) to allow parties sufficient time, as determined by the examiner, to take discovery on newly added witnesses.

One commenter asked whether the executive director will continue to identify witnesses along with the applicant on the day that jurisdiction is established pursuant to §265.26(1) if there are no protestants or if the executive director is the plaintiff.

Section 265.21(a) states that this subchapter shall apply to permit hearings, consequently, the executive director would not be considered a "plaintiff" in any proceeding under Subchapter C. In accord with §265.23(b) the executive director will identify its witnesses at the first preliminary hearing.

Many commenters endorsed §265.27 allowing the examiner to reduce excessive numbers of witnesses, because of its effect of streamlining a costly process. Other commenters stated that caution should be exercised in the use of the rule to preclude violations of due process, and to assure that the record is fully developed. Accordingly, they recommend deleting the examiner's discretion to strike witnesses' testimony.

The commission notes that the rule allows the examiner to strike witnesses whose testimony would be unduly repetitious or irrelevant, or in order to render discovery and the hearing process manageable.

Comments were received regarding proposed §265.27. The rule as originally drafted allows rebuttal by the applicant as a matter of right and, if the executive director presents evidence that could not have been reasonably anticipated at the time the protestants presented their case, by protestants. One commenter recommended that the applicant be allowed rebuttal only when it can demonstrate satisfactorily to the examiner that it has exercised due diligence in discovery of all parties, but nonetheless suffered surprise by the evidence presented in the direct case of another party. In turn, rebuttal by other parties should be allowed if necessary to assure a fair hearing process. Another commenter stated that the protestant's rebuttal rights should not be contingent upon the executive director's presentation of evidence which could not have been anticipated at the time that protestants presented their case.

Section 265.28 has been modified to provide for a rebuttal case by parties other than the applicant in certain limited circumstances.

The commission amends §265.28(a) to provide that the applicant, as the party with the burden of proof, is the only party allowed to present a rebuttal case and that in all cases the applicant shall be allowed to close with its rebuttal. Subsection (b) adds that if a party can demonstrate that evidence was presented by another party which could not have been reasonably anticipated at the time that party presented its direct case, the party may present a rebuttal case upon leave of the examiner.

Some commenters disagreed with the requirement of proposed §265.29(a) providing that notice of intent to use prefiled testimony be given 60 days in advance of the hearing. They reason that it is unknown when the 60 days starts to toll, except after the second discovery period when the applicant must decide whether it will amend its application. The same commenters wished to have §265.29(b) amended to require prefiling of objections if prefiled testimony is required.

The commission responds with §265.29(a), now providing that if a party decides to prefile testimony it shall notify other parties on or before the last day of the second discovery period. The examiner may or may not require prefiling of objections to required prefiled testimony as appropriate.

Three commenters objected to the provision contained in §265.29(c) which limits

live presentation of prefiled testimony to introductory material, corrections to the prefiled testimony, and a brief summary of not more than ten minutes. These commenters believe that if overall time limits are set, each party should be allowed to use time as they see fit, and, in addition, the examiner may benefit by supplementation of live presentation from expert witnesses.

Another commenter generally opposed the use of prefiled testimony as too complex a tool for protestants and asks whether the limitation of 10 minutes for introductory material relative to prefiled testimony is for all prefiled or each prefiled testimony. Other commenters stated that they prefer live testimony within specified timeframes because prefiled testimony is a burden to protestants.

The commission responds by amending the rule to limit live presentation of prefiled testimony "as provided by the examiner within the scope of the original prefiled testimony. . . . Further, the timeframe for presentation has been extended to "generally . . . no more than 30 minutes for each witness."

One commenter expressed support for proposed §265.33 and §265.34, which potentially provide a penalty for uncooperative witnesses. Another commenter suggested that the "reasonably prudent person" standard rather than the "reasonably prudent man" standard be used in §265.34(b).

The commission amends the rule to substitute "reasonably prudent persons" for the "reasonably prudent men" standard in current §265.34(b).

A commenter objected to proposed §265.35 providing that the examiner may allow additional evidence to be offered at any time when it appears to be necessary to the administration of justice. The commenter stated that the rule as formulated will allow the tactic of withholding objections to the permit until after it is frozen and then bringing up the objection as a fatal flaw, putting the applicant in the position of having to anticipate any conceivable concern of the protestant.

The commission responds that the rule is intended to allow for circumstances in which the examiner may wish to call on the expertise of an additional objective expert witness or to allow for inquiry by the examiner regarding the matters about which the expert has testified.

With regard to §265.36, various timeframes have been modified in order to streamline and expedite the process.

Also, with regard to §265.36 one commenter noted generally that the structure of discovery periods may adversely affect applicants in the permitting process. Many commenters discussed the limitation for the first discovery period described in §265.36(a)(1), which provides that such period is reserved for the protestant's discovery from the applicant and the applicant's limited discovery of the nature and funding of the protestant. These commenters request that all parties should be allowed to request documents from all other parties in the first discovery period.

The commission responds that the first discovery period is designed to enable protestants to become familiar with the application drafted by the applicant and already reviewed by the staff.

Two commenters recommended that "limited" be deleted from proposed §265.36(a)(1) as it refers to applicant's right to conduct "limited discovery of the nature and funding of the protestant." These commenters noted that the rule limits the discovery of nature and funding issues instead of limiting discovery to nature and funding issues.

One commenter recommended, as well, that "nature" be defined in the rule to include the type of legal entity, its address, names and addresses of officers, directors, owners, and all members, ownership interests, articles of incorporation, bylaws, rules, regulations, minutes, resolutions, etc. Several commenters stated that they will not disclose the identities of individual members of their groups to protect privacy but will provide information that assures that such groups are not funded by competitors or polluters.

To make the intent of the rule clear, the commission amends §265.36(a)(1) to provide examples of the limited discovery intended and to state explicitly that discovery may be taken regarding whether source of funding is by a competitor.

Two commenters oppose the limitation of §265.36(a)(2)(B) providing interrogatories available to the applicant during the second discovery period shall be reduced by the number of interrogatories submitted during the first discovery period.

The commission declines to change the rule, as the purpose of limiting the number of interrogatories is to encourage the parties to focus on the contested issues.

Several commenters urged that §265.36(b)(3)(A) limiting depositions of the executive director to last a total of four hours, should be amended to limit depositions of the applicant and the protestant to four hours. One commenter suggested that the rule may interfere with certain rights of parties under the Texas Administrative Procedure Act. These commenters recommended that, instead of a time limit, the rule should authorize the examiner to limit the depositions of the executive director when necessary to avoid excessive expense to the commission and loss of staff time.

The commission notes that such limitations are included due to limited state resources and to ensure that staff of the executive director are available to pursue other permitting tasks and duties. Further, §265.36(b)(3)(F) provides that all of these requirements may be waived by agreement of the staff or by the examiner on a showing of good cause.

However, the commission removes the restriction that the executive director will be subject to depositions only under certain conditions by deleting the word "only" from §265.36(b)(3).

A comment was received that proposed §265.37(d) appears to conflict with

subsection 265.37(g) to require a party resisting discovery to file a motion for protective order in every instance, which seems inefficient and wasteful.

The commission responds by modifying §265.37(d) to add "a motion to compel" to "objection" and "motion for protective order" as not requiring a hearing to preserve error. Section 265.37(g) regarding discovery disputes merely indicates a process for responses and rulings to motions to compel and protective orders. It should be noted that to avoid unnecessary disputes in discovery and assist all parties to comply with the schedules, the Office of Hearings Examiners has proposed several forms. Disputes over access to confidential information and over entry to property have led to problems in past hearings. The examiners will encourage the use of the forms to avoid disputes, while allowing the parties to agree to alternative language or allowing any one party to seek alternative terms, for good cause.

A guidance form Protective Order will be available to any party seeking to maintain information confidential or seeking to review information claimed as confidential. A guidance form Agreement for Entry, together with a form Release and Indemnification documents, will likewise be available to facilitate such discovery. The forms are available now from the Office of Hearings Examiners. At hearings to take jurisdiction, notice of the availability of such forms will again be provided.

One commenter observed that there is an improper reference to "complex" hearings in §265.37(a).

The commission responds by deleting the reference in §265.37(a) and substituting "for hearings under this subchapter."

Three commenters stated that §265.37(b)(2) exempting the executive director and Public Interest Counsel of the commission from the requirement of producing certain materials for discovery if such materials are readily available in the commission's records, should be applicable to all parties.

The commission disagrees.

One commenter noted that the operation of §265.37(b)(3), regarding entry upon land, could have adverse effects to protestants. Another commenter advocated a limit to be imposed on the number of persons who may be given access to land, except for extraordinary circumstances.

The commission responds with the language added to §265.36(b)(3)(A) providing that the examiner may impose other reasonable restrictions on right to entry upon land as necessary.

Two commenters suggested that §265.36(b)(3)(A)(i) be clarified to state which party is releasing and which party is indemnifying.

The commission notes that the Agreement for Entry Upon Land executed by the parties will make this clear. Of further note is the fact that there is a guidance form for such agreement available in the Office of Hearings Examiners.

Two commenters asked that §265.36(b)(3)(B) be modified to require a parties to identify the types of samples, method and parameters of tests, in order allow the other parties an opportunity to timely replicate the tests.

The commission concludes that since circumstances may vary from site visit to site visit this issue should be left to the discretion of the examiner during the hearing.

A commenter stated that §265.37(f) regarding duty to supplement discovery requests, should be modified to state that supplementation shall be undertaken promptly but in any event by the close of the third discovery period

The commission declines to change the language of the rule in accord with this comment as the duty to supplement is ongoing

Two commenters objected to §265.37(f) regarding the duty to supplement no less than 30 days before the hearing, stating that it cannot be known when 30 days prior to the hearing will occur and that the deadline will fall within the third discovery period

The commission responds that because the examiner will at the jurisdictional hearing set a schedule for the entire hearing process, 30 days prior to the hearing can be determined in practice. It is preferable that supplementation fall within the third discovery period, a period within which the examiner can expand discovery in the interest of fairness

Comments were received on §265.37(g)(3), that parties should be allowed to seek certification of discovery orders requiring the disclosure of material for which a privilege has been asserted, as an erroneous ruling of that type cannot be rectified on appeal. Another commenter suggested that certification to the commission should be appropriate when irreparable harm could be shown

The commission responds that the rule is written benefits those parties seeking resolution of claims of privilege. Once the examiner has ruled, pursuant to the rule, the party has exhausted its remedies at the agency level on the issue and may seek relief in court

Two commenters suggested that §265.39 be amended to permit parties to produce voluminous documents exceeding 30 pages in length by making them available for inspection and copying at the mutual convenience of the parties and at the requesting party's expense

Three commenters requested that §265.39(a)(4) be amended to provided that documents shall be made available in the general vicinity of the proposed facility, unless otherwise agreed by the parties participating in production

The commission responds without change to the rule by noting that the commission intends for all parties to pay their own costs

Many commenters expressed concern about §265.39(a)(9) providing that the examiner may reasonably allocate costs associated with production, because they interpret the rule to require one party to pay the costs of reproducing documents requested by another party. Such a rule, they asserted, could penalize the applicant whose application is unjustifiably protested and could discourage protestants from focusing their discovery requests. The commenters recommended that the rule be amended to require the party requesting documents to pay costs and/or to require the examiner to reasonably allocate the costs among the parties seeking production. Some commenters stated that certain organizations' bylaws prohibit receiving payment for production costs by applicants

The commission responds by noting that it intends for parties seeking production to pay costs and, where necessary, for the examiner to reasonably allocate the costs among the parties seeking production

Comments were received on §265.39(b), recommending that 21 days is too long to allow for the service of a written response in light of the limited, fixed discovery periods established in §§265.24 and 265.36. The commenters suggested instead a 14-day limit. They also favored the same 14-day limitation to be applied to objections and responses pursuant to §265.40

By contrast, two commenters requested that the time limits of these rules be extended to 30 days consistent with timeframes used in Rule of Civil Procedure, 168(4)

The commission responds that §265.24(n) has been revised to allow scheduled periods to be modified

One commenter discussed §265.49(a)(3) authorizing the use of a prior deposition against a late-joined party where the party joined late has the opportunity to redepose the deponent. The commenter pointed out that the rules are silent on the use of depositions to support the late-joined party's position.

The commission responds by amending §265.49(a)(3) to provide that any deposition may be used by parties joined after deposition for any purpose against any party in accordance with paragraphs (1) and (2) of the rule

The commission has deleted all references to award of expenses as a sanction in §§265.50(a)(3) and (4), (b)(2)(B) and (F), and (d)(2) and (3)

Comments were received on §265.50(a)(4), which imposes sanctions for the omission of material information from an application. The commenters stated that, under this rule, an applicant could be sanctioned even if the applicant was unaware that the information was material. Further, "material information" should be limited to information that is expressly required in Chapter 330 of Title 30

Three other commenters requested that the penalty for failing to disclose complete and accurate information be a mandatory, rather than permissive, grounds for denial of the application

The commission responds with the language of the rule to remain as written, noting that the examiner and commission should be allowed to weigh evidence and facts surrounding an allegation related to misrepresentations as the permissive language of the rule anticipates

A commenter stated that although §265.50 addresses abuse of discovery and sanctions committed primarily by parties and to some extent their counsel, it also addresses abuse of discovery by "other deponents." Because all those proposed to be deposed are not under the control of a party or the party's counsel, it would be unfair to sanction a party or the party's counsel if certain "other deponents" abuse discovery

The commission notes that fairness and due process are considerations in any ruling by an examiner and assures the commenter that any special facts or circumstances will be taken into account when sanctions are ordered

The commission has deleted all references to award of expenses as a sanction in §265.51(3) and §265.52

Comments were received regarding proposed §265.53, which provides that, absent good cause, a party may be barred from calling a witness who was not listed on that party's prehearing witness list or who failed to give prefiled testimony. Four commenters recommended that the rule be expanded to provide that a witness who was unprepared to testify in a properly noticed deposition regarding the subject matter of his or her anticipated testimony as described in the party's witness list, or who failed to give prefiled testimony if prefiled testimony has been required by the examiner, be barred from testifying

The commission notes that sanctions regarding failure of witnesses to comply with discovery requests are contained in §265.50(b) and that §265.54 addresses failure to identify testimony. The commission has also changed §265.53 to provide for a bar to calling a witness who has not been identified pursuant to §265.26

Comments were received regarding §265.55. The rule bars exhibits not timely identified and prefiled but exempts cross-examination exhibits from the provision. Four commenters stated that the rule allows the protestants a basis on which to "lay behind the log." The commenters recommended that "good cause" be defined to avoid opportunity for abuse and that cross-examination exhibits should be barred unless they could not have been anticipated

The commission deletes the current text of the rule and adds language providing that absent good cause under §265.24(i)(2), an exhibit shall not be accepted into the record which was not offered at the prehearing conference

One commenter proposed to add a Subchapter F to Chapter 265, which would provide that if there are no parties other than statutory parties by the close of the first preliminary public hearing and no statutory party requests that a second public hearing be held, that the Executive Director may forward the application directly to the full commission

for action without the necessity of a second public hearing.

The commission disagrees, noting that all time periods and procedures may be modified by agreement of the parties with approval by the examiner.

### Subchapter C. Special Procedures for Freezing the Process

#### • 30 TAC §§265.21-265.24, 265.26-265.35

The sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the Commission.

#### §265.21. Applicability.

(a) The provisions of this subchapter shall apply to permit hearings in the areas of hazardous waste, industrial solid waste, municipal solid waste, and air quality, as well as to other hearings designated by the examiner on or before the date jurisdiction is established. Except by agreement of the parties, the provisions of this subchapter do not apply to permit hearings at which jurisdiction is established prior to the effective date of this subchapter. For permit hearings for which jurisdiction is established on or after the effective date of this subchapter, an application may either be included in, or excluded from, the applicability of this subchapter or any portion of this subchapter by agreement of the parties only with the approval of the examiner, or, for good cause, by the examiner. Good cause may include without limitation a finding that the lack of complexity of a proceeding in a hearing does not warrant the implementation of all or a portion of this subchapter.

(b) The provisions of other chapters of this title and other subchapters of this chapter are inapplicable to proceedings to which this subchapter applies only to the extent that such provisions conflict with this subchapter.

#### §265.22. Procedures Applicable to the Executive Director and Public Interest Counsel.

##### (a) Executive Director.

(1) Evaluation and assessment to issue or to deny. After the executive director has conducted his technical review of an application, the executive director shall prepare a proposed permit based on the application submitted. The executive director shall develop an initial position recommending issuance, issuance with additional or different permit provisions, or denial of the permit. If the executive director recommends issuance with additional or

different permit provisions, he shall specify those provisions in a document separate from the proposed permit. If the executive director's recommendation is to deny, he shall issue a document summarizing the basis for his position. The proposed permit and additional documents prepared by the executive director shall be forwarded to the Chief Clerk's Office for filing and setting. This provision does not impair the executive director's ability to return applications pursuant to §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review).

(2) The executive director may change his position based on evidence or other new information. The executive director shall timely notify all parties on the record or in writing if he changes his opinion, and the other parties shall be afforded the opportunity to respond.

(b) Public Interest Counsel. The Public Interest Counsel shall comply with all time-frames and procedures relevant to protestants pursuant to this chapter, unless otherwise determined by the examiner.

§265.23. First Preliminary Hearing. After the required notice has been given and a request for hearing has been received, an examiner will convene a public hearing to take jurisdiction over the application, accept public commentary, designate parties, and set a discovery and procedural schedule. At this hearing the examiner shall address the jurisdiction of the commission over the proceeding. If jurisdiction is established, the following shall occur:

(1) The examiner shall accept public commentary and name the parties;

(2) The examiner shall set acceptable methods of service of pleadings, motions, and discovery;

(3) The executive director shall provide his evaluation and assessment pursuant to §265.22(a)(1) of this title (relating to Procedures Applicable to the Executive Director and Public Interest Counsel), along with the proposed permit and any additional documents prepared by the executive director related to his assessment;

(4) The applicant shall submit proposed findings of fact and conclusions of law;

(5) The applicant shall identify what constitutes the application and shall provide a total of two copies of the permit application, for use by all of the protestants in the case. These copies shall include all notices of deficiency and the applicant's response to those notices;

(6) The executive director and the applicant shall provide their witness lists;

(7) The parties shall raise their claims of confidentiality of portions of the application or agency files in a request for a protective order; and

(8) The examiner shall establish a procedural schedule for the hearing consistent with the provisions of §265.24 of this title (relating to Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter). Without limiting §265.22(a)(2), based on the executive director's position, the examiner may also set a procedural schedule for the executive director to file responses or issues lists in accord with the time periods set out in §265.24.

#### §265.24. Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter.

(a) First Discovery Period. The first discovery period shall extend 30 to 80 days beginning immediately after the date on which jurisdiction is established, as set out in full in §265.36(a)(1) of this title (relating to Discovery in Hearings Held under Subchapter C).

(b) Protestants' First List of Issues. On the last day of the first discovery period the protestants shall identify issues based on the proposed findings of fact and conclusions of law submitted by the applicant pursuant to §265.23(4) of this title (relating to First Preliminary Hearing), and shall include a statement as to the basis of the protestant's dispute on each issue. In addition, on the last day of the first discovery period, protestants may also raise new issues and proposed findings of fact and conclusions of law.

(c) Second Discovery Period. The second discovery period shall extend 30 to 80 days beginning immediately after the protestants' list of issues is submitted, as set out in full in §265.35(a)(2) of this title (relating to Discovery in Hearings Held under Subchapter C).

(d) Applicant's Response. The applicant may respond to issues raised by the protestants no later than the last day of the second discovery period by amending its application and/or proposed findings of fact and conclusions of law at this time, responses being limited to the issues raised by the other parties. Given the nature and degree of amendment, the application may be remanded by the examiner to the executive director for further technical review. The application may be subject to additional notice, discovery and hearing requirements. Subsequent to the time for filing a response pursuant to this subsection, the applicant may not file any amendment to its application except as provided in subsection (g) of this section.

(e) Third Discovery Period. This period shall extend 20 to 45 days immediately following the conclusion of the second discovery period, and shall be limited in accordance with §265.36(a)(3) of this title (relating to Discovery in Hearings Held under Subchapter C).

(f) Protestants' Second List of Issues. On or before the last day of the third discovery period protestants are entitled to submit a second list of issues. The protestants' second list of issues shall be limited in scope to the applicant's response as provided in subsection (d) of this section.

(g) Applicant's Second Response. The applicant may respond to issues raised in the protestants' second list of issues within seven days after the third discovery period. The applicant may be allowed by the examiner to respond with a minor amendment and proposed findings of fact and conclusions of law limited to protestants' second list of issues, within seven days of the third discovery period. Issues related to any minor amendment filed by the applicant will be considered by the examiner at the prehearing conference for inclusion in the final issue list. Subsequent to the time for filing a response pursuant to this subsection, the applicant may not file any amendment except by agreement of the parties.

(h) Prehearing Meeting. A prehearing meeting may be held within three or ten days after the conclusion of the third discovery period, depending upon whether protestants submit a second list of issues. The prehearing meeting is a meeting of the parties without the examiner. At this meeting, the parties shall bring for submission to the examiner and exchange among parties findings of fact, conclusions of law, stipulations, and exhibits. The parties may have the proceedings recorded. If parties do not convene a meeting pursuant to this subsection, they shall submit to the examiner and exchange among parties findings of fact, conclusions of law, stipulations, and exhibits within three or ten working days after the conclusion of the third discovery period.

(i) Prehearing Conference and Order. Within 7-14 days after the conclusion of the third discovery period, the Examiner shall hold a prehearing conference.

(1) All parties shall address the stipulations of the proposed findings of fact and conclusions of law beginning with the applicant. The examiner shall determine which issues remain and which findings of fact and conclusions of law have been stipulated. Proposed findings and conclusions shall be treated as follows:

(A) A proposed finding or conclusion stipulated by all parties shall be regarded as established.

(B) A proposed finding or conclusion that has not been stipulated, was on the other parties' issue list, and for which the other parties have a reasonable basis for continuing to contest the issue, may be raised as an issue at the hearing. The reasonableness of the other parties' basis for contesting the issue may receive further inquiry by the examiner during the prehearing conference. If the examiner determines that the other parties have not shown a reasonable basis for contesting the finding or conclusion and the executive director did not raise the issue as a basis for permit denial, the examiner shall deem the finding or conclusion stipulated.

(2) Exhibits shall be offered and marked and the Examiner will rule on their admissibility insofar as possible. At hearing all objections to exhibits, which could have been cured if timely raised, shall be deemed waived if they were not raised during the prehearing conference. Parties wishing to offer exhibits at any time subsequent to the prehearing conference shall notify all other parties as soon as practicable of intention to seek leave to submit additional exhibits. The examiner has the discretion to permit the offer of exhibits not submitted at the prehearing conference for good cause. Good cause includes the need for one party to prepare an exhibit in response to another party's exhibit first seen at the prehearing conference, the need to prepare an exhibit in response to the direct testimony of another party and other cases which are justified by the party seeking to submit the exhibit.

(3) The examiner shall set final case time limitations at or before the prehearing conference.

(4) The examiner shall promptly incorporate all rulings and determinations in a written prehearing order.

(j) Failure to Comply With Schedules. Parties who do not identify issues, make amendments, propose findings of fact and conclusions of law or submit responses in accord with the schedules established under this subchapter and with the examiner's orders implementing it will be regarded as waiving the right to pursue them in an evidentiary hearing conducted pursuant to this subchapter.

(k) Final Preparation. Final preparation for hearing shall extend no more than 14 calendar days from the date of the prehearing conference.

(l) Evidentiary Hearing. The evidentiary hearing shall extend from five to no more than 25 calendar days in duration immediately following final preparation for hearing, subject to extension by the examiner for good cause. The examiner shall set reasonable time limitations for the presentation of the cases of all parties in order to limit the hearing to this time period.

(m) Proposal for Decision. The examiner shall issue a Proposal for Decision within 20-55 days from the conclusion of the evidentiary hearing.

(n) Modification of Schedules. The scheduled periods set out in this section are presumptively the time limits but they may be modified in exceptional circumstances for good cause either by the examiner or by agreement of the parties with approval of the examiner for good cause. Good cause may include without limitation a finding that the complexity or lack thereof of a proceeding warrants modification of one or more of the scheduled periods.

(o) Motion for Rehearing. A party may not raise for the first time on motion for rehearing an issue of fact or law which it has not previously raised as a contested issue unless the issue is related to:

(1) a procedural irregularity; or

(2) changed circumstance, where the issue is material and a party demonstrates good cause for failure to raise it as an issue prior to the prehearing conference. Notwithstanding the foregoing the Commission may exercise its discretion to address an issue not raised by the other parties or remand an issue depending on the evidence in the record.

§265.26. *Identification of Witnesses.* The examiner shall require the parties to exchange lists of witnesses who will be called to testify at the evidentiary hearing. The witness lists shall include the names and addresses of the witnesses and a brief description of the subject matter of their anticipated testimony.

(1) The witness lists of the applicant and the executive director shall be submitted on the day that jurisdiction is established over the proceeding, and may be amended by these parties to address the protestants' and Public Interest Counsel's list of issues.

(2) The witness lists of the protestants and Public Interest Counsel shall be submitted when the protestants and Public Interest Counsel list their issues.

(3) Parties may call rebuttal witnesses not identified on their witness lists only on a showing of good cause and after the parties are afforded a reasonable opportunity to conduct discovery.

(4) The examiner may allow a party to amend its witness list upon a showing of good cause. The parties shall have sufficient time, as determined by the examiner, to take discovery on newly added witnesses, as authorized in this paragraph or by paragraphs (1)-(3) of this subsection. There is a continuing obligation to update witness lists as soon as the need for and identity of the new witness is reasonably known.



**§265.27. Limiting the Number of Witnesses.** At the request of a party or on the examiner's own motion, the examiner may reduce excessive numbers of witnesses identified pursuant to §265.26 of this title (relating to Identification of Witnesses) as follows:

(1) The examiner may direct the party to do one of the following:

(A) voluntarily reduce its listed witnesses to a specified number; or

(B) provide a summary of the expected testimony of each witness sufficiently specific to show the need for the testimony.

(2) The examiner may use the witness lists and any summaries of testimony provided to strike witnesses whose testimony would be unduly repetitious or irrelevant, or in order to render discovery and the hearing process manageable.

(3) If a party fails or refuses to comply with the directions of the examiner pursuant to this section, the examiner may limit or strike the testimony of witnesses called by the party in any reasonable manner.

**§265.28. Rebuttal.**

(a) Except as provided by subsection (b) of this section, the applicant, as the party with the burden of proof, is the only party allowed to present a rebuttal case. In all cases, the applicant shall be allowed to close with its rebuttal.

(b) If a party can demonstrate that evidence was presented by another party which could not have been reasonably anticipated at the time that party presented its direct case, the party may present a rebuttal case upon leave of the examiner.

(c) Rebuttal cases must be presented within the time limitations set by the examiner in the prehearing order.

**§265.29. Prefiled Testimony.**

(a) Unless otherwise directed by the examiner, any party shall have the option to prefile all or any part of the testimony of all or any one of its witnesses. One party's election to prefile shall not control another party's decision regarding whether to prefile testimony. If a party decides to use prefiled testimony, it shall notify the other parties and the examiner on or before the last day of the second discovery period, identifying the relevant witness(es).

(b) The examiner may direct all parties to prefile their entire direct cases. If all direct testimony is prefiled, whether by examiner's order or by agreement of the parties:

(1) No party shall be allowed to go beyond the scope of its prefiled testimony on direct examination; and

(2) The examiner may limit or prohibit non-adverse cross-examination if unnecessary to the development of a complete evidentiary record.

(c) The live presentation of prefiled testimony at the evidentiary hearing shall be limited as provided by the examiner within the scope of the original prefiled testimony to introductory material, corrections to the prefiled testimony, and a brief summary. The live presentation shall generally last no more than 30 minutes for each prefiled witness.

(d) The examiner shall set the deadline for the filing of prefiled testimony at a reasonable time before the evidentiary hearing. The factors the examiner shall consider include the complexity of the material, the expected length of the material, the number of witnesses or issues that are to be presented by prefiled testimony, and the acceptable method of presenting objections.

**§265.31. Subpoena of Witnesses and for the Production of Documentary Evidence.**

(a) On his own motion or on the written request of any party to a hearing under this subchapter pending before him, on a showing of good cause, and on deposit of sums as required by the Administrative Procedure Act, the examiner shall issue a subpoena addressed to the sheriff or constable of the State of Texas, or any other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178, to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings. The Office of Hearings Examiners may develop a standard subpoena request form which the examiner may require the requesting party to complete and return as a prerequisite to issuance of a subpoena.

(b) If a subpoena also commands the person to whom it is directed to produce books, papers, documents or tangible things designated therein, the examiner, on motion made seasonably and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive, or

(2) condition denial of the motion to quash or modify upon the advancement by the person on whose behalf the subpoena is issued, of the reasonable costs of producing the books, papers, documents, or tangible things.

**§265.33. Witness Shall Attend Hearing.** Every witness summoned in any hearing shall attend the hearing from day to

day, and from place to place, until discharged by the examiner or party summoning such witness. If any witness after being duly subpoenaed fails to attend, such witness may be subject to any remedies available through district court to the party summoning the witness.

**§265.34. Evidence.**

(a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(b) Whenever necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs

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 July 6, 1994.

TRD-9443588

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date July 27, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 239-0600

◆ ◆ ◆  
**Subchapter D. Discovery in Hearings Held Under Subchapter C**

• **30 TAC §§265.36-265.49**

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource and Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission

**§265.36. Discovery in Hearings Held under Subchapter C.**

(a) Except when otherwise ordered by the examiner, discovery in hearings held under Subchapter C of this chapter will be separated by time and manner into three distinct periods. Within the timeframe set for each period in this subsection, the examiner shall have the discretion to set the duration of each discovery period

(1) First Discovery Period. The first discovery period shall extend 30 to 80 days from the date that jurisdiction is taken by the agency. This period is reserved for the protestants' discovery from the applicant. The applicant may conduct limited discovery related to the nature of each prot-

estant (including for example the type and date of organization, purpose, and number of members) and whether the source of funding is by a competitor of the applicant.

(2) **Second Discovery Period.** The second discovery period shall extend 30 to 80 days from the end of the first discovery period. Discovery during this period shall consist of the following:

(A) the protestant may discover from the staff;

(B) the applicant may discover from the protestant and the staff; the number of interrogatories available to the applicant during the second discovery period shall be reduced by the number of interrogatories submitted during the first discovery period; and

(C) the staff may discover from the protestant and the applicant.

(3) **Third Discovery Period.** The third discovery period shall extend 20 to 45 days from the end of the second discovery period. During this period, any discovery by the protestant or the applicant from the staff shall be limited to the staff's position regarding the applicant's response, and the staff's position regarding the protestants' issues. Discovery from the applicant and the protestant shall be limited to the scope of the listed issues as provided in §265.24(b) of this title (relating to Discovery Schedule) and the applicant's response as provided in §265.24(d). The examiner shall have discretion to limit or expand discovery in this period further in the interest of fairness. The examiner shall identify which of the time periods listed above applies to discovery for those parties not fitting into the categories discussed above as appropriate.

(b) **Discovery from the Executive Director.** Whenever discovery is sought of the staff of the executive director in any of the discovery periods, it shall be in accord with the following provisions:

(1) Beginning at the time jurisdiction is taken, all parties shall have access to all unprivileged documents in the agency's files without the necessity of submitting an Open Records request or a Request for Production. It shall be the agency's responsibility to ensure that documents protected from discovery as provided for under law are removed from agency public files and that all assertions of privilege by the executive director relating to those agency files are made at the time jurisdiction is taken or other timely manner.

(2) The executive director shall answer Interrogatories and Requests for Production during the second and third discovery periods.

(3) The executive director shall be subject to depositions during the second

and third discovery periods, under the following conditions:

(A) Each deposition shall be limited to a total of 4 hours.

(B) Any party seeking to depose a staff witness shall attempt to set the time and date of the deposition through agreement with the staff.

(C) The staff shall not be required to submit to a date for the deposition less than 10 days from the date of the request.

(D) The staff shall not be required to submit to a deposition any later than a date 20 days prior to the prehearing conference.

(E) All depositions of staff witnesses shall be taken in Austin in one of the TNRCC office buildings.

(F) All of these requirements may be waived by agreement of the staff or by the examiner on a showing of good cause.

(c) Voluntary discovery may be sought at any time by any party.

*§265.37. Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.*

(a) **Forms of discovery.** For purposes of hearings held under Subchapter C of this chapter, all forms of discovery are deemed compellable. Permissible forms of discovery for hearings under this subchapter include:

(1) oral or written depositions of any party or nonparty;

(2) written interrogatories;

(3) requests of a party for admissions of facts and the genuineness or identity of documents or things;

(4) requests and motions for production, examination, and copying of documents or other tangible materials, and

(5) requests and motions for entry upon and examination of real property.

(b) **Scope of discovery.** Except as provided in subsection (c) of this section, unless otherwise limited by order of the examiner in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending proceeding. It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated

to lead to the discovery of admissible evidence. It is also not grounds for objection that an interrogatory propounded pursuant to §265.40 of this title (relating to Interrogatories to Parties) involves an opinion or contention that relates to fact or the application of law to fact, but the examiner may order that such an interrogatory not be answered until after designated discovery has been completed or until a prehearing conference or other later time. It is also not grounds for objection that a request for admission propounded pursuant to §265.41 of this title (relating to Requests for Admissions) relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at trial.

(2) **Documents and tangible things.** A party may obtain discovery of the existence, description, nature, condition, location and contents of any and all documents (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom production is sought, into reasonably usable form) and any other tangible things which constitute or contain matters relevant to the subject matter in the proceeding. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody or control. Possession, custody or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority or representative), the person has possession, custody or control. The executive director and the public interest counsel of the commission are not required to amass, assemble, collect, compile, gather, and/or sort the materials described in this paragraph if those materials are readily available in the commission's records.

(3) **Land.**

(A) During the appropriate discovery period, a party may obtain a right of entry upon designated land or other property in the possession or control of a person upon whom a request or motion to produce is served when the designated land or other property is relevant to the application which is the subject of the hearing for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. This provision is not intended to affect any statutory rights authorizing access. If a person has a superior right to compel a third person to permit entry, the person with the right has possession or control. Upon request of the controller or possessor of the land, the examiner may order

that entry upon the land be subject to any existing safety regulations or protections of trade secrets or processes, and may impose other reasonable restrictions on this right as necessary. Unless otherwise ordered by the examiner, the parties shall enter into a standard Agreement for Entry Upon Land which contains the following:

- (i) a release and indemnification provision;
- (ii) allowance for all parties to split samples;
- (iii) a provision that the controller of the land shall allow entry within a reasonable period of time after the request; and
- (iv) a provision that the controller of the land shall have the right to accompany the party entering the property.

(B) The parties may request and the examiner will rule on whether a party intending to take samples shall be required to reveal the types of samples and methodology and parameters of tests performed on those samples prior to or subsequent to entry upon land.

(4) Potential parties and witnesses. A party may obtain discovery of the identity and location (name, address and telephone number) of any potential party and of persons having knowledge of relevant facts. A person has knowledge of relevant facts when he or she has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of this subsection and personal knowledge is not required.

(5) Experts and reports of experts. Discovery of the facts known, mental impressions and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending proceeding, but which were acquired or developed in anticipation of trial and the discovery of the identity of experts from whom the information may be learned may be obtained only as follows:

(A) General. A party may obtain discovery of the identity and location (name, address and telephone number) of an expert who may be called as an expert witness, the subject matter of which the witness is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as an expert witness at trial is required if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

(B) Reports. A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data and other materials prepared by an expert or for an expert in anticipation of the expert's hearing and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of trial if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(C) Determination of status. The examiner has discretion to compel a party to make the determination and disclosure of whether an expert may be called to testify within a reasonable and specific time.

(D) Reduction of report to tangible form. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as an expert witness have not been recorded and reduced to tangible form, the examiner may order these matters reduced to tangible form and produced within a reasonable time.

(6) Statements. Any person, whether or not a party, shall be entitled to obtain, upon written request, his own statement previously made concerning the matter which is the subject of the hearing, or its subject matter, which is in the possession, custody or control of any party. If the request is refused, the person may move for an examiner's order under §265.50 of this title (relating to Abuse of Discovery; Sanctions). For the purpose of this paragraph, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

(c) Exemptions. The following matters are protected from disclosure by privilege:

(1) Work product. The work product of an attorney, subject to the exceptions of Texas Rules of Civil Evidence, §503(d), which shall govern as to work product as well as to attorney-client privilege.

(2) Experts. The identity, mental impressions and opinions of an expert who has been informally consulted or of an expert who has been retained or specially employed by another party in anticipation of, or preparation for hearing, or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

(3) Written statements. The written statements of potential witnesses and parties, when made in connection with, or in anticipation of, the prosecution, investigation, defense or protest of the particular application or petition that is the subject of the proceeding, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the application or petition or its subject matter and which are in the possession, custody, or control of any party. The term "written statements" includes:

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. For purposes of this paragraph, a photograph is not a statement.

(4) Party communications. Communications between agents or representatives or the employees of a party to the hearing or communications between a party and that party's agents, representatives or employees, when made in connection with the prosecution, investigation, defense or protest of the particular application or petition that is the subject of the particular proceeding, or in anticipation of the prosecution, protest, or defense of any claims made in a part of the pending hearing. This exemption does not include communications prepared by or for experts that are otherwise discoverable. For the purposes of this paragraph, a photograph is not a communication.

(5) Other privileged information; Any Matter Protected from Disclosure by Any Other Privilege. Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempt

from discovery by paragraphs (3) and (4) of this subsection. Nothing in this subsection shall be construed to render non-discoverable the identity and location of any potential party, any person having knowledge or relevant facts, any expert who is expected to be called as a witness during trial, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

(d) Presentation of objections. Either an objection, a motion to compel or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for special hearing and determined by the examiner. At any reasonable time, any party may request a special hearing on any objection, motion to compel or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery, motion to compel or motion for protective order does not waive such objection or motion. In objecting to an appropriate request within the scope of subsection (b) of this section, a party seeking to exclude any matter from discovery on the basis of an exemption or immunity from discovery must specifically plead the particular exemption or immunity from discovery relied upon and at or prior to any special hearing, shall produce any evidence necessary to support such claim either in the form of affidavits served at least seven days before the special hearing or by testimony. If the examiner determines that an in camera inspection and review by the examiner of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the examiner in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights rather than a specific immunity or exemption, it is not necessary for the examiner to conduct an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by agreement or order of the examiner or good cause is shown for the failure to object within such period.

(e) Protective orders. On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the examiner may make any order in the interests of justice necessary to protect the movant from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Insofar as the applicant is claiming confidentiality of any

part of the permit application, the applicant shall request a protective order at the time that jurisdiction is taken. All other claims of confidentiality shall be handled as they arise, according to the timelines established under subsection (d) of this section. Unless amended by the examiner, a standard order developed by the Office of Hearings Examiners shall be used. Motions or responses made under this section may have exhibits attached including affidavits, discovery pleadings, or any other documents. Specifically, the examiner's authority as to such orders extends to, but is not limited by, any of the following:

(1) ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;

(2) ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the examiner

(f) Duty to supplement. A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than 30 days prior to trial unless the examiner finds that a good cause exists for permitting or requiring later supplementation.

(1) A party is under a duty reasonably to supplement his response if he obtains information upon the basis of which:

(A) he knows that the response was incomplete and incorrect when made;

(B) he knows that the response, though correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading; or

(2) If the party expects to call an expert witness when the identity or the subject matter of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name, address and telephone number of the expert witness and the substance of the testimony concerning which the expert witness is expected to testify, as soon as is practical, but in no event less than 30 days prior to trial, except on leave of the examiner

(3) In addition, a duty to supplement answers may be imposed by order of the examiner or agreement of the parties, or at any time prior to trial, through new requests for supplementation or prior answers

(g) Discovery Disputes.

(1) Discovery motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of examiner intervention have been attempted and failed.

(2) Motions to Compel and for Protective Orders. Whenever a discovery dispute arises, the disputing party shall file a motion to compel or for protective order. Any response shall be filed within five working days of receipt. The response may be a showing of good cause for extra time to respond. The examiner shall rule within five working days of the response.

(3) Finality of Examiner's Ruling. No discovery issues shall be certified to the commission.

*§265.45. Non-Stenographic Recording; Deposition by Telephone.*

(a) Non-Stenographic Recording. Any party may cause the testimony and other available evidence at a deposition upon oral examination to be recorded by other than stenographic means, including videotape recordings, upon leave of the examiner, and the non-stenographic recording may be presented at trial in lieu of reading from a stenographic transcription of the deposition, subject to the following:

(1) Any party intending to make a non-stenographic recording shall give five days' notice to all other parties by mail, return receipt requested, and shall specify in said notice the type of non-stenographic recording which will be used.

(2) After notice is given, any party may make a motion for relief under §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders; Supplementation of Responses). If a special hearing session is not held prior to the taking of the deposition, the non-stenographic recording shall be made subject to the examiner's ruling at a later time.

(3) Any party shall have reasonable access to the original recording and may obtain a duplicate copy at his own expense.

(4) The expense of a non-stenographic recording shall not be taxed as costs, unless before the deposition is taken, the parties so agree, or the examiner so orders, for good cause shown, on motion and notice.

(5) The non-stenographic recording shall not dispense with the requirement of a stenographic transcription unless the examiner shall so order on motion and notice before the deposition is taken and such order shall make such provision concerning the manner of taking, preserving and filing the non-stenographic recording as may be necessary to assure that the recorded testimony will be intelligible, accu-

rate and trustworthy. Such order shall not prevent any party from having stenographic transcription made at his own expense. In the event of an appeal, the non-stenographic recording shall be reduced to writing at the expense of the party making the recording.

(b) Deposition by telephone. The parties may stipulate in writing, or the examiner may, upon motion, order that a deposition be taken by telephone. For the purposes of this section and §265.43 of this title (relating to Issuance of Commission to Take Deposition) and §265.50 of this title (relating to Abuse of Discovery; Sanctions), a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded to him.

#### §265.49. Use of Deposition Transcripts in Commission Proceedings

(a) Use of deposition transcript in same proceeding.

(1) Use of depositions. At trial or upon a hearing on a motion, any part or all of a deposition taken in the same proceeding, insofar as admissible under the Texas Rules of Civil Evidence, may be used by any person for any purpose against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Depositions shall include the original transcripts or any certified copies thereof. Unavailability of the deponent is not a requirement for admissibility.

(2) Included within meaning of "same proceeding." Substitution of parties pursuant to these rules does not affect the right to use depositions previously taken.

(3) Parties joined after deposition taken. If one becomes a party after a deposition is taken and has an interest similar to that of any party described in paragraphs (1) or (2) of this subsection, the deposition is admissible against him if he has had a reasonable opportunity, after becoming a party, to redepose the deponent, and has failed to exercise that opportunity. Any existing deposition may be used by parties joined after the deposition is taken for any purpose against any party in accordance with paragraphs (1) and (2) of this subsection.

(b) Use of deposition transcript taken in different proceeding. At trial or upon the hearing of a motion or an interlocutory proceeding before an examiner, any part or all of a deposition taken in a different proceeding may be used subject to the provisions and requirements of the Texas Rules of Civil Evidence. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness was then present and testifying

(c) Motion to suppress. When a deposition transcript has been delivered by the deposition officer and notice of delivery given at least one entire day before the day on which the case is called for trial, errors and irregularities in the notice of delivery, and errors in the manner in which the testimony is transcribed or the deposition transcript is prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with by the deposition officer under §265.48 of this title (relating to Submission to Witness; Changes; Signing) are waived, unless a motion to suppress the deposition transcript or some part thereof is made and notice of the written objections made in the motion is given to every other party before trial commences.

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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Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 239-0600

### ◆ ◆ ◆ Subchapter E. Special Sanctions Rules Relating to Freezing the Process

#### • 30 TAC §§265.50, 265.51, 265.53-265.55

The new sections are adopted under the Texas Water Code, §5103 and §5105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission

#### §265.50 Abuse of Discovery, Sanctions

(a) Motion for sanctions or order compelling discovery. A party, upon reasonable notice to all other parties and to all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows:

(1) Motion. According to subparagraphs (A), (B), (C), and (D) of this paragraph, the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the examiner for imposition of any sanction authorized by subsection (b)(2) of this section without the necessity of first having obtained an examiner's order compelling such discovery.

(A) if a party or other deponent which is a corporation or other entity fails to designate the persons or persons to testify on the deponent's behalf, and, if the deponent so desires, the matters on which each person designated will testify; or

(B) if a party, or other deponent, or a person designated to testify on behalf of a party or other deponent fails:

(i) to appear before the officer who is to take his deposition, after being served with a proper notice; or

(ii) to answer a question propounded or submitted upon oral examination or upon written questions; or

(C) if a party fails:

(i) to serve answers or objections to interrogatories submitted under §265.40 of this title (relating to Interrogatories to Parties), after proper service of the interrogatories; or

(ii) to answer an interrogatory submitted under §265.40; or

(iii) to serve a written response to a request for inspection under §265.39 of this title (relating to Discovery and Production of Documents and Things for Inspection, Copying or Photographing), after proper service of the request; or

(iv) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under §265.39, or

(D) if a party fails to comply with any person's written request for the person's own statement as provided in §265.37(b)(6) of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses).

(2) Depositions Upon Oral Examination. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) Protective Orders. If the examiner denies the motion in whole or in part, the examiner may make such protective order as he would have been empowered to make on a motion pursuant to §265.37

(4) Material Misrepresentations. Material misrepresentations, including misleading statements or omissions of material information in any application material, or in response to a discovery request or in testimony, constitutes a violation and may be punished by the Examiner with the full range of sanctions, including a recommendation of denial, of the relief requested in the hearing by the responsible party.

(5) Evasive or Incomplete Answer. For purposes of this section, an eva-

sive or incomplete answer is to be treated as a failure to answer.

(b) Failure to comply with order or with discovery requests.

(1) Sanctions by court. If a deponent fails to appear or to be sworn or to answer a question after being directed to do so by an examiner, the failure may be appealed to district court by the movant as provided by law.

(2) Sanctions by examiner and commission. If a party or an officer, director, or managing agent of a party or a person designated under subsection (a)(1) of this section to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under subsection (a) of this section, the examiner may impose any of the sanctions authorized by §265.50 of this title (relating to Abuse of Discovery; Sanctions) or he may, after notice and hearing, make such orders, or recommendations to the commission, in regard to the failure as are just, and among others, the following:

(A) an examiner's order disallowing any further discovery of any kind or of a particular kind by the disobedient party;

(B) an examiner's order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(C) an examiner's order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting him from introducing designated matters in evidence;

(D) an examiner's order striking out pleadings, or parts thereof, or staying further proceedings until the order is obeyed. The commission may issue an order dismissing, with or without prejudice, the application, petition, or proceedings or any part thereof.

(c) Abuse of discovery process in seeking, making, or resisting discovery. If the examiner finds a party is abusing the discovery process in seeking, making, or resisting discovery or if the examiner finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for the purposes of delay, then the examiner, or the commission may, after notice and hearing, impose any appropriate sanction authorized by §265.50 or authorized by subsection (b)(2)(A)-(C) of this section, or recommend that the commission dismiss the proceedings as authorized by

subsection (b)(2)(D) of this section. Such order of sanction shall be subject to review on appeal when the commission's order becomes final.

(d) Failure to comply with §265.41 of this title (relating to Requests for Admissions).

(1) Deemed admission. Each matter of which an admission is requested shall be deemed admitted unless, within the time provided for in §265.41, the party to whom the request is directed serves upon the party requesting the admissions a sufficient written answer or objection in compliance with the requirements of §265.41, addressed to each matter of which an admission is requested. For purposes of this section, an evasive or incomplete answer may be treated as a failure to answer.

(2) Motion. The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the examiner determines that an objection is justified, the examiner may order that an answer be served. If the examiner determines that an answer does not comply with the requirements of §265.41, the examiner may order either that the matter be admitted or that an amended answer be served.

(e) Failure to respond to or supplement discovery. A party who fails to respond to or supplement his response to a request for discovery shall not be entitled to present evidence which the party was under a duty to provide in a response or supplemental response or to offer the testimony of an expert witness or of any other person having knowledge of discoverable matter, unless the examiner finds that good cause, sufficient to require admission, exists. The burden of establishing good cause is upon the party offering the evidence and good cause must be shown in the record

*§265.51. Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions.* If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, prefiled testimony or prefiled objections, or other application for an examiner's order, the examiner may, in his discretion, on notice and hearing:

(1) order all or any part of such document stricken; or

(2) direct that such party shall not be permitted to present grounds for relief, protest or defense contained therein.

*§265.53. Failure to Identify Witnesses.* A party shall be barred from calling a witness who has not been identified pursuant to §265.26 of this Chapter (relating to Identification of Witnesses).

*§265.54. Failure to Identify Testimony.* Absent good cause, a witness shall be

barred from testifying about matters which were not identified by the sponsoring party in its witness list and amendments thereto, and/or in that witness' prefiled testimony, when election to prefile testimony has been noticed by the sponsoring party or when prefiled testimony has been directed by the examiner.

*§265.55. Barring Exhibits.* Absent good cause under §265.24(i)(2) of this title (relating to Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter), an exhibit shall not be accepted into the record which was not offered at the prehearing conference.

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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Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call: (512) 239-0600

## Chapter 267. Procedures During Public Hearing

### • 30 TAC §267.11, §267.13

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §267.11 and §267.13, concerning the presentation of evidence in hearings; specifically, providing for a certain order of presentation and that witnesses be called either by a party or the hearings officer. The rules are adopted with changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885).

The proposed changes are necessitated by the merger of the Texas Air Control Board and the Texas Water Commission in order to combine and refine the rules to meet the needs of a broad range of hearing types at the new agency. The proposed changes are consistent with current practices at the agency

A public hearing was held on February 28, 1994 in Austin. The comment period closed March 14, 1994. Comments to the proposed sections were received by the following entities: Henry, Lowerre, Hass and Frederick; USA Waste Services; the Lone Star Chapter of the Solid Waste Association of North America; the Cities of Arlington and Irving; and Kelly, Hart and Hallman.

With regard to §267.11, one commenter urged that if the Executive Director (ED) has taken a position in favor of permit issuance, the ED should be aligned with the applicant and the presentation order should be: applicant; executive director, public interest counsel (PIC); and protestants. The commenter

argued that ED alignment with the applicant is proper where the ED is going to make the case for the applicant

The Commission disagrees that such alignment is proper. The ED is a statutory party and, while the ED may have preliminary position regarding the application, that position may change based upon new information or new evidence. In any event, while the ED may take position regarding the application, the burden of proof remains with the applicant. Further, it should be noted that §267.11 has been changed to clarify which provisions apply only to permit hearings and which apply to all proceedings. For clarity, the Commission has also amended the rule to reflect that the ED opens with a statement regarding its "preliminary" position rather than "current" position

Section 267.13(c) would allow any person whose position is not adequately represented to be called as a witness for the examiner, subject to cross-examination by all parties. All commenters stated that the problem with the rule is that it would allow the person called as the examiner's witness to enter late in the process during hearing, circumventing discovery and thus denying due process, with the surprise witness supplying testimony that may become the basis for decision on an issue or on the final decision

The Commission disagrees with the commenters' suggestion. The intent of the rule is to allow the hearing examiner to develop a full record. Occasionally during the hearing process, an issue may come to light about which the parties have little information, but which is very relevant to the case at hand. Without the authority to subpoena witnesses who have relevant knowledge, the examiner may be precluded from making an adequate recommendation. However, the Commission agrees that the change in the proposed wording is in order to prevent circumvention of discovery. A clarifying sentence is added to provide the parties an opportunity to take discovery of such person

The amendments are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its power and duties under the code and other laws of this state and to establish and approve all general policy of the Commission

#### §267.11 Order of Presentation

(a) In all proceedings the moving party shall have the right to open and close. Where several matters have been consolidated, the presiding officer will designate who will open and close. The presiding officer will determine at what stage intervenors will be permitted to offer evidence and argument. After all parties have completed the presentation of their evidence, the presiding officer may call upon any party for further material or relevant evidence upon any issue

(b) Before the moving party opens in a permit hearing, the Executive Director's Staff shall open with a simple statement of its preliminary position on the

application and, in a permit hearing, will present the Staff's draft permit including special provisions, if any. In a permit hearing, the applicant presents evidence to meet its burden of proof on the application, any opponents present evidence, the Public Interest Counsel presents evidence, and the Staff presents its evidence. In all cases, the applicant shall be allowed to close with its rebuttal. Any party may present a rebuttal case when another party presents evidence which could not have been reasonably anticipated.

#### §267.13. General Admissibility of Evidence.

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

(c) Testimony will be received only from witnesses called by a party or his or her representative or the presiding officer. The presiding officer may allow or request testimony from any person whose position is not adequately represented by any party, subject to cross-examination by all parties or their representatives. Such testimony may be allowed at the presiding officer's discretion. All parties shall have an opportunity to take discovery of such person.

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 25, 1994.

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Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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Proposal publication date: February 8, 1994

For further information, please call: (512) 239-0615

#### Chapter 269. Procedures After Public Hearings Before a Hearings Examiners

##### • 30 TAC §269.6

The Texas Natural Resource Conservation Commission (Commission) adopts an amendment to §269.6, concerning pleadings following the Proposal for Decision; specifically, establishing the deadlines for filing of exceptions and replies to exceptions with the time periods allowed to be changed by agreement of all parties. The rule is adopted without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885).

The proposed changes are necessitated by the merger of the Texas Air Control Board and the Texas Water Commission in order to combine and refine the rules to meet the needs of a broad range of hearing types at the new agency. The proposed changes are consistent with current practices at the agency.

A public hearing was held on February 28, 1994, in Austin. The comment period closed

March 14, 1994. No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its power and duties under the code and other laws of this state and to establish and approve all general policy of the Commission.

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

Issued in Austin, Texas, on May 25, 1994.

TRD-9443568

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call: (512) 239-0615

#### Chapter 274. Expediting the Complex Hearings

The Texas Natural Resource Conservation Commission (Commission) adopts the repeal of §§274.1-274.9, 274.21-274.24, 274.41-274.63, and 274.71-274.76, concerning expediting the complex hearings are adopted without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 776).

Repeal of these rules is based in part on Commission work with the Permit Hearing Task Force, a group of attorneys, individuals associated with industry-related interests, individuals associated with environmental interests and other special interest groups.

A public hearing was held on April 7, 1994, in Austin, Texas. The comment period closed on April 7, 1994.

There was no oral testimony given during the public hearing. However, the Commission has received written testimony on the repeal proposal from one commenter, the law firm of Henry, Lowerre, Hess and Frederick. This commenter observed that the three to four attempts to use these rules was not a sufficient test of their usefulness and practicality. The commenter noted that the rules had many benefits and believes their repeal is mistaken.

The Commission disagrees. The Commission believes that the complex hearings process does not produce the time and cost savings anticipated, especially during discovery prior to the application being declared technically complete. Concurrently with repealing these sections the Commission is adopting amendments and new rules in Chapter 265, Procedures Before Public Hearing, which include special procedures for freezing the application prior to hearing and discovery and sanction procedures. The Commission believes the repeal of complex hearings process rules and adoption of amendments of Chapter 265 will streamline and make the hearings pro-

cess more fair. Chapter 265 as adopted is published concurrently in this edition of the *Texas Register*

### Subchapter A. General Rules

#### • 30 TAC §§274.1-274.9

The repeals are adopted under the Texas Water Code, Title 2, Subtitle A, Chapter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and establish and approve all general policy of the Commission

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

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Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call. (512) 463-8069

### Subchapter B. Prehearing Procedures for Complex Hearings

#### • 30 TAC §§274.21-274.24

The repeals are adopted under Water Code, §5.103 and §5.105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission.

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

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Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 463-8069

### Subchapter C. Discovery and Evidence

#### • 30 TAC §§274.41-274.63

The repeal are adopted under Water Code, §5.103 and §5.105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource  
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For further information, please call (512) 463-8069

### Subchapter D. Sanctions

#### • 30 TAC §§274.71-274.76

The repeals are adopted under Water Code, §5.103 and §5.105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission

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

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Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

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For further information, please call (512) 463-8069

### Chapter 275. Special Provisions

#### Variance Hearings

##### • 30 TAC §§275.130-275.132

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§275.130-275.132, concerning variance hearings pursuant to the Texas Clean Air Act Section 275.130 is adopted with changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 885) Sections 275.131 and 275.132 are adopted without changes and will not be republished

The proposed changes are necessitated by the merger of the Texas Air Control Board and the Texas Water Commission in order to combine and refine the rules to meet the needs of a broad range of hearing types at the new agency. The proposed changes are consistent with current practices at the agency

A public hearing was held on February 23, 1994, in Austin. The comment period closed March 14, 1994. No comments were received regarding adoption of the rules. Section 275.130 was modified by the agency for clarification purposes

The amendments are adopted under the Texas Water Code, Title 2, Subtitle A, Chap-

ter 5, §5.103 and §5.105, which authorizes the Commission to adopt any rules necessary to carry out its power and duties under the code and other laws of this state and to establish and approve all general policy of the Commission

*§275.130. Variance Hearings Pursuant to the Texas Clean Air Act.* Upon the filing of a proper petition, a date for a hearing on the petition shall be set not be more than 90 days after the date the petition is filed. Notice of the hearing shall be given as required by the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.031 and the Administrative Procedure Act, the Government Code, Chapters 2001 and 2002. A petition for the variance shall be considered to be in proper form if it identifies the person seeking the variance; identifies the particular rule or provisions of the TCAA from which a variance is sought; identifies the source of air contaminants which are the subject of the petition, including information on the nature and the amount of emissions from the source, if available, and the location of the source; and includes a short and plain statement of the grounds upon which the relief is sought. Forms to assist in the filing of a petition are available upon request, but are not mandatory

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 25, 1994

TRD-9443567

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date July 27, 1994

Proposal publication date: February 8, 1994

For further information, please call (512) 239-0615

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VII. Texas Commission on Law Enforcement Officer Standards and Education

#### Chapter 211. Administration Division

##### • 37 TAC §211.66, §211.67

The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts the repeals of §211.66, concerning Agreement Training and §211.67 concerning Academy Advisory Boards, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3634). Section 211.66 is being amended and replaced with a



new number §215.66. Section 211.67 is being amended to include all types of training providers, and is being proposed for adoption with a new number §215.67.

The repeals of this section were adopted at the June 14, 1994, regular quarterly meeting of the commission. Section 211.66 and §211.67 were adopted as Final Order 94-7.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 415, §415.010(1), which provides the commission with authority to pass rules for the administration of this chapter, and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443601 Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 450-0188

◆ ◆ ◆  
• 37 TAC §211.75

The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts the repeal of §211.75, concerning Advisory Boards, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3635). Section 211.75 is being replaced by a new section which provides the same guidelines for all training providers.

The repeal of this section was adopted at the June 14, 1994, regular quarterly meeting of the commission. Section 211.75 was adopted as Final Order 94-8.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, Chapter 415, §415.010(1), which provides the commission with authority to pass rules for the administration of Chapter 415; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443602 Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 450-0188

◆ ◆ ◆  
• 37 TAC §211.100

The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts the repeal of §211.100, concerning the in-service training requirements for agencies, that appoint peace officers or reserves in order to place the rule in compliance with applicable State law, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3637). This rule will be amended and repropoed as §221.100 to establish continuity and consistency in the rule numbering scheme.

The repeal of this section was adopted at the June 14, 1994, regular quarterly meeting of the commission. Section 211.100 was adopted as Final Order 94-2.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, Chapter 415, §415.010(1), which provides the commission with authority to pass rules for the administration of this Chapter, and §415.034(a) and (b), which require the commission to recognize, prepare, or administer continuing education programs, and to require law enforcement agencies to provide such training.

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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443598 Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 450-0188

◆ ◆ ◆  
Chapter 215. Training and  
Educational Providers and  
Related Matters Division

• 37 TAC §215.66

The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts new §215.66 to provide guidelines for the delivery of law enforcement training by contract providers, with changes to the proposed text as published in the May

13, 1994, issue of the *Texas Register* (19 TexReg 3636). It is necessary to provide guidelines consistent with those applicable to licensed academies in order to maintain quality in the commission's training effort. This section amends and replaces repealed §211.66 of the commission rules.

This new section was adopted with changes at the June 14, 1994, regular quarterly meeting of the commission. The terms 'staff member' or 'commission' were changed to 'executive director' in subsections (b)(2), (d), (e)(1), (6), and (h). In subsection (b)(2) the change to executive director was made because only the executive director can enter into a contract for the Commission. The other changes were made for continuity throughout the rule. Subsection (d) was also changed to read ". . . Any party may terminate upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office." Section 215.66 was adopted as Final Order 94-5.

No comments were received regarding adoption of this new section.

The new section is adopted under Texas Government Code, Chapter 415, §415.010(1), which provides the commission with the authority to pass rules for the administration of this chapter; §415.010(7) which provides for contracts; §415.010(9) which provides the commission with authority to establish minimum standards; and §415.031(a) which requires the commission to establish and maintain training programs; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

§215.66. *Agreement Training.*

(a) The commission may, in the discretion of the executive director, enter into an agreement with a law enforcement agency, a law enforcement association, or alternative delivery trainer to conduct training for license holders.

(b) Any such agreement is limited to those terms expressly included in the agreement or incorporated by reference and must be dated and:

(1) in writing on a commission form;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(c) An agreement may approve a specific course(s) and the number of times it will be offered. These contracts are perpetual but may be terminated for cause within ten days by written notice on the part of either party to the contract. An agreement may incorporate by reference a law, rule, or any other document. However, any

waiver, exception, or deletion must be expressed.

(d) The executive director may terminate an agreement if no training is conducted within each calendar year unless the chief administrator has petitioned the executive director for a waiver, and the waiver has been granted. The executive director may suspend an agreement, until compliance, for any violation of its terms or of any commission rule or law. Any party may terminate upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office.

(e) The agreeing agency, association, or alternative delivery trainer must:

(1) provide a comprehensive needs assessment to the executive director justifying the need for an agreement. The needs assessment must include as a minimum:

(A) the names of the licensed academies located in the council of governments or regional planning commission area of the requesting party;

(B) a description of the existing law enforcement training programs in the area;

(C) what specific training need(s) are to be addressed by the proposed agreement contract.

(D) the number and types of courses that will be offered during the first quarter of the executed contract;

(2) appoint and maintain an advisory board as required by law and rule;

(3) follow the current requirements set by its advisory board;

(4) select a training facility that meets all academy inspection requirements, if applicable;

(5) select any instructional material, equipment, or resources necessary for the course;

(6) forward for approval, upon the executive director's request, at least one copy of the learning objectives of each course covered by the agreement;

(7) appoint and maintain the appointment of a qualified training coordinator;

(8) insure the training coordinator discharges any responsibilities required by law, rule, or agreement;

(9) select and monitor the performance of qualified instructors;

(10) admit any license holder subject to any reasonable limitations or preferences required by the advisory board;

(11) insure effective training and distribute learning objectives to each student before the course is taught;

(12) teach or insure that each course is taught in accordance with the instructor guide and/or learning objectives provided or approved by the commission;

(13) keep records of all agreement training for at least five years; and

(14) proctor any required examination and insure fair, honest results.

(f) Unless expressly waived by the agreement:

(1) an advisory board for agreement training must discharge the responsibilities of such boards as required by law or rule; and

(2) a training coordinator for an agreement must discharge the same responsibilities as an academy training coordinator and must hold a valid instructor license.

(g) By entering into any such agreement, the commission preapproves specific training which will be fully credited by the commission to each student as basic or in-service training or to the agency as in-service training provided by that agency, unless:

(1) the training was not conducted in compliance with the agreement; or

(2) the advisory board, training coordinator, or instructor substantially failed to discharge any responsibility required by rule.

(h) Once the agreement has been executed, the agreement trainer may be evaluated periodically by the commission as determined by the executive director. The evaluation may be accomplished by commission staff or by training professionals selected and trained by commission staff.

(i) The effective date of this section is September 1, 1994.

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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443803

Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 450-0188

◆ ◆ ◆  
The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts new §215.67 to establish consistent guidelines for both licensed academies and agreement training providers, with one

change to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3637). The change is at subsection (k) where it is changed to its to correct a typographical error. This section amends and replaces repealed §211.67, concerning Academy Advisory Boards, and §211.75, concerning Advisory Boards. This section is renumbered to provide better administrative control and consistency in the numbering scheme.

Section 215.67 was adopted as Final Order 94-6.

No comments were received regarding adoption of this new section.

• 37 TAC §215.67

The new section is adopted under Texas Government Code, Chapter 415, §§415.010(1), 415.031(a), and 415.031(c), which provides the commission with the authority to pass rules for the administration of Chapter 415; and under the Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

§215.67. *Training Provider Advisory Boards.*

(a) Each licensed academy and each agreement training provider approved by the commission must establish and maintain an advisory board as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum for more than 30 days.

(b) The board may have members who are law enforcement personnel. However one-third of the members must be public members having the same qualifications, found in the Government Code, §415-005, as any commissioner who is required by law to be a member of the general public. The chief administrator or head of the sponsoring organization and the designated training coordinator may only be ex-officio, non-voting members.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon board approval.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this title (relating to definitions);

(2) for a college academy, by the dean or other person who appoints the training coordinator, or

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area, or

(4) for an agreement training provider, by the chief administrator

(g) A member may be removed by the appointing authority

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties

(1) effectively discharge its responsibilities and otherwise comply with commission rules,

(2) advise on the need to study, evaluate, and identify specific training needs,

(3) advise on the determination of the types, frequency, and location of course to be offered, and

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the admission standards

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator

(l) The effective date of this section is September 1, 1994

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 authority

Issued in Austin, Texas, on July 7, 1994

TRD-9443604

Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date September 1, 1994

Proposal publication date May 13, 1994

For further information, please call (512) 450-0188

## Chapter 221. Proficiency Certificates and other Post- Basic Licenses Division

### • 37 TAC §221.100

The Texas Commission on Law Enforcement Officer Standards and Education (commission) adopts new §221.100 with changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3638). The commission is required by statute to establish and maintain minimum training standards for peace officers, reserve law enforcement officers, county jailers, and public security officers. A part of the statutorily required training is mandated continuing education in specific topic areas. Senate Bill 473, Acts of the 73rd Texas Legislature, amended existing provisions of Government Code, Chapter 415, by adding new topics. It is an objective of the Commission to implement fully the spirit and intent of the new provisions. The citizens of Texas derive a benefit when law enforcement practitioners are adequately trained in contemporary issues that affect all the various segments of society. Some of these issues are addressed in the amended continuing education statute. §221.100 will amend and replace §211.100, which did not address all provisions of the amended statute.

The new section was adopted with changes at the June 14, 1994, regular quarterly meeting of the commission. The changes made were to subsection (b) adding "... beginning September 1, 1993," and to subsection (d) deleting " or September 1, 1993, whichever is later." Section 221.100 was adopted as Final Order 94-1.

An oral comment was received during the June 13, 1994, commission work session meeting. An individual from the Fort Bend County Sheriff's Office, Richmond, asked for clarification whether the commencement date of September 1, 1993, referred to in subsection (d), applies to constables only, or to all peace officers covered by §221.100. The assistant director clarified that subsection (d) applies to constables and/or their deputies. He pointed out that the law the commission is implementing in this section went into effect September 1, 1993, but the provisions for in-service training for constables and their deputies went into effect September 1, 1991. The reference to September 1, 1993, was deleted from subsection (d), and subsection (b) was changed to include the effective date of September 1, 1993.

The new section is adopted under Texas Government Code, Chapter 415, §415.010(1), which provides the commission with authority to pass rules for the administration of Chapter 415; §415.034(a) and (b), which requires the commission to recognize, prepare, or administer continuing education programs, and to require law enforcement agencies to provide such training, and under Texas Government Code, Chapters 2001 and 2002, which taken together establish the procedures for the rule making requirements for the commission.

*§221.100 In-service Training Requirements  
for Agencies that Appoint Peace Officers.*

### *Reserve Law Enforcement Officers, County Jailers, and Public Security Officers*

(a) An agency that appoints or employs county jailers, or public security officers may provide, as defined in subsection (f) of this section, and during each 24-month period, training and instruction in civil rights, racial sensitivity, and cultural diversity

(b) An agency that appoints peace officers or reserve law enforcement officers shall provide, as defined in subsection (f) of this section, the in-service training program required by this section. The program shall consist of one or more in-service courses, that total at least 40 hours during each 24-month period, beginning September 1, 1993, and must:

(1) be approved by the commission; and

(2) include education and training in:

(A) civil rights, racial sensitivity, and cultural diversity, and

(B) the recognition of cases that involve the following:

(i) child abuse;

(ii) child neglect,

(iii) family violence; and

(iv) sexual assault

(c) An officer appointed to the officer's first supervisory position on or after September 1, 1993, must receive in-service training on supervision as part of a course or courses provided under subsection (b) of this section during the 24-month period after the date of that appointment

(d) All constables and their deputies, as a part of their 40 hour in-service training requirement, shall complete 20 hours of instruction in civil process. A constable may, by written certification to the commission, exempt from the civil process training those deputies who do not serve process. The first 24-month period shall commence for each peace officer on that officer's date of appointment

(e) An agency may voluntarily require of or provide to, any peace officer or other person employed or appointed by that agency, any additional training that exceeds this required in-service program

(f) An agency provides a program or course, for purposes of this section if:

(1) the agency orders or requires attendance and successful completion as a condition of continued employment or appointment; and the agency pays all the cost of attendance and provides direct or compensatory time off for attendance, or

(2) the agency requires attendance and successful completion as a condi-

tion of continued commissioning; and the agency has issued the commission as provided by law to an officer who is appointed by another entity.

(g) An in-service training program shall consist of one or more separate in-service courses, each of which shall have a final examination or skills test, as appropriate, which must be passed before course completion credit will be awarded. Any such course shall be reasonably related to the current or prospective duties of each person who attends; and at least one such course provided by each agency should include instruction in recent changes in criminal or civil law.

(h) Unless otherwise provided by law, rule, or agreement, an agency or advisory board responsible for any in-service course shall, within its discretion:

- (1) govern the conduct of that course;
- (2) control the length, the number of times taught, and the specific content of any course; and
- (3) assign any or all officers to attend any particular course.

(i) The effective date of this section is September 1, 1994.

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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443600 Truman Lewis  
Assistant Director  
Texas Commission on Law  
Enforcement Officer  
Standards and  
Education

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 450-0188

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

##### Subchapter B. Contracting Requirements

###### • 40 TAC §27.203

The Texas Department of Human Services (DHS) adopts an amendment to §27.203, concerning provider applications, in its Intermediate Care Facilities for the Mentally Retarded (ICF/MR) rule chapter, with changes to the proposed text as published in the May 27, 1994,

issue of the *Texas Register* (19 TexReg 4170).

The justification for the amendment is to clarify the provider application rule regarding qualifications and requirements of a new applicant, refinanced facilities, half-mile rule, commensurate wages, and time frames

The amendment will function by improving quality of services provided by ICFs-MR resulting from changes to the application process.

No comments were received regarding adoption of the amendment; however, DHS is adopting subsection (d)(3)(A) with a change to clarify that requests for a change in location following application approval must be in writing.

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 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.

#### §27.203. Provider Applications.

(a) (No change.)

(b) All applicants for participation in the Intermediate Care Facility for the Mentally Retarded (ICF/MR) Program must submit an application to the Texas Department of Mental Health and Mental Retardation (TXMHMR) for review and approval. The application must include documentation to verify the applicant's ability to ensure the delivery of quality care and services.

(1) The documentation submitted must indicate that the following persons will have completed the ICF/MR preapplication training course prior to approval of the application:

(A) the applicant and/or a designated representative, other than a consultant; and/or

(B) the individual who will be responsible for the direct management of the facility; or

(C) those who, at the time of application, are not owners of an ICF/MR facility in the Texas ICF/MR Program.

(2) If the employment status of the persons specified in paragraph (1) of this subsection changes prior to approval of the application, approval of the application will be postponed until the appropriate persons complete the training.

(c) All applications are limited to one level-of-care classification (I, V, VI, or VIII) and must meet the requirements specified in paragraphs (1)-(5) of this subsection.

(1) Requested certification is limited to a maximum of six beds per facility, except for those facilities funded only through state general revenue and being refinanced by TXMHMR during fiscal year 1994-1995. This includes new facilities seeking initial certification and currently certified facilities seeking to increase the certified bed capacity. During the 1994-1995 biennium, facilities funded only through general revenue and refinancing under the ICF/MR Program that have more than six beds must become six-bed facilities within three years from the date of TXMHMR approval of the ICF/MR application packet.

(2) The proposed facility is in compliance with applicable special use permit requirements, local zoning, and/or occupancy code requirements, and §27.201 of this title (relating to Participation Requirements). The proposed facility must also meet the specifications described in subparagraphs (A) and (B) of this paragraph:

(A) The applicant must submit information about the proposed facility which addresses the services detailed in clauses (i)-(iv) of this subparagraph.

(i) Availability of 24-hour emergency medical services, utility services, fire protection, police and sheriff protection, waste water, and garbage disposal

(ii) If the proposed facility intends to serve individuals who are eligible for educational services, the application must include documentation to verify that the local school district has been notified of the development of the proposed facility.

(iii) If the proposed facility intends to serve individuals who are 22 years of age and older, the application must include a description of how the program intends to provide and/or support the delivery of vocational, day habilitation, or supported employment services.

(iv) If the services are to be provided by an entity other than the applicant or facility, the service provider must submit documentation of his intent to provide services to the individuals who will be residing in the proposed facility. If commensurate wages will be earned by individuals in a vocational services setting provided by the applicant, documentation of Department of Labor Certification is required.

(B) The applicant must submit documentation that the proposed facility is not within a one-half mile radius of another ICF/MR, except in those community care facilities that were refinanced by TXMHMR during fiscal year 1994-1995.

(3) A needs assessment has been conducted to include the following:

(A) (No change.)

(B) The applicant must submit documentation to verify that the Mental Retardation Authority in whose catchment area the proposed facility is located has been notified of the development of the proposed facility and the proposed facility's admission criteria. The applicant must obtain and submit two letters which address the need for the facility from the following sources: the superintendent of the state school and/or the executive director of the MHMR center in whose catchment area the proposed facility is located, advocacy groups, developmental disability service providers and organizations, school districts, and/or other appropriate developmental disability referral sources. Letters from individuals who have a financial interest in the proposed facility are not acceptable. The letters must:

- (i) refer specifically to the proposed facility by name and/or address;
- (ii) be current within six months prior to the submission of the application; and
- (iii) be printed on the letterhead of the acknowledging entity.

(C) If the facility serves individuals qualifying for Level-of-Care VIII services, the applicant must additionally submit documentation that verifies that the regional DHS office and at least two other appropriate developmental disability referral sources, such as Head Injury Foundation and Spina Bifida Foundation, have been notified about the development of the proposed facility

(D) (No change.)

(4) (No change.)

(5) Facilities that are in the application process prior to initial certification, certified facilities, and licensed facilities requesting to reclassify must withdraw from the program and submit a new application for the new level of care.

(d) The applicant has 270 calendar days from the date an application for participation in the ICF/MR program has been approved by TXMHMR to obtain certification by the Texas Department of Human Services (DHS). If, at the end of the 270-calendar-day period, the provider is unable to obtain certification, the request for program participation will be withdrawn by TXMHMR and the application will be returned to the applicant.

(1) TXMHMR may grant applicants a 90-calendar-day extension for new construction delayed by inclement weather, natural disaster, construction strike, litigation, requirements of other state agencies,

or other causes beyond the provider's control. New construction does not include renovations or modifications to existing structures. The request for the extension must:

(A) be submitted in writing to TXMHMR prior to the end of the 270-calendar-day period; and

(B) include documentation to support the circumstance which caused the delay.

(2) If there is an agency delay which is not the fault of the applicant and results in failure to obtain certification within the 270-calendar-day period, an extension is granted to enable completion of the process. A copy of the written notification will be forwarded to the provider and the other state agencies involved. The length of the extensions is as follows:

(A) new construction-90 days;

(B) survey scheduling-not to exceed the scheduled date of survey; or

(C) litigation-until

(i) litigation is resolved, plus 270 days if construction was stopped because of an injunction; or

(ii) the scheduled date of survey, if:

(I) there was no new construction; or

(II) construction was allowed to continue.

(3) If an applicant must change locations following application approval by TXMHMR, the change in location must:

(A) be requested in writing within the first 30 days from the date of the original application approval and include the relocation information required by TXMHMR;

(B) meet all requirements set forth in this section and be approved by TXMHMR, ICF/MR Section;

(C) remain within the same geographic region as the previously approved location, as defined in TXMHMR's Plan on Long-Term Care for People with Mental Retardation or Related Conditions; and

(D) not alter the applicant's ability to obtain certification within the

270-calendar-day time period set forth in this subsection.

(e) To receive approval for participation, applications must meet all requirements set forth in this section and be in compliance with TXMHMR's Plan on Long-Term Care for People with Mental Retardation or Related Conditions. Applications that have not received approval from TXMHMR within a 90-calendar-day period from the date submitted will be withdrawn from the review process and returned to the applicant.

(1) TXMHMR reserves the right to deny the approval of any application if the applicant or an affiliate has been excluded from Medicaid program participation under Chapter 79, Subchapter V, of this title (relating to Fraud and Abuse Involving Medical Providers) or debarred from contracting with DHS under §§69.275-69.279 of this title (relating to Debarment and Suspension of Current and Potential Contractor's Rights, Causes for and Conditions of Debarment, Causes for and Conditions of Suspension, Proof Required for Debarment and Suspension, and Notice Requirements for Debarment and Suspension). TXMHMR also reserves the right to postpone the approval of any application if the applicant or an affiliate is currently under investigation or review for potential fraud, abuse, or misuse of Medicaid funds or for any violation for which a sanction could be taken under Chapter 79, Subchapters V, W, and X of this title (relating to Fraud and Abuse Involving Medical Providers, Fraud or Abuse Involving Individual or Major Providers (Except Medical), and Recovery of Benefits Wrongfully Received)

(2) As necessary, TXMHMR, ICF/MR Program staff will contact the applicant to facilitate completion of the application process. Upon approval, TXMHMR will notify DHS that the facility can begin the certification survey process. If a change in ownership or control occurs after the application is approved, but before the facility is certified, the application will be withdrawn and returned to the original owner and/or applicant. Applications are not transferable prior to certification of the facility. If a facility loses its license.

(A) its certification will be revoked, and

(B) the facility's provider contract will be canceled.

(3) The contract for services is dependent on compliance with the provisions of 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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443660

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

Effective date August 1, 1994

Proposal publication date: May 27, 1994

For further information, please call: (512)  
450-3765

## Subchapter D. Reimbursement Methodology

### • 40 TAC §27.413

The Texas Department of Human Services (DHS) adopts an amendment to §27.413, concerning rate setting methodology, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter, with changes to the proposed text as published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3239).

The justification for the amendment is to modify the reimbursement methodology for ICF-MR Level V children's facilities to ensure adequate payment to care for children in this class.

The amendment will function by allowing the only Level V ICF-MR special children's facility to continue to operate. This facility is dedicated to serving disabled children with mental retardation or a related condition.

During the public comment period, DHS received comments from representatives of Advocacy, Incorporated; the Arc of Texas; the Disability Policy Consortium; the Texas Planning Council for Developmental Disabilities; the American Disabled for Attendant Programs Today; the Health Care Financing Administration; United Cerebral Palsy of Texas; the Ada Wilson Children's Center for Rehabilitation; and several individuals. A summary of the comments and DHS's responses follows:

**Comment:** Several commenters stated that the proposed reimbursement rule conflicts with DHS's Community Impact Statement.

**Response:** While it is true that the proposed rule conflicts with the Community Impact Statement, it is just a temporary measure that will expire on October 1, 1994. Since the rulemaking function will be taken over by the Texas Department of Mental Health and Mental Retardation on September 1, 1994, the decision whether or not to continue with the temporary rules would be made by that agency. The rule is needed so that no disruption will occur for DHS's clients until a longer-term solution is developed.

**Comment:** Several commenters stated that since DHS is proposing a new facility-specific reimbursement methodology, it should not be necessary to make the proposed change for the special children's facility class.

**Response:** The earliest that the proposed facility specific methodology would be imple-

mented would be January 1, 1995. The proposed methodology for the special children's facility class would be a temporary measure until October 1, 1994.

**Comment:** Commenters felt that setting a special rate for one special children's facility would encourage other providers to request special treatment for their facilities. They questioned how much extending the same treatment to other facilities would cost and whether failure to extend similar treatment to other facilities would raise "equal protection" issues.

**Response:** Although the proposed rules would only affect the Ada Wilson facility, another provider outside the special children's class has requested similar treatment. If similar treatment were extended to all ICFs-MR, the estimated cost to the state would be at least \$8 million annually. Regarding equality of treatment, the facility affected by the proposal is unique in that it is the only large Level V children's facility in the state and, along with four other large Level VI children's facilities, this facility is recognized as a special-payment class in published rules and in the Texas Medicaid State Plan, pursuant to the Royal Thomas v. Martin Johnston lawsuit settlement agreement.

**Comment:** Several commenters stated that they did not think enough information was presented to demonstrate the necessity for a special rate for Ada Wilson.

**Response:** DHS and the Texas Department of Mental Health and Mental Retardation (TXMHMR) have been meeting with representatives of Ada Wilson for two years discussing the revenue shortfalls. TXMHMR staff have visited the facility to examine staffing and cost issues. The methodology that was proposed is designed to cover additional costs for enhanced services tailored to the needs of this particular population in this setting.

**Comment:** One commenter recommended that the following actions be taken regarding the proposed methodology: (1) that DHS reaffirm its commitment to community services, (2) that any increase in funding for Ada Wilson be conditioned upon a redirection of effort toward developing community services, with specific time lines, and (3) that incentives be developed for Ada Wilson to increase community services to a point where the operation was not dependent upon residential services funding.

**Response:** DHS is forwarding these recommendations to TXMHMR because that agency will be taking on responsibility for the ICF-MR program on September 1, 1994.

**Comment:** One commenter requested clarification regarding the method and the base period which will be used to project historical costs.

**Response:** DHS is adopting subsection (c)(3)(E)(iii) with changes to provide the requested clarification. In addition, DHS is adopting subsection (c)(3)(E)(v) with a change to clarify that the state will recoup

nonexpended Medicaid payments, and is adopting (c)(3)(E)(vi) to add a reference to the State Plan amendment process which would be needed to replace or modify the methodology after September 30, 1994.

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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001, 22.002, and 32.001-32.042.

### §27.413. Rate Setting Methodology.

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

(c) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of Texas Department of Human Services (DHS) staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

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

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992.

(A)-(D) (No change.)

(E) Temporary method for determination of ICF-MR Level V alternative children's facility rates for the period beginning May 1, 1994. An eligible children's facility is reimbursed in the following manner:

(i) Rates are based on projected per diem costs, not to exceed the current ICF-MR/RC-VIII base rate, including the estimated per diem cost of augmentative communication devices, plus the single highest supplemental rate amount, as specified under §27.415(c) of this title (relating to ICF-MR/RC VIII Experimental Class). The cost-based rates will not include a mark-up or incentive factor.

(ii) Reimbursement for fixed capital assets is in the form of a use

fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and building equipment lease expense. The annual use fee is calculated as 14% of the appraised value of buildings, improvements and land, as determined by local taxing authorities. If an appraisal by local taxing authorities is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to ICF-MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The per diem use fee is calculated by dividing the annual use fee by anticipated facility days of service.

(iii) Projected costs may be calculated by using pro forma estimates

based on historical costs adjusted to reflect anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by DHS for the particular children's population served.

(iv) The portion of the Medicaid rate to a provider that represents administrative costs, as collected on the administrative cost area of the Medicaid cost report, is limited to the 90th percentile in the array of administrative costs for all large Level V ICFs-MR.

(v) Any Medicaid payments not expended on Medicaid allowable costs will be recouped by the state.

(vi) This temporary method remains in effect until September 30, 1994, or until formally replaced or mod-

ified through a State Plan amendment, whichever comes first.

(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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443668

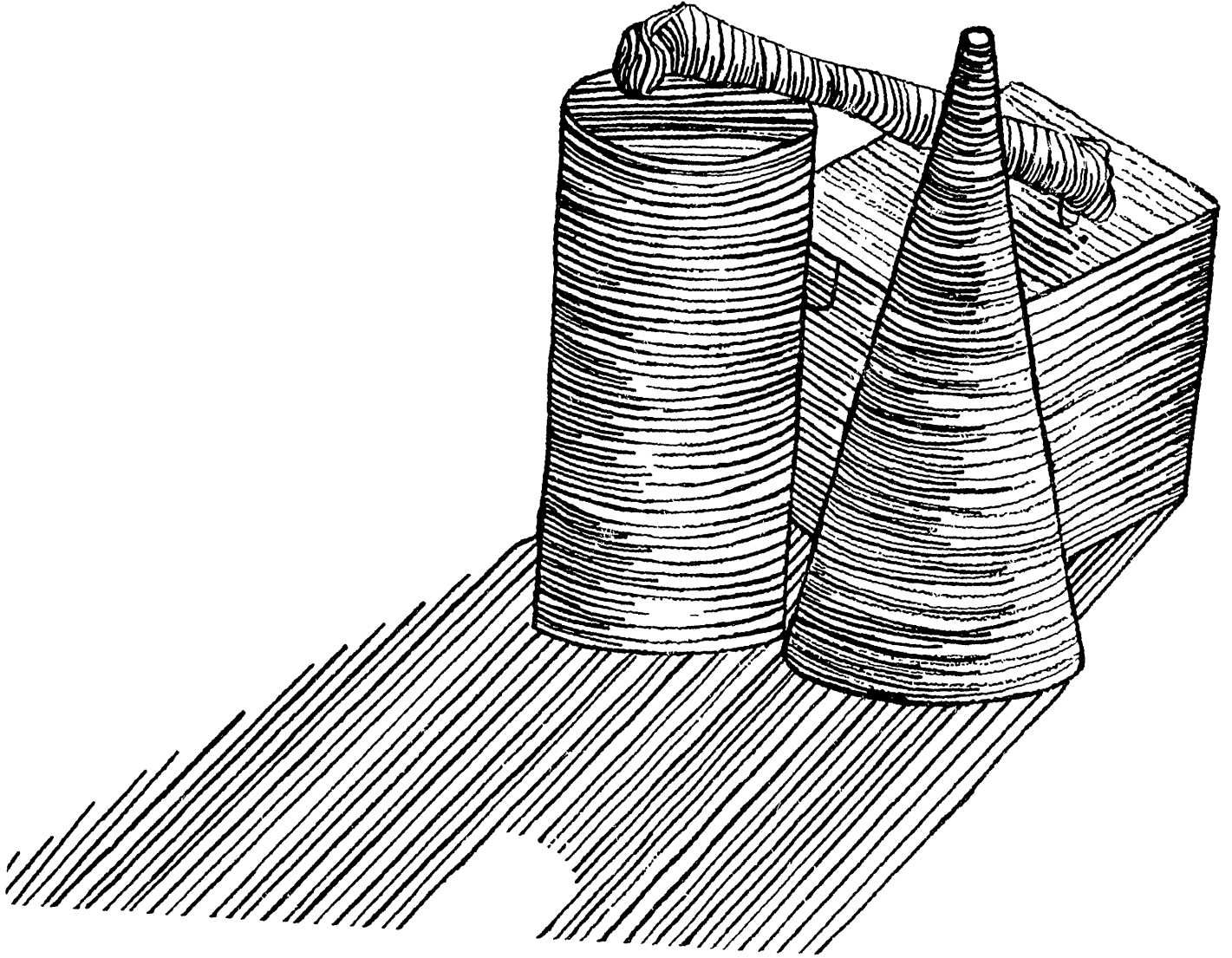
Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: August 1, 1994

Proposal publication date: April 29, 1994

For further information, please call: (512) 450-3765

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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-Wednesday, July 20-21, 1994, 1:00 p.m. and 8:45 a.m. respectively.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A  
Austin

According to the agenda summary, the Texas Agricultural Finance Authority will hold discussion and action on minutes of last meeting, applications to Loan Guaranty Program, outstanding guaranty to Tyler Rose Nursery, Inc.; fiscal year 1995 budget, Loan Guaranty Program rules, application for Young Farmer Loan Guarantee Program, Young Farmer Loan Guarantee Program rules, Young Farmer Loan Guarantee credit policy and procedures, project eligibility, credit cards for board members, presentations by respondents to request for proposal for senior managing underwriter for Farm and Ranch Finance Program, selection of senior managing underwriter for Farm and Ranch Finance Program, Revenue Bond Program, and discussion on demand survey by Texas A&M, portfolio of TAFE Loan Guaranty Program, and date of next meeting.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639

Filed: July 11, 1994, 4:36 p.m.

TRD-9443856

Thursday, August 25, 1994, 10:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120  
San Antonio

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violations of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1982) regarding J A V AG, Inc. doing business as Van De Walle Vegetable, complainant and counter-respondent vs. Kay Meat Company, Inc., respondent and counter-complainant.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448

Filed: July 11, 1994, 3:09 p.m.

TRD-9443837

Tuesday, August 30, 1994, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

According to the complete agenda, the Produce Recovery Fund Board will discuss deliberation and action on: Docket Number 01-93-APA, Javi Farms, Inc. vs. Thomas E. Wiseman, Docket Number 39-93-APA, Tender Care Produce vs. Kay-Dee Produce, and Docket Number 45-93-APA, Jose Luis Vargas v. Kay-Dee Produce

Contact: Margaret Alvarez, P.O. Box 12847, Austin, Texas 78711, (512) 463-7604

Filed: July 5, 1994, 11:49 a.m.

TRD-9443499

Wednesday, August 31, 1994, 9:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

According to the complete agenda, the Produce Recovery Fund Board will discuss deliberation and action on Docket Number 62-92-APA, Chaparral Fruit Sales, Inc. vs. Rudy Longoria.

Contact: Margaret Alvarez, P.O. Box 12847, Austin, Texas 78711, (512) 463-7604

Filed: July 5, 1994, 11:49 a.m.

TRD-9443500

## Texas Appraiser Licensing and Certification Board

Tuesday, July 19, 1994, 10:00 a.m.

Executive Conference Room 235-A, 1101 Camino La Costa

Austin

According to the complete agenda, the Budget Committee will hold a workshop for preparation of the agency's requests for legislative appropriations for fiscal years 1996 and 1997 for recommendation to the Texas Appraiser Licensing and Certification Board

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: July 7, 1994, 4:02 p.m.

TRD-9443659

Wednesday, July 20, 1994, 8:30 p.m.

Executive Conference Room 235-A, 1101 Camino La Costa

Austin

According to the complete agenda, the Ad Hoc Committee will hold a workshop in executive session concerning the evaluation of the commissioner's job performance pursuant to Texas Government Code, §551.074.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: July 7, 1994, 4:30 p.m.

TRD-9443673

### Advisory Board of Athletic Trainers

Wednesday, July 20, 1994, 9:00 a.m.

Room M9-12, Arlington Convention Center  
Arlington

According to the complete agenda, the Advisory Board of Athletic Trainers will hold a ten-minute forum to receive input from interested parties; and discuss and possibly act on minutes of the April 16, 1994 meeting; chairman's report; executive secretary's report; program director's report; complaints (#94-02 William Clark; and #94-03 Ross Geyer and Glen Geyer); proposed amendments to Chapter 313; board appreciation resolutions (James G. Murray; Sanford Miller, Leeland Winston, M.D.; and Buckalew Chevrolet); continuing education and test committee report; report on survey concerning coursework and perceptions of recently licensed athletic trainers; election of officers; appointment of committees; professional services contract for executive secretary and associate executive secretary; announcements and comments not requiring board action; and setting of the next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615. 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: July 6, 1994, 3:39 p.m.

TRD-9443551

Wednesday, July 20, 1994, 11:00 a.m.

Room M9-12, Arlington Convention Center  
Arlington

According to the complete agenda, the Advisory Board of Athletic Trainers (Worksession) will hold a worksession and

discussion on the clinical skills and coursework required for licensure as an athletic trainer.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615. 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: July 6, 1994, 3:39 p.m.

TRD-9443552

### The State Bar of Texas

Thursday-Friday, July 14-15, 1994, 9:30 a.m. and 8:30 a.m., respectively.

The Texas Law Center, 1414 Colorado, Room 206

Austin

According to the agenda summary, the Commission for Lawyer Discipline called to order/introductions/discussed: minutes; status reports; commission's compliance with State Bar Act, Texas Rules of Disciplinary Procedure, Orders of the Supreme Court; operations of the general counsel's office; grievance committees; special counsel program; presentation by Jack Pasqual; discuss adoption of an internal operating rule; operations of the commission; issue of taping-recording of conversations; mediation of disciplinary matters; presentations of trial staff/closed executive session: discussed: pending litigation and evidentiary cases; special counsel assignments; personnel matters/public session: discussed and took action on matters discussed in closed executive session; discussed future meetings, discussed other matters as appropriate; received public comment; and adjourned.

Contact: Anna McKenna, P.O. Box 12487, Austin, Texas 78711, 1-(800) 204-2222.

Filed: July 6, 1994, 4:30 p.m.

TRD-9443590

Thursday-Friday, July 14-15, 1994, 9:30 a.m. and 8:30 a.m., respectively.

The Texas Law Center, Room 206, 1414 Colorado

Austin

Emergency Revised Agenda

According to the complete agenda, the Commission for Lawyer Discipline will add the case of Jack Clinton Looney (16A), to Item Numbers 16 and 20 and the case of Timothy Gerard Pletta (6A) to Item Numbers 15 and 19 for discussion and possible action.

Reason for emergency: These items require action prior to the next scheduled meeting of the commission.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, (512) 463-1463.

Filed: July 11, 1994, 4:51 p.m.

TRD-9443860

### Texas Certified Self-Insurer Guaranty Association

Tuesday, July 19, 1994, 11:00 a.m.

4000 South IH-35, Tippy Foster Meeting Room 910

Austin

According to the agenda summary, the Board will call to order; approval of minutes for the public meeting of June 21, 1994; discussion, consideration, and possible action on the initial applications for Driver Pipeline Company, Inc. and The Heil Company; discussion, consideration, and possible action on the renewal applications for Browning-Ferris Industries, Inc., Mother Frances Hospital Regional Health Care Center, Venture Stores, Inc., Thiokol Corporation, and Red Arrow Freight Lines, Inc.; discussion, consideration, and possible action on the Officers and Directors Liability Insurance; other business; discussion of future public meetings; and adjournment.

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322-2514.

Filed: July 8, 1994, 2:45 p.m.

TRD-9443728

### Texas Commission on Children and Youth

Friday, July 15, 1994, 9:00 a.m.

300 West 15th Street, Committee Room One

Austin

According to the agenda summary, the Texas Commission on Children and Youth will hold commission work session; lunch; commission work session continues. This meeting is open to the public, but no public testimony is scheduled.

Contact: Mary Acree, P.O. Box 131065, Austin, Texas 78711, (512) 305-9056

Filed: July 7, 1994, 3:58 p.m.

TRD-9443657

## Texas State Board of Examiners of Professional Counselors

Friday, July 15, 1994, 1:00 p.m.

Suite S-256, 420 Decker Drive

Irving

According to the complete agenda, the Complaints Committee discussed and possibly acted on: proposal submitted by B.B.; agreed orders concerning J.R., T.P., and G.I.; surrender of M.H.'s and J.R.'s license; and pending complaints.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler (512) 458-7695 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 6, 1994, 3:39 p.m.

TRD-9442554

## Texas Department of Criminal Justice

Wednesday, July 13, 1994, 8:30 a.m.

Four Seasons Hotel, San Jacinto Ballroom, 98 San Jacinto Boulevard

Austin

According to the agenda summary, the Board of Criminal Justice discussed in morning session: task force on recidivism, and afternoon session: task force on recidivism/work group sessions and state jail facilities (afternoon meetings ran concurrently).

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas (512) 475-3250.

Filed: July 5, 1994, 3:39 p.m.

TRD-9443510

Thursday, July 14, 1994, 8:00 a.m.

Four Seasons Hotel, 98 San Jacinto Boulevard

Austin

According to the agenda summary, the Board of Criminal Justice, Windham School Board met in executive session. discussion concerning contract nonrenewal of probationary employee; regular session: action item-nonrenewal of probationary employee, consent items; discussion and action items-WSS budget and salary schedule for 1994-1995; and program planning session.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 6, 1994, 3:36 p.m.

TRD-9443548

Thursday, July 14, 1994, 1:00 p.m.

Four Seasons Hotel, 98 San Jacinto Boulevard

Austin

According to the complete agenda, the Board of Criminal Justice presented and discussed "Progress Beyond the Walls-Development of a New TDCJ" (agency response to the Texas Performance Review Audit). Item included discussion and action as necessary.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 6, 1994, 3:36 p.m.

TRD-9443547

Thursday, July 14, 1994, 4:30 p.m.

Four Seasons Hotel, 98 San Jacinto Boulevard

Austin

According to the agenda summary, the Board of Criminal Justice, Facilities Committee discussed current project status; state jail facilities; construction projects for committee approval; and other items.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 6, 1994, 3:49 p.m.

TRD-9443556

Thursday, July 14, 1994, 4:30 p.m.

Four Seasons Hotel, 98 San Jacinto Boulevard

Austin

According to the complete agenda, the Board of Criminal Justice, Administration Committee discussed review and final approval of fiscal year 1995 audit plan; and audit reports.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 6, 1994, 3:49 p.m.

TRD-9443557

Friday, July 15, 1994, 8:00 a.m.

Four Seasons Hotel, 98 San Jacinto Boulevard

Austin

According to the agenda summary, the Board of Criminal Justice will meet at 8:00 a.m.-executive session: discussion with attorneys concerning litigation; discussion of matters confidential under State Bar Disci-

plinary Rules/Professional Conduct; discussion/personnel matters. 9:00 a.m.-regular session: recognition; consent items; board committee reports; approval/fiscal year 1995-1996 educational and recreational budget; final approval of fiscal year 1995 internal audit plan; construction briefing; resolution-relating to financing/Henderson State Jail Facility; designation/unit names; proposed repeal/rules governing inmates; Judicial Advisory Council; state jail issues; allocation formulas; performance review report; proposed rules/policies governing determination of prison capacity; and discussion/telephones in prisons

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: July 7, 1994, 4 45 p.m.

TRD-9443682

## Texas Education Agency

Friday, July 8, 1994, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

Emergency Revised Agenda

According to the complete agenda, the State Board of Education will discuss emergency addition to agenda-allocation of additional funds for the purchase of textbooks. On July 7, 1994, the Legislative Budget Board approved a budget execution proposal to transfer \$11.8 million for public textbook funding. An additional \$17 million has also been appropriated from the Available School Fund. This item recommends that the State Board of Education accept the additional \$11.8 million and sets aside \$17 million out of the Available School Fund for the purchase and distribution of textbooks determined to be priorities for school year 1994-1995.

Reason for emergency: The agency finds it is of urgent public necessity for this item to be added to the SBOE agenda on an emergency basis in order to make \$28.8 million available for textbook purchases for school year 1994-1995

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701

Filed: July 7, 1994, 3 52 p.m.

TRD-9443646

## The State Employee Charitable Campaign

Thursday, July 14, 1994, 9:00 a.m.

815 Market  
Galveston

According to the agenda summary, the Local Employee Committee-Galveston will share updated information on SECC review and approved LCM's budget, schedule, materials

- I. Welcome, minutes.
- II Review and approval of campaign.
  - A. Schedule.
  - B. Budget.
  - C. Materials.
- III. Review of reporting process.
- IV Schedule future meetings

Contact: Frank Johnson, P.O. Box 2250, Galveston, Texas 77553, (409) 762-1041.

Filed: July 11, 1994, 10 22 a.m.

TRD-9443800

Thursday, July 14, 1994, Noon.

1212 North Velasco  
Angleton

According to the complete agenda, the Local Employee Committee-Brazoria County held a meeting to approve revised local campaign manager budget, discuss degree of campaign services to other counties, review plans for training and kickoff

Contact: Lupe Olivares, 1212 North Velasco, Angleton, Texas 77515, (409) 849-9402

Filed: July 8, 1994, Noon.

TRD-9443713

Wednesday, July 20, 1994, 3:30 p.m.

Beaumont Community Foundation Building, 700 North Street

Beaumont

According to the agenda summary, the Local Employee Committee will discuss campaign update

Contact: Charles Turco, 113 Briggs Street, Beaumont, Texas 77707, (409) 880-8439.

Filed: July 11, 1994, 3 10 p.m

TRD-9443838

## Texas Employment Commission

Tuesday, July 12, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

### Emergency Revised Agenda

According to the agenda summary, the Texas Employment Commission will add to executive session consider potential litigation regarding the Bryan local office

Reason for emergency: Threat of immediate significant litigation

Contact: C Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291

Filed: July 11, 1994, 4 09 p.m.

TRD-9443854

## Texas Commission on Fire Protection

Wednesday-Friday, July 13-15, 1994, 9:00 a.m.

12675 North Research Boulevard

Austin

### Emergency Revised Agenda

According to the agenda summary, the Texas Commission on Fire Protection discussed 37 TAC Chapter 423, Subchapter A, amendments to §421.1, 421.3, and 421.5 concerning structural fire protection personnel certification.

Reason for emergency. To include a section number which was left out of the original agenda.

Contact: Carol Menchu, 12675 North Research, Austin, 78758, (512) 918-7100

Filed: July 6, 1994, 1.22 p.m

TRD-9443533

## General Land Office

Tuesday, July 19, 1994, 10:00 a.m.

S.F.A. Building, 1700 North Congress, Room 831

Austin

According to the complete agenda, the School Land Board will discuss approval of previous board meeting minutes; pooling applications, Buck Ranch Strawn, Parker County, Jack Starr (Yegua Y-4), Jackson County; Wildcat/Taylor Lake, East, Harris County; Aggieldand, Burleson and Brazos counties; Giddings (Austin Chalk-3), Burleson and Brazos counties; applications

to lease highway rights of way for oil and gas, Lee County, Washington County, Howard County, Victoria County, Fayette County, and Brazos County, coastal public lands-commercial lease ratification, Clear Lake, Galveston County, lease amendment, Copano Bay, Refugio County, easement application, Matagorda Bay, Matagorda County, structure (cabin) permit termination, Laguna Madre, Kleberg County; structure (cabin) permit request, Laguna Madre, Kleberg County, structure (cabin) permit amendments, Laguna Madre, Kleberg County, Chocolate Bay, Brazoria County, structure (cabin) permit renewals, Laguna Madre, Kleberg County, Laguna Madre, Kenedy County, consideration of easement, Hynes Bay, Calhoun County, executive session-pending and proposed litigation, executive session-direct land sale, Bexar County, open session-consideration of direct land sale, Bexar County; executive session direct land sale, El Paso County, open session-consideration of direct land sale, El Paso County, executive session-discussion of lease provision, Harris County; open session-consideration of lease provision, Harris County, executive session-discussion of tracts, terms and conditions for a September 6, 1994 sealed bid land sale, open session consideration of tracts, terms and conditions for a September 6, 1994 sealed bid land sale

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 836, , 78701, (512) 463-5016.

Filed: July 11, 1994, 4 04 p.m

TRD-9443847

## General Services Commission

Thursday, August 11, 1994, 8:30 a.m.

The Royce Hotel, 3401 South IH-35

Austin

According to the complete agenda, the General Services Commission will discuss School Bus Bodies, Chassis, Engines, Options, Safety Items, various accessories, and the Approved Products List

Contact: Ron Dyer, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3412.

Filed: July 7, 1994, 11 53 a.m

TRD-9443615

## Office of the Governor

Monday, July 25, 1994, 8:30 a.m.

Capitol Extension, Room E1 014

Austin

According to the agenda summary, the Committee on People with Disabilities will hold a regular quarterly meeting

1. Full committee meeting. Approval of minutes and public comment.
2. Organization reports.
3. Executive director's report.
4. Report from Texas Performance Review.
5. Subcommittee meetings.
6. Subcommittee reports. Program Subcommittee. Action: Approval of Barbara Jordan Award winners. Action: Approval of Employment Award winners. Action: Approval of design for Governor's Trophy. Long-Range Planning and Policy Subcommittee meeting. Action: Accept or amend draft policy (recommendations tentatively approved May 13, 1994). Action: Designate and authorize committee member/s to oversee and approve copy for the Long-Range State Plan for Texans with Disabilities.
7. Discussion of GCPD priorities for action. Action: Vote on GCPD priorities for action.
8. Adjournment

Contact: Virginia Roberts, 201 East 14th Street, Austin, Texas 78711, (512) 463-5739.

Filed: July 11, 1994, 9:15 a.m.

TRD-9443798

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**Texas Department of Health**

Friday, July 15, 1994, 1:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Community Oriented Primary Care Committee will discuss approval of the minutes of the previous meeting; discuss and possibly act on: fiscal year 1995 grant applications (continuation/expansion; transition, and new applications); Community Oriented Primary Care initiatives (handbook: Integrated Client Encounter Services; and Texas Eligibility Screening Systems); and selection of next meeting.

Contact: John Dombroski, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771. 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: June 29, 1994, 9:56 a.m.

TRD-9443191

Wednesday, July 20, 1994, 9:00 a.m.

Suite 200, Texas Department of Health, 2201 Donley Drive

Austin

According to the complete agenda, the Wholesale Drug Advisory Committee will discuss and possibly act on: reimbursement procedures for travel vouchers, additional

proposed amendments to the rules for licensing of wholesale distributors of drugs including good manufacturing practices; proposed licensure fee increases; and new business not requiring committee action.

Contact: Cynthia T. Culmo, R.Ph., 1100 West 49th Street, Austin, Texas 78756, (512) 719-0200. 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: July 8, 1994, 7:43 p.m.

TRD-9443765

Friday, August 5, 1994, 10:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas HIV Medication Program Advisory Committee will discuss approval minutes of previous meeting; and discuss and possibly act on: new Food and Drug Administration-approved antiretroviral --D4T (Stavudine); and recommendations.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7357. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 6, 1994, 3:39 p.m.

TRD-9443553

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**Health and Human Services Commission**

Thursday, July 14, 1994, 9:15 a.m.

701 West 51st, Winters Building

Austin

According to the complete agenda, the Medical Care Advisory Committee will discuss opening comments; State Medicaid Director's comments; approval of minutes; changes to the licensure rules for nurse aides; changes to rules regarding adult day care; combining nursing facility licensure standards and certification requirements in the nursing facility requirements; Medicaid reimbursement for services to individuals 65 years old or older and residing in institutions for mental diseases; addition of licensed professional counselors and advanced clinical practitioners as Medicaid providers, addition of family care as optional service for primary home care provider; reimbursement for vaccines not covered elsewhere under OBRA 1989; EPSDT: Psychosocial Treatment Program for Foster Children, budgeting vehicles as resources in the Food Stamp and Medical programs, adding RN delegation of health-related tasks to Community Living Assistance and Support Services and Nursing Facility

Waiver programs; trusts and transfers of assets; support and maintenance policy; rule changes to the Community Living Assistance and Support Services Program; cost determination rules for certain long term care programs; Primary Home Care Program; revision to licensing requirement; rules; selective contracting for hospitals--update, report; open discussion; and next meeting/adjournment.

Contact: Geri Williams, 4807 Spicewood Springs Road, Building Four, Austin, Texas 78759, (512) 502-3256.

Filed: July 6, 1994, 10:44 a.m.

TRD-9443524

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**Statewide Health Coordinating Council**

Wednesday, July 20, 1994, 8:00 a.m.

Room 102, University of Texas School of Public Health, 1200 Herman Pressler

Houston

According to the complete agenda, the Ad Hoc Committee on Higher Education will discuss and possibly act on higher education issues related to the 1995-1996 State Health Plan.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 8, 1994, 7:54 p.m.

TRD-9443769

Wednesday, July 20, 1994, 9:00 a.m.

Room 102, University of Texas School of Public Health, 1200 Herman Pressler

Houston

According to the complete agenda, the Plan Development Committee will discuss and possibly act on the draft State Health Plan documents.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 8, 1994, 7:54 p.m.

TRD-9443768

Wednesday, July 20, 1994, 2:00 p.m.

Room 102, University of Texas School of Public Health, 1200 Herman Pressler

Houston

According to the complete agenda, the Statewide Health Coordinating Council will discuss approval of the minutes of June 16, 1994 meeting; discuss and possible act on:

guiding principles; council mission statement; Ad Hoc Committee on Higher Education report; plan development report; briefing on home health; Medicaid reform hearings/role of council; briefing on academic health centers; video of La Fe Community Health Center; update on Donna Reservoir; next meeting date; and announcements.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 8, 1994, 7:43 p.m.

TRD-9443767

Wednesday, July 20, 1994, 6:00 p.m.

Auditorium, University of Texas School of Public Health, 1200 Herman Pressler Houston

According to the complete agenda, the Statewide Health Coordinating Council (Public Meeting) will hold a public meeting to discuss higher education issues related to the 1995-1996 State Health Plan. More specifically, the council will accept comments on how the health resources associated with state-supported institutions of higher education can be used to help fill the gaps in health services for Texans.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 8, 1994, 7:43 p.m.

TRD-9443766

### Texas House of Representatives

Friday, July 22, 1994, 9:00 a.m.

Capitol Extension, Room E2.030  
Austin

Contact: Frank Galitski, P.O. Box 2910, Austin, Texas 78703, (512) 463-0702.

Filed: July 11, 1994, 3:05 p.m.

TRD-9443832

### Texas Department of Housing and Community Affairs

Friday, July 15, 1994, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 118  
Austin

According to the agenda summary, the Low Income Housing Tax Credit Committee will

meet to review and possibly act on the threshold and selection criteria points as contained within the application submission procedure manual as it relates to the following general topics: rehabilitation of existing rental housing developments; low density developments; mixed income developments; qualified non-profit participation; and other related matters, and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711, (512) 475-3934.

Filed: July 7, 1994, 4:34 p.m.

TRD-9443676

### Texas Department of Human Services

Friday, July 22, 1994, 10:00 a.m.

Joe C. Thompson Conference Center, U.T. at Austin, 26th at Red River

Austin

According to the agenda summary, the State Advisory Committee on Child Care Programs will welcome everyone; make introductions; approve minutes of April 21-22, 1994, meeting; hear staff reports; discuss policies concerning eligibility of undocumented workers for child care services, parent fee policies, and payment rate policies; hear committee reports; act on resolution of comments received on rule revisions recently published as proposed; act on proposed rule revisions required to comply with federal policy on maximum allowable income for child care services; and adjourn.

Contact: Charlotte Brantley, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4179.

Filed: July 11, 1994, 12:39 p.m.

TRD-9443818

Monday, July 25, 1994, 9:00 a.m.

8407 Wall Street, S-400

Austin

According to the complete agenda, the Advisory Committee for Personal Care Facilities Subcommittee will review current construction requirements; hear possible alternatives to the construction requirements; and announce the next subcommittee meeting.

Contact: Barbara Crenwelge, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6697.

Filed: July 11, 1994, 3:05 p.m.

TRD-9443834

### State Independent Living Council

Monday-Tuesday, July 18-19, 1994, 9:30 a.m. and 3:00 p.m. respectively.

4900 North Lamar Boulevard

Austin

According to the agenda summary, the State Independent Living Council will call to order; review agenda; review minutes; public comment; TRC/TCB reports; council reports; commissioner/discussion on SPIL; 501-3C status for SILC Committee assignments; three-year plan by laws; nominations discussion forums planning; resource plan; and council training.

Contact: Humberto Orozco, P.O. Box 2946, McAllen, Texas 78502, (210) 781-7733.

Filed: July 8, 1994, 2:45 p.m.

TRD-9443727

### Texas Department of Insurance

Tuesday, July 19, 1994, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the agenda summary, the Texas Department of Insurance will discuss request by Advantage Rent-A-Car for a hearing on the application of the Assigned Risk Rating Program Rules (ARRP) with an experience modifier rating-facility appeal.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443608

Wednesday, July 20, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the agenda summary, the Texas Department of Insurance will consider the application of Arthur J. Dimaline, Hurst, Texas, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443609

Thursday, July 21, 1994, 1:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fifth Floor, Suite 502

According to the agenda summary, the Texas Department of Insurance will consider the application of Jimmie L. Walden, Austin, Texas, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443606

Friday, July 22, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the agenda summary, the Texas Department of Insurance will consider whether disciplinary action should be taken against Linda J. Hunter, Coleman, Texas, who holds a Local Recording Agent's license issued by the Texas Department of the Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443607

Friday, July 22, 1994, 1:00 p.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fifth Floor, Suite 502

Austin

According to the agenda summary, the Texas Department of Insurance will consider whether disciplinary action should be taken against Dan Robert Smith, Abilene, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II, Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443605

## Lamar University System

Thursday, July 14, 1994, 9:00 a.m.

John Gray Institute Map Room, 855 Florida  
Beaumont

According to the complete agenda, the Board of Regents will call to order, chair's report, chancellor's report; approval of min-

utes-April 14, 1994; executive session; reconvene open meeting; proposals presented for action; and adjourn.

Contact: James A. Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: July 7, 1994, 11:55 a.m.

TRD-9443610

## Texas Commission on Law Enforcement Officer Standards and Education

Monday, July 18, 1994, 10:00 a.m.

State Capitol Extension, Room E2.012

Austin

According to the complete agenda, a panel of TCLEOSE Commissioners, with the assistance of the office of State Representative Keith Oakley, Chairman of the Public Safety Committee of the Texas House of Representatives, will hold a public hearing to receive testimony from invited and other interested individuals to identify alternative means of delivering mandated and in-service law enforcement training programs in Texas.

Contact: Edward T. Laine, 1033 La Posada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: July 6, 1994, 4:52 p.m.

TRD-9443565

## Board of Law Examiners

Monday, June 25, 1994, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

According to the complete agenda, the Hearings Panel will hold public hearings and conduct deliberations on character and fitness of applicants and/or declarants. (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(c), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: July 11, 1994, 3:10 p.m.

TRD-9443839

## Texas State Library and Archives Commission

Wednesday, July 20, 1994, 10:30 a.m.

1201 Brazos, Lorenzo de Zavala Archives and Library Building, Room 314

Austin

According to the complete agenda, the Selection Committee will write the job description and task statement for the director and librarian position for consideration by the State Library and Archives Commission.

Contact: William D. Gooch, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460

Filed: July 7, 1994, 10:40 a.m.

TRD-9443621

Wednesday, July 20, 1994, Noon.

1201 Brazos, Lorenzo de Zavala Archives and Library Building, Room 314

Austin

According to the complete agenda, the Internal Audit Committee will consider the internal auditor's recommendations contained in the audit of the State and Local Records Management Program; review the audit of the library's accounting system and accounting internal controls submitted by the commission's internal auditor, review the audit of the State Archives submitted by the commission's internal auditor; approve the internal audit plan for state fiscal year 1995; and prepare a Request for Proposal for internal auditing services for fiscal year 1995.

Contact: William D. Gooch, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

Filed: July 7, 1994, 10:39 a.m.

TRD-9443619

Wednesday-Thursday, July 20-21, 1994, 2:00 p.m. and 10:00 a.m. respectively.

1201 Brazos Street, Lorenzo de Zavala Archives and Library Building, Room 314

Austin

According to the complete agenda, the Texas State Library and Archives Commission will approve minutes of May 27, 1994 commission meeting; consider the internal auditor's recommendations contained in the audit of the State and Local Records Program; consider report from the internal auditor on the audits conducted of the accounting system and accounting internal controls and the State Archives; approve the internal audit plan and a Request for Proposal for internal audit services for fiscal year 1995; approve Library Services and Construction Act Annual Program and Long

Range Plan; approve Library Services and Construction Act grants: Title I-Library Services to Disadvantaged Populations Grants and Title II-Public Library Construction Grants, approve appointments to advisory board and council: one appointment to the State Library Systems Act Advisory Board and nine appointments to the Federal Library Services and Construction Act Advisory Council; approve the State Library and Archives Commission's 1996-1997 Legislative Appropriations Request; approve expenditures for repairs to the Sam Houston Library and Research Center building in Liberty, Texas; approve report and recommendations of the Commission's Selection Committee; consider report on the Texas Reading Machine Program; consider request to exchange captured battle flags with Mexico; consider proposal to secure educational telecommunication rates for public libraries; consider proposal for the Texas State Library to serve as intermediary for automation grant program for public libraries; and committee reports.

Contact: William D. Gooch, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

Filed: July 7, 1994, 10:39 a.m.

TRD-9443620

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**Texas Life, Accident, Health  
and Hospital Service In-  
surance Guaranty Associa-  
tion**

Monday, July 18, 1994, 4:00 p.m.

301 Congress Avenue, Suite 500, Board Room

Austin

According to the complete agenda, the Executive Committee will discuss consideration and possible action on: approval of August 30, 1993 minutes; executive session: adoption of a recommendation to present to the Board of Directors concerning compensation for the officers of the Association, and other personnel matters; matters discussed in executive session, appropriate disposition of accumulated funds, and next meeting date.

Contact: C. S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: July 8, 1994, 4:04 p.m.

TRD-9443749

Tuesday, July 19, 1994, 7:00 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin

According to the agenda summary, the Investment Committee will discuss consider-

ation and possible action on: approval of minutes; Texas Commerce Bank request to move Association funds to Hanover Money Market Funds; Executive Life Insurance Company fund investment transactions; renewal of lines of credit; and next meeting date.

Contact: C. S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: July 8, 1994, 4:04 p.m.

TRD-9443750

Tuesday, July 19, 1994, 9:00 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin

According to the agenda summary, the Board of Directors will discuss consideration and possible action on: approval of minutes; Guaranty Association activities; executive session; matters discussed in executive session; financial reports; report and recommendation from committees, impaired/insolvent member insurers; policy for monitoring of companies in rehabilitation, additions/changes to policy and procedures manual; self-insurance plan for Association and Association Officers/Directors; procedures for policy issue and policy rating; developing a public relations policy for the Association, Association's position relative to legislation; board committee authority and activities; and next meeting date.

Contact: C. S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: July 8, 1994, 4:04 p.m.

TRD-9443751

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**Texas State Board of Medi-  
cal Examiners**

Monday, July 18, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the agenda summary, the Texas State Board of Acupuncture Examiners, Education Committee will consider discussion and possible action on subcommittee recommendations relating to college hour requirement contained in the statute; amendments to current rules to reflect authority of acupuncture board to approve acceptable school and to control the degrees and certificates issued by acceptable schools, use of NACSCAOM as the standard for approving schools as acceptable, modification for the approval of foreign school; use of specific designations or titles in the name of acupuncture school, such as college or university; and citizen communication regarding education requirements.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: July 7, 1994, 3:56 p.m.

TRD-9443656

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**Midwestern State University**

Tuesday, July 12, 1994, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

According to the complete agenda, the Board of Regents will make recommendations concerning the approval of a contract with UAW-GM for employee development at A.C. Rochester and the addition of three instructors to provide services under this contract; the proposed reorganization of the School Relations office staff with realignment of duties and increased salaries; the addition of a new part-time position in radiological science due to the expansion of the baccalaureate level program, the initiation of a distance learning fee for courses delivered by compressed video and/or satellite, KU band broadcasting; information regarding the Killingsworth and Pierce Halls asbestos abatement project and a recommendation for the installation and restoration of ceiling tiles and piping insulation; recommended interim improvements to the Clark Student Center totaling \$70,955; approval of the Legislative Appropriations Request for the Fiscal Year 1996 and Fiscal Year 1997 biennial period; and the land sale of Southwest Parkway property will be discussed in closed session as allowed by the Texas Open Meetings Act, §2(f).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: July 5, 1994, 11:38 a.m.

TRD-9443496

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**Texas Natural Resource Con-  
servation Commission**

Wednesday, July 13, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

Revised Agenda

According to the complete agenda, the Texas Natural Resource Conservation Commission discussed addendum to contested agenda, Emergency Order to Texas Department of Criminal Justice-Coffield Prison Unit; Appeal of Air Quality Permit held by Occidental Chemical Corporation; correction to language of three previously posted items, Items #16, #18, and 12.



Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: July 5, 1994, 1:54 p.m.

TRD-9443503

Friday, July 22, 1994, 9:00 a.m.

12124 Park 35 Circle, TNRCC Building B, Room 201-A

Austin

According to the complete agenda, the Waste Reduction Advisory Committee will have their third quarterly meeting for 1994. A public comment period will be available at the beginning of the meeting. Sign up for the comment period begins at 8:30 a.m. The following are highlights that will be discussed at the Advisory Committee meeting: opening remarks/administrative items, EPA Common Sense Initiative, definition of solid waste/recycling, pollution prevention initiatives, TRI underground injection and delisting presentation, used tire market study, WRAC subcommittees and team reports, and WRAC planning and schedule.

Contact: Selma D' Mallo, 1700 North Congress Avenue, Suite 237-1, Austin, Texas 78701, (512) 463-8794 or fax (512) 475-4599.

Filed: July 12, 1994, 8:48 a.m.

TRD-9443864

Tuesday, July 26, 1994, 10:00 a.m.

Building C, Room 107 West, 12124 Park 35 Circle

Austin

According to the agenda summary, the Office of Hearings Examiner will discuss notice of public hearing on assessment of administrative penalties and requiring certain actions of B. J. Schindler.

Contact: Pat Robards, P.O. Box 13087, Austin, Texas 78711, (512) 239-4100.

Filed: July 7, 1994, 3:53 p.m.

TRD-9443651

Monday-Tuesday, August 8-9, 1994, 9:00 a.m.

12100 Park 35 Circle, Room 310-A, Building A

Austin

According to the complete agenda, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost regulations. Topics for discussion on August 8 are source separated recycling program requirement for mixed msw composting, sampling, end product standards, and labeling. The August 9 meeting is scheduled to present the Ad Hoc group with staff revisions to the draft regulations based on the Ad Hoc groups' comments on the facility requirements only. Open files

consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building (Building F), 12015 Park 35 Circle, Room 1151, Austin, Texas 78753, (512) 239-6203. These files will be listed as "Compost Regulations Development Group."

August 8, 1994: discussion of source separated recycling program requirement for mixed msw composting, sampling, end product standards, and labeling.

August 9, 1994: address staff revisions to draft regulations based on Ad Hoc Group's comments.

Contact: Sally Lewis, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6773.

Filed: July 8, 1994, 2:45 p.m.

TRD-9443726

### Texas State Board of Physical Therapy Examiners

Tuesday, August 30, 1994, 1:30 p.m.

3001 South Lamar Boulevard, Suite 101

Austin

According to the complete agenda, the Texas State Board of Physical Therapy Examiners will:

I. Call to order.

II. Public comment re: proposed rules §§323.4, 329.3, 329.5, 342.1, 343.23, and 343.24 as posted in the *Texas Register*, Volume 19, Number 34, May 10, 1994.

III. Adjourn.

Contact: Gerard Swain, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: July 11, 1994, 4:56 p.m.

TRD-9443859

### Polygraph Examiners Board

Monday, July 18, 1994, 10:00 a.m.

Holiday Inn, Austin Airport, 6911 North IH-35, LBJ Conference Room

Austin

According to the complete agenda, the Polygraph Examiners Board will open meeting; consideration of June 1994 board meeting minutes; discussion of board regulation 393.5; consideration of agency strategic plan 1995-1999; consideration of Legislative Appropriations Request 1996-1997; discussion of merit salary increases; discussion of licensing survey; discussion of meetings held in conjunction with State Association Seminars, board representation at

national seminars held in Texas; board expenses associated with seminar attendance; and agency update.

Contact: Bryan M. Perot, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: July 7, 1994, 4:55 p.m.

TRD-9443632

### Public Utility Commission of Texas

Friday, July 15, 1994, 1:00 p.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Relay Texas Advisory Committee was appointed by the Public Utility Commission of Texas pursuant to House Bill 174, passed by the 71st Texas Legislature. At this meeting, the Committee heard welcome and opening remarks; considered minutes; old business; PUC report; and Sprint report.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 5, 1994, 2:32 p.m.

TRD-9443508

Monday, July 18, 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 13139--application of Brazos Electric Power Cooperative, Inc., and Tenaska Power Partners, L.P., for certification of cogeneration agreement.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 6, 1994, 11:47 a.m.

TRD-9443530

Monday, July 18, 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 12361--application of Medina Electric Cooperative, Inc. for reconciliation of fuel cost and refund of fuel cost overrecovery.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 6, 1994, 4:51 p.m.

TRD-9443564

**Monday, July 18, 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 13162-application for sale, transfer, or merger of Panhandle Telephone Cooperative, Inc.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 6, 1994, 10:51 a.m.

TRD-9443525

**Monday, July 18, 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 13173-application of sale, transfer, or merger of Eaglenet, Inc

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: July 6, 1994, 1:12 p.m.

TRD-9443534

**Monday, July 18, 1994, 1:30 p.m.**

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 13170-application of Gulf States Utilities Company to reconcile its fuel costs.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 7, 1994, 4:32 p.m.

TRD-9443675

**Monday, July 25, 1994, 10:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Rescheduled From Monday, July 11, 1994, 10:00 a.m.

According to the complete agenda, the Hearings Division will hold a rescheduled 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: July 8, 1994, 4:56 p.m.

TRD-9443762

**Monday, August 1, 1994, 9:00 a.m. (Rescheduled from July 27, 1994)**

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a rescheduled hearing in Docket Number 12957-application of Houston Lighting and Power Company for approval of experimental tariff for special contract pricing, rate schedule SCP.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 6, 1994, 11:45 a.m.

TRD-9443529

**Monday, September 19, 1994, 10:00 a.m.**

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 13102-application of Lower Colorado River Authority for approval of sale, transfer, or merger of 17.8 mile, 69 KV transmission line from Bandera Electric Cooperative, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 7, 1994, 3:52 p.m.

TRD-9443647

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**Railroad Commission of Texas**

**Monday, July 18, 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 Schauble, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: July 8, 1994, 10:30 a.m.

TRD-9443715

**Monday, July 18, 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, re-assignment, duties, discipline and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative or procedural matters, strategic planning, personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981

Filed: July 8, 1994, 10:30 a.m.

TRD-9443716

**Monday, July 18, 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: July 8, 1994, 10:30 a.m.

TRD-9443717

**Monday, July 18, 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 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: July 8, 1994, 10:30 a.m.

TRD-9443718

**Monday, July 18, 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 Surface Mining and Reclamation Division 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: July 8, 1994, 10:30 a.m.

TRD-9443719

**Monday, July 18, 1994, 9:30 a.m.**

1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967,  
Austin, Texas 78711-2967, (512) 463-7257.

Filed: July 8, 1994, 10:30 a.m.

TRD-9443720

**Monday, July 18, 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 at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of an contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967,  
Austin, Texas 78711, (512) 463-6921.

Filed: July 8, 1994, 10:30 a.m.

TRD-9443721

**Thursday, July 21, 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: July 8, 1994, 10:30 a.m.

TRD-9443714

## **Texas Rehabilitation Commission**

**Thursday, July 21, 1994, 9:00 a.m.**

Brown-Heatly Building, 4900 North Lamar  
Boulevard

Austin

According to the complete agenda, the Texas Rehabilitation Advisory Council will call to order, roll call, agenda review, announcements, review of annual report outline, subcommittee meetings, subcommittee reports, lunch.

Approval of minutes of April 1994 meeting, chairperson's report, TRC consumer affairs report, introduction of TRAC staffperson and report, report on progress of Quality Task Force and TRAC's role, TRC reengineering project report, wrap up of Day One, and adjourn.

Contact: Barbara Ritter, 4900 North Lamar  
Boulevard, Austin, Texas 78751, (512) 483-4160.

Filed: July 12, 1994, 8:48 a.m.

TRD-9443862

**Friday, July 22, 1994, 9:00 a.m.**

Brown-Heatly Building, 4900 North Lamar  
Boulevard

Austin

According to the complete agenda, the Texas Rehabilitation Advisory Council will discuss announcements, public comment, break, commissioner's report (TRC board meeting; LBB request; state of TRC funding for VR; historically underutilized businesses), lunch.

Recommendations, action items, agenda items for next meeting, and adjourn.

Contact: Barbara Ritter, 4900 North Lamar  
Boulevard, Austin, Texas 78751, (512) 483-4160.

Filed: July 12, 1994, 8:48 a.m.

TRD-9443863

## **State Soil and Water Conservation Board**

**Wednesday, July 20, 1994, 8:00 a.m.**

311 North Fifth Street, Conference Room  
Temple

According to the complete agenda, the State Soil and Water Conservation Board will review and take appropriate action on the following: minutes from June 16, 1994 board meeting; district director appoint-

ments; subdivision boundary changes for Toyah-Limpia SWCD #209 and Upper Pecos SWCD #213; 1994 annual state meeting of Soil and Water Conservation District directors; reinventing USDA-Soil Conservation Service forums; 1995 Conservation Awards Program; public information/education report; nonpoint source status report; implementation of Senate Bill 503; Clean Water Act reauthorization; Coastal Zone Management Program; certification of water quality management plans; USDA reorganization; 1995 fiscal year operating budget; allocation of fiscal year 1995 grants to districts; 1996-1997 biennium legislative appropriation request; reports from agencies and guests; 1994 fiscal year supplemental grants to districts; 1994 fiscal year expenditure report; 1994 technical assistance grants status report; board member travel report; recruiting update; finalize August board meeting date; Water Quality Cost Share Program; review of agency's risk management policy; and SCS Field Office Cluster Pilot Program.

Contact: Robert G. Buckley, P.O. Box 658,  
Temple, Texas 76503, (817) 773-2250,  
TEX-AN 820-1250.

Filed: July 8, 1994, Noon.

TRD-9443722

## **Texas A&M University System, Board of Regents**

**Thursday, July 14, 1994, 10:00 a.m.**

Board of Regents Meeting Room, Texas  
A&M University, MSC, Clark Street

College Station

According to the complete agenda, the Committee for Academic Campuses will discuss holiday schedules, Prairie View A&M logo, Border Trade Institute, School of Government and Public Service, license agreements, memorandum of agreements, Master of Science Degree in Special Education, curriculum policies for system universities, admission policies for system universities, food service policy for system universities, policy on diplomas issues by the system universities, discussion with Central Texas University Task Force, and NAFTA (Multicultural Studies).

Contact: Vickie Running, The Texas A&M  
University System, College Station, Texas  
77843, (409) 845-9600.

Filed: July 6, 1994, 4:51 p.m.

TRD-9443563

## Texas State Technical College System

Wednesday, July 13, 1994, 9:00 a.m.

AVIALL, Inc., 9311 Reeves Street

Dallas

According to the agenda summary, the Board of Regents, Executive Committee discussed and acted on the following minute order: authority to submit the appropriations request for fiscal year 1996 and fiscal year 1997; and discussed the following reports: status of president selection, Amarillo Campus operations, Amarillo storm damage.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 7, 1994, 2:18 p.m.

TRD-9443639

Wednesday, July 13, 1994, 9:30 a.m.

AVIALL, Inc., 9311 Reeves Street

Dallas

According to the agenda summary, the Board of Regents, Audit Committee discussed external audits including Coordinating Board Program review, and enrollment audit training; and internal audits including annual audit plan, unscheduled audits, and other activities.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 7, 1994, 2:18 p.m.

TRD-9443638

## Texas Department of Transportation and Texas Parks and Wildlife Department

Thursday, July 21, 1994, 9:00 a.m.

200 East Riverside Drive, Room 102

Austin

According to the agenda summary, the Interagency Abandoned Rail Corridor Committee will discuss briefing on current status of transportation enhancement submission and awards. Approval of brochure describing role of committee. Discussion on status of various forthcoming and pending abandonment proceedings.

Contact: Curtis Toews, 125 East 11th Street, Austin, Texas 78701, (512) 305-9506.

Filed: July 8, 1994, Noon.

TRD-9443712

## Texas Board of Veterinary Medical Examiners

Monday, July 25, 1994, 9:00 a.m.

1946 South IH-35, #306

Austin

According to the complete agenda, the September Examination Preparation Committee will prepare the September Examination for licensure. The Committee will convene in open session and then go into executive session in accordance with Attorney General Opinion H-484, 1974 and JM-460, 1987.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: July 7, 1994, 2:21

TRD-9443642

## Texas Workers' Compensation Research Center

Friday, July 15, 1994, 9:30 a.m.

105 West Riverside Drive, Suite 100

Austin

According to the complete agenda, the Budget and Audit Committee will discuss and act on the following items: call to order; discussion of request for legislative appropriations for fiscal years 1996 and 1997; and adjournment.

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811.

Filed: July 8, 1994, 4:15 p.m.

TRD-9443752

## Texas Council on Workforce and Economic Competitiveness

Monday-Tuesday, July 18-19, 1994, 9:00 a.m. and 8:30 a.m., respectively.

Texas Higher Education Coordinating Board, 7745 Chevy Chase Drive

Austin

According to the agenda summary, the Apprenticeship and Career Pathways Programs Design Committee will discuss items on the agenda which include: opening remarks; public testimony; approval of the minutes of

the June 13-14, 1994, meeting; staff report; update on apprenticeship training by the U.S. Department of Labor Bureau of Apprenticeship and Training; working session to develop recommendations on a school-to-work system for Texas to be submitted to the Legislature in a report on October 1, 1994, with presentations by the various state agencies and organizations represented on the School-to-Work Task Force; and other business.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Val Blaschke, (512) 305-7008 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 305-7008.

Filed: July 7, 1994, 4:43 p.m.

TRD-9443680

Thursday, August 8, 1994, 10:00 a.m.

Frost Bank Plaza, 816 Congress Avenue, 11th Floor Board Room

Austin

According to the complete agenda, the Executive Committee will call to order; opening remarks; announcements; action item-review and approval of legislative appropriations request for the 1996-1997 biennium; briefing item-consolidation process; briefing item-other program areas; and adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78768, (512) 305-7000.

Filed: July 8, 1994, 11:02 a.m.

TRD-9443690

## Texas Youth Commission

Wednesday, July 20, 1994, 9:00 a.m.

Y.O. Ranch Hotel, 2033 Sidney Baker, Guadalupe Room

Kerrville

According to the agenda summary, the Board will discuss report on activities of the TYC/TJPC Joint Committee; statistical summary/report on student population; re-

port on release policies and practices; proposed rates for contract care programs; resolution between TYC and the Texas Public Finance Authority for capital expenditures; approval of fiscal year 1994 fund transfers and revised operating budget; approval of fiscal year 1995 fund transfers and operating budget; and approval of the fiscal years 1996-1997 biennium budget request.

Contact: Steve Robinson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

Filed: July 11, 1994, 4.04 p.m.

TRD-9443850

## Regional Meetings

### Meetings Filed July 5, 1994

**The Concho Valley Council of Governments Executive Committee** met at 5014 Knickerbocker Road, San Angelo, July 13, 1994, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666 TRD-9443502.

**The Elm Creek Water Supply Corporation Board** met at the Willow Grove Baptist Church, Moody, July 14, 1994, at 7:00 p.m. Information may be obtained from Paulette Richardson, Route 1 Box 564, Moody, Texas 76557, (817) 853-2339 TRD-9443505.

**The Golden Crescent Private Industry Council Quality Work Force Planning Full Committee** met at the Victoria College, Student Center, 2200 East Red River, Victoria, July 14, 1994, at 3:30 p.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9443513.

**The North Plains Ground Water Conservation District Number Two Board of Directors** met at 603 East First Street, Dumas, July 12, 1994, at 10:00 a.m. Information may be obtained from Richard Bowers or Carla Gray, 603 East First Street, Dumas, Texas 79029, (806) 935-6401 TRD-9443506.

**The Permian Basin Regional Planning Commission Board of Directors** met at the PBRPC Offices, 2910 La Force Boulevard, Midland, July 13, 1994, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061 TRD-9443504.

**The Rio Grande Council of Governments Board of Directors** met at 1100 North Stanton, Main Conference Room, El Paso, July 15, 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-9443493.

**The Scurry County Appraisal District Appraisal Review Board** met at 2612 College Avenue, Snyder, July 12, 1994, at 10:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9443498.

**The Scurry County Appraisal District Appraisal Review Board** met at 2612 College Avenue, Snyder, July 13, 1994, at 9:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9443497.

**The South Franklin Water Supply Corporation Board of Directors** met at the Office of South Franklin Water Supply Corporation, Highway 115, South of Mount Vernon, July 11, 1994, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9443511.

**The Upshur County Appraisal District Appraisal Review Board** met at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, July 11, 1994, at 8:30 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9443501.

### Meetings Filed July 6, 1994

**The Aqua Water Supply Corporation Board of Directors** met at 305 Eskew (Aqua Office), Bastrop, July 11, 1994, at 7:30 p.m. Information may be obtained from Carol Kadura, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943 TRD-9443540.

**The Austin Transportation Study Policy Advisory Committee** met at 26th and Red River, Room 2102, Austin, July 11, 1994, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-2275 or Fax (512) 499-2269 TRD-9443541.

**The Brazos Valley Development Council Local Workforce Development Board** met at the Brazos Center, Assembly III, 3232 Briarcrest, Bryan, July 13, 1994, at 3:00 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244 TRD-9443522.

**The Brazos Valley Development Council Executive Committee** met in the BVDC Conference Room, 1706 East 29th Street, Bryan, July 14, 1994, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244 TRD-9443523.

**The Burnet County Appraisal District (Revised agenda.) Appraisal Review Board** met at 223 South Pierce, Burnet, July 12, 1994, at 8:30 a.m. Information may be obtained from Bili Howell, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9443531.

**The Canadian River Municipal Water Authority Board of Directors** met at the CRMWA Headquarters Building, Sanford Dam, Sanford, July 13, 1994, at 11:00 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325 TRD-9443538.

**The Canyon Regional Water Authority Board (Regular Meeting)** met at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, July 11, 1994, at 7:00 p.m. Information may be obtained from Cathy C. Talcott, Route 2 Box 654 W, New Braunfels, Texas 78130-9579, (210) 609-0543 TRD-9443532.

**The Cass County Appraisal District Appraisal Review Board** met at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 11, 1994, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545 TRD-9443536.

**The Cass County Appraisal District Board of Directors** met at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 11, 1994, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545 TRD-9443535.

**The Concho Valley Council of Governments Private Industry Council** met at 5014 Knickerbocker Road, San Angelo, July 13, 1994, at 3:00 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666 TRD-9443561.

**The Gonzales County Appraisal District Appraisal Review Board** met at 928 St. Paul Street, Gonzales, July 11, 1994, at 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879 TRD-9443549.

**The Gonzales County Appraisal District Appraisal Review Board** met at 928 St. Paul Street, Gonzales, July 12, 1994, at 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9443550.

**The Gregg County Appraisal District Appraisal Review Board** met at 2010 Gilmer Road, Longview, July 12, 1994, at 9:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015 TRD-9443526.

**The Gregg County Appraisal District Appraisal Review Board** met at 2010 Gilmer Road, Longview, July 13, 1994, at 9:00

a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9443527.

**The High Plains Underground Water Conservation District Number One Board of Directors** met in the Conference Room, 2930 Avenue Q, Lubbock, July 14, 1994, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9443559.

**The Hood County Appraisal District Appraisal Review Board** met at 1902 West Pearl, District Office, Granbury, July 13-14, 1994, 8:30 a.m. and 9:00 a.m., respectively. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9443542.

**The Lometa Rural Water Supply Corporation Board of Directors** met at the Lometa Rural Water Office, 506 West Main Street, Lometa, July 11, 1994, at 7:00 p.m. Information may be obtained from Levi G. Cash and/or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9443537.

**The Mills County Appraisal District** will meet in the Mills County Courthouse Jury Room, Goldthwaite, July 21, 1994, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9443539.

**The Texas Public Workers' Compensation Program** met at Dan McKlusky's Restaurant, 10000 Research Boulevard, Austin, July 11, 1994, at 10:30 a.m. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78654, (210) 693-2508. TRD-9443528.

**The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee** met in the VIA Board Room, 809 West Myrtle, San Antonio, July 12, 1994, at 9:00 a.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9443520.

**The Wheeler County Appraisal District Board of Directors** will meet at the District's Office, County Courthouse Square, Wheeler, July 18, 1994, at 7:30 p.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9443555.

**The Wise County Appraisal District Board of Directors** met at 206 South State Street, Decatur, July 12, 1994, at 8:00 p.m. Information may be obtained from Freddie Tripiett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9443560.

## Meetings Filed July 7, 1994

**The Austin-Travis County Mental Health Mental Retardation Center Public Relations Committee** will meet at 1430 Collier Street, Austin, July 18, 1994, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9443618.

**The Bosque County Central Appraisal District Board of Directors** met at 202 South Highway 6, Meridian, July 14, 1994, at 8:00 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9443679.

**The Callahan County Appraisal District Board of Directors** will meet at 130A West Fourth Street, Baird, July 18, 1994, at 8:00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9443623.

**The Deep East Texas Private Industry Council Inc. Executive Committee** will meet in the Gallery Room, Rayburn Country Club, Sam Rayburn, July 13, 1994, at 1:00 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9443649.

**The Deep East Texas Private Industry Council Inc.** will meet in the Gallery Room, Rayburn Country Club, Sam Rayburn, July 14, 1994, at 9:00 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9443648.

**The Denton Central Appraisal District Appraisal Review Board** will meet at 3911 Morse Street, Denton, July 20, 1994, at 9:00 a.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904. TRD-9443658.

**The Denton Central Appraisal District Board of Directors** will meet at 3911 Morse Street, Denton, July 28, 1994, at 4:00 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904. TRD-9443678.

**The Edwards Central Appraisal District Appraisal Review Board** will meet at the New County Annex Building, Rocksprings, July 22, 1994, at 9:30 a.m. Information may be obtained from Teresa Sweeten, P.O. Box 278, Rocksprings, Texas 78880, (210) 683-4189. TRD-9443643.

**The El Oso Water Supply Corporation Board of Directors** met at their Office, FM 99, Karnes City, July 12, 1994, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9443611.

**The Grand Parkway Association** will meet at 5757 Woodway, East Wing, Suite 140, Houston, July 14, 1994, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 140 Woodway, East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9443628.

**The Hamilton County Appraisal District Board of Directors** will meet at 119 East Henry, July 12, 1994, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9443681.

**The Hays County Appraisal District Board of Directors** met at 21001 North IH-35, Kyle, July 14, 1994, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9443616.

**The Jack County Appraisal District Board of Directors** will meet at 210 North Church Street, Jacksboro, July 19, 1994, at 7:00 p.m. Information may be obtained from Gary L. Zeltler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9443614.

**The Jack County Appraisal District Board of Directors** will meet at 210 North Church Street, Jacksboro, July 19, 1994, at 7:15 p.m. Information may be obtained from Gary L. Zeltler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9443613.

**The Lower Colorado River Authority Planning and Public Policy Committee** will meet in the Board Conference Room, 3701 Lake Austin Boulevard, Hancock Building, Austin, July 12, 1994, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9443677.

**The Lower Rio Grande Valley Tech Prep/Associate Degree Consortium** (also known as Tech Prep of the Rio Grande Valley, Inc.) Board of Directors met in the Board Room, Conference Center, Texas State Technical College, 2424 Boxwood, Harlingen, July 13, 1994, at 2:30 p.m. Information may be obtained from Pat Bubb, c/o TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9443612.

**The Mills County Appraisal Review Board** will meet in the Courthouse Jury Room, P.O. Box 565, Goldthwaite, July 20, 1994, at 8:00 a.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9443644.

**The Nortex Regional Planning Commission Executive Committee** will meet at 4309 Jacksboro Highway, the Galaxy Center, Suite 200, Wichita Falls, July 21, 1994, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281, Fax (817) 322-6743. TRD-9443652.

The Central Appraisal District of Rockwall County Board of Directors met at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, July 12, 1994, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9443617.

The Sabine Valley Center Finance Committee will meet at the Administration Building, 107 Woodbine Place, Longview, July 14, 1994, at 6:00 p.m. Information may be obtained from Mark Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9443655.

The Sabine Valley Center Personnel Committee will meet at the Administration Building, 107 Woodbine Place, Longview, July 14, 1994, at 6:30 p.m. Information may be obtained from Mark Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9443654.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Longview, July 14, 1994, at 7:00 p.m. Information may be obtained from Mark Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9443653.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market, Sinton, July 14, 1994, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9443624.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, July 12, 1994, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9443626.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, July 12, 1994, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730. TRD-9443625.

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**Meetings Filed July 8, 1994**

The Archer County Appraisal District Appraisal District Board of Directors met at 101 South Center, Archer City, July 13, 1994, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9443753.

The Austin-Travis County Mental Health Mental Retardation Center Planning and Operations Committee will meet at 1430 Collier Street, Board Room, Austin, July 15, 1994, at 11:00 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9443747.

The Austin-Travis County Mental Health Mental Retardation Center Community Forum will meet at 1430 Collier Street, Board Room, Austin, July 19, 1994, at 5:45 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9443732.

The Bandera County Appraisal District (Public Budget Hearing) will meet at 1116 Main Street (former Bandera Bulletin Building), Bandera, July 18, 1994, at 7:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax: (210) 796-3672. TRD-9443689.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124-A Regal Row, Austin, July 14, 1994, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9443763.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 14, 1994, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9443710.

The Blanco County Central Appraisal District 1994 Board of Directors met at the Blanco County Courthouse Annex, Avenue G and Seventh Street, Johnson City, July 12, 1994, at 5:00 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013, Fax: (210) 868-7788. TRD-9443688.

The Brazos Valley Development Council (Revised agenda.) (will host a Workforce Development Board Meeting) met at the Brazos Center, Assembly III, 3232 Briarcrest, Bryan, July 13, 1994, at 3:00 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9443731.

The Coleman County Water Supply Corporation Board of Directors met at the Corporation Office, 214 Santa Anna Avenue, Coleman, July 13, 1994, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9443711.

The Colorado County Central Appraisal District Appraisal Review Board will meet at the Colorado County Courthouse (County Courtroom), 400 Spring, Columbus, July 15, 1994, at 9:30 a.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9443686.

The Deep East Texas Private Industry Council, Inc. (Revised agenda.) Executive Committee met in the Gallery Room, Rayburn Country Club, Sam Rayburn, July 13, 1994, at 1:00 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9443733.

The East Texas Council of Governments Executive Committee met at the ETCOG Office, Kilgore, July 14, 1994, at 2:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9443709.

The Education Service Center, Region XIII Board of Directors met at the ESC, Region XIII, Board Room #205, 5701 Springdale Road, Austin, July 14, 1994, at Noon. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9443708.

The Golden Crescent Private Industry Council Planning Committee met at 2401 Houston Highway, Victoria, July 12, 1994, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9443684.

The Guadalupe-Blanco River Authority Public Relations Committee met at 502 Saint Paul, Gonzales, July 13, 1994, at 9:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9443685.

The Hansford Appraisal District Appraisal Review Board met at 709 West Seventh Street, Spearman, July 14, 1994, at 9:00 a.m. Information may be obtained from Lovida Giblin, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9443729.

The Hunt County Appraisal District Board of Directors met in the Hunt County Appraisal District Boardroom, 4801 King Street, Greenville, July 14, 1994, at Noon. Information may be obtained from Shirley Smith, 4801 King Street, Greenville, Texas 75401, (903) 454-3510. TRD-9443730.

The Liberty County Central Appraisal District (Revised agenda.) Appraisal Review Board met at 315 Main Street, Liberty, July 14, 1994, at 9:00 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9443734.

**The Lower Colorado River Authority Board of Trustees** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, July 12, 1994, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9443739.

**The Lower Colorado River Authority Board of Trustees Investment Subcommittee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, July 12, 1994, at 2:30 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9443738.

**The Manville Water Supply Corporation Board of Directors** met at the Manville Office, Off Highway 95 on Spur 277, Coupland, July 14, 1994, at 7:00 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9443764

**The Texas Municipal Power Agency (TMPA) Board of Directors Annual Retreat** met at the Stouffer Austin Hotel, Nueces Room, 9721 Arboretum Boulevard, Austin, July 14, 1994, at 8:00 a.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9443723.

**The Texas Municipal Power Agency (TMPA) Board of Directors Annual Retreat** will meet at the Stouffer Austin Hotel, Nueces Room, 9721 Arboretum Boulevard, Austin, July 15, 1994, at 7:30 a.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9443724.

**The Texas Municipal Power Agency (TMPA) Board of Directors** will meet at the Stouffer Austin Hotel, Nueces Room, 9721 Arboretum Boulevard, Austin, July 15, 1994, at 10:00 a.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9443725.

**The Central Appraisal District of Nolan County Appraisal Review Board** met at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, July 14, 1994, at 9:00 a.m. Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9443740.

**The Swisher County Appraisal District Appraisal Review Board** met at 130 North Armstrong, Tulia, July 13, 1994, at 10:15 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118, Fax (806) 994-4079. TRD-9443760

**The Swisher County Appraisal District Appraisal Review Board** met at 130 North Armstrong, Tulia, July 13, 1994, at 10:15 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118, Fax (806) 994-4079. TRD-9443761

**The Tarrant Appraisal District Board of Directors** will meet at 2301 Gravel Road, Fort Worth, July 22, 1994, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9443687

**The Central Appraisal District of Taylor County Board of Directors** met at 1534 South Treadaway, Abilene, July 13, 1994, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9443748

**The Trinity River Authority of Texas Nominating Committee** met at 5300 South Collins, Arlington, July 13, 1994, at 10:00 a.m. Information may be obtained from the Secretary, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9443691

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**Meetings Filed July 11, 1994**

**The Austin-Travis County MHMR Center (Revised Agenda.) Planning and Operations Committee** will meet in the Board Room, 1430 Collier Street, July 15, 1994, at 11:00 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9443851

**The Bi-County Water Supply** will meet at the Office, FM Road 2254, Pittsburg, July 12, 1994, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75685, (903) 856-5840. TRD-9443817

**The Burnet County Appraisal District Board of Directors** will meet at 223 South Pierce, Burnet, July 21, 1994, at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9443846

**The Carson County Appraisal District Appraisal Review Board** will meet at 102 Main Street, Panhandle, July 14, 1994, at 8:30 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas (806) 537-3569. TRD-9443799

**The Comal Appraisal District Board of Directors** will meet at 178 East Mill Street, Suite 102, New Braunfels, July 18, 1994, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9443796

**The Dewitt County Appraisal District Appraisal Review Board** will meet at 103 Bailey Street, Cuero, July 13, 1994, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9443816

**The Eastland County Appraisal District Appraisal Review Board** will meet in the Commissioners' Courtroom, Eastland County Courthouse, Eastland, July 21, 1994, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9443795.

**The Appraisal District of Jones County Board of Directors** will meet at the District's Office, 1137 East Court Plaza, Anson, July 21, 1994, at 8:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9443794.

**The Hamby Water Supply Corporation Board of Directors** will meet at the Hamby Water Supply Office, 408 Elmdale Road North, Abilene, July 12, 1994, at 7:30 p.m. Information may be obtained from Bertha Linahan, 408 Elmdale Road North, Abilene, Texas 79601, (915) 548-2510. TRD-9443853.

**The Harris County Appraisal District Appraisal Review Board** will meet at 2800 North Loop West, Eighth Floor, Houston, July 15, 1994, at 8:00 a.m. Information may be obtained from Susan Jordan, Box 920975, Houston, Texas 77292-0975, (713) 957-5275. TRD-9443855.

**The Texas Health Benefits Purchasing Cooperative** will meet at 2222 Welborn Street, Scottish Rite Hospital for Children, Dallas, July 20, 1994, at 9:30 a.m. Information may be obtained from Rebecca Lightsey, 1005 Congress Avenue, Suite 550, Austin, Texas 78701, (512) 472-3956. TRD-9443857.

**The Hood County Appraisal District Board of Directors** will meet at 1902 West Pearl Street, District Office, Granbury, July 19, 1994, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9443835.

**The Kendall County Appraisal District (Revised Agenda. Rescheduled from July 18, 1994, 9:00 a.m.) Appraisal Review Board** will meet in the Conference Room, 121 South Main Street, Boerne, July 18, 1994, at 8:40 a.m. Information may be obtained from Joe P. Davis, Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9443844

**The Kendall County Appraisal District Appraisal Review Board** will meet in the Conference Room, 121 South Main Street, Boerne, July 20, 1994, at 9:00 a.m. Information may be obtained from Joe P. Davis, Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9443845.

**The Lee County Appraisal District Appraisal Review Board** will meet at 289 South Street, Giddings, July 20, 1994, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9443848.



**The San Antonio River Authority Board of Directors will meet in the Boardroom, 100 East Guenther Street, San Antonio, July 20, 1994, at 2:00 p. m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9443797.**

**The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, June 15, 1994, at 7:00 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9443793.**

**Meetings Filed July 12, 1994**

**The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul Street, Gonzales, July 15, 1994, at 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9443865.**





James [unclear]

# 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 Agriculture Request for Proposals

Pursuant to the Texas Agriculture Code, 12.002 and 12.007, the General Appropriations Act, Senate Bill 5, Article I, pages I-9 to I-15, Acts 1993, 73rd Legislature, Regular Session, and Senate Bill 1089, 1, pages 1-2, Acts 1993, 73rd Legislature, Regular Session, the Texas Department of Agriculture (TDA) is authorized to contract with producer organizations to provide statewide integrated pest management (IPM) programs

TDA has entered into a cooperative agreement with Texas Pest Management Association (TPMA) to administer TDA's IPM grant program. TPMA, through TDA, hereby requests proposals for fiscal year 1995 projects that use and expand the use of integrated pest management in agriculture. A total of \$297,500 will be awarded, with no more than \$40,000 being awarded per grantee.

The proposed projects should be for: demonstration of IPM principles and technology, establishment of educational programs to expand the use of biologically-intensive IPM; and implementation of and carrying out of biologically-intensive IPM programs for farmer/rancher groups. Proposals must be submitted by non-profit producer, education, or research organizations involved in integrated pest management programs. Joint efforts between public and private entities are encouraged. Proposals will also be accepted for the support of boll weevil diapause programs. Proposals involving research other than IPM implementation research and proposals for chemical Texas Department of Agriculture pesticides efficacy testing are not eligible for grant funds.

Preference will be given to: proposals that emphasize the final development of new, previously untested technologies, proposals that compare different IPM strategies to arrive at optimal biologically-intensive strategies; proposals that seek implementation of previously unused IPM technologies; proposals that seek implementation of IPM practices in Texas counties where such practices have not been used; multi-county IPM proposals, and proposals that evaluate economic and environmental impacts of IPM use.

Each proposal must include the following: a project summary and rationale/justification, project objectives, project work plan/duration, description of the anticipated impact on agriculture, vitae of principal project managers, and a detailed project budget. The entire proposal may not exceed six pages, including attachments. All approved projects must be completed by August 31, 1995. Upon completion of the project, a project report will be due within four weeks. The quality of this report may be used to evaluate further funding requests. All awards will be subject to audit.

Proposals should be submitted to Mike Wallace, Executive Director, Texas Pest Management Association, 8000 Centre Park Drive, Suite 340, Austin, Texas 78754. Mr. Wallace may be contacted by phone at (512) 834-8762 or by fax at (512) 339-6302 for additional information about preparing the proposal. Proposals Texas Department of Agriculture must be received no later than 5:00 p.m., August 12, 1994.

All proposals will be evaluated by a proposal review committee made up of persons knowledgeable in IPM programs and practices. Proposals will be evaluated based on the requirements set forth above. The announcement of the grant awards will be made by September 16, 1994.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443741

Dolores Alvarado Hibbe  
Chief Administrative Law Judge  
Texas Department of Agriculture

Filed: July 8, 1994

## 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 June 18-July 1, 1994.

Total amount of state ceiling remaining unreserved for the \$252,434,000 subceiling for qualified mortgage bonds under the Act as of July 1, 1994: \$85,434,000.

Total amount of state ceiling remaining unreserved for the \$157,771,250 subceiling for state-voted issues under the Act as of July 1, 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 July 1, 1994: \$45,366,250.

Total amount of state ceiling remaining unreserved for the \$45,077,500 subceiling for residential rental project issues under the Act as of July 1, 1994: \$6,322,500.

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 July 1, 1994: \$0.

Total amount of the \$901,550,000 state ceiling remaining unreserved as of July 1, 1994: \$184,893,113.96.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from June 18-July 1, 1994: Southeast Texas HFC, Assured Housing Corporation, Residential Rental Garland Oaks Apartments, \$4,100,000.

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 June 18-July 1, 1994: Grand Prairie HFC, Eligible Borrowers, MRBs, \$14,940,000; Harris County IDC, National Waste Industries, Cougar Landfill, \$5,000,000; McKinney EDC, Leon's Texas Cuisine, Food Manufacturing Facility, \$4,850,000.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from June 18-July 1, 1994: Southeast Texas HFC, Assured Housing Corporation, Residential Rental Garland Oaks Apartments, \$3,750,000.

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from June 18-July 1, 1994: none.

Issued in Austin, Texas, on July 5, 1994.

TRD-9443514 Albert L. Bacarisse  
Executive Director  
Texas Bond Review Board

Filed: July 5, 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 Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	07/11/94-07/17/94	18.00%	18.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on July 5, 1994.

TRD-9443622 Al Endsley  
Commissioner  
Office of Consumer Credit Commissioner

Filed: July 7, 1994

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**Texas Education Agency  
Notice of Public Hearings**

The State Board of Education (SBOE) Committee on Long-Range Planning will hold a series of public hearings to obtain input on the development of the Long-Range Plan for Public Education, 1995-1999. The hearings will be held at the times and places listed as follows. Hearings may adjourn before the stated ending time if all who pre-registered or registered on-site have been called to give testimony.

Hearings will be held at the following locations:

Thursday, August 18, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 2 Education Service Center, 209 North Water Street, Room 2D, Corpus Christi, Texas;

Tuesday, August 23, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 13 Education Service Center, 5701 Springdale Road, Rooms 202 and 203, Austin, Texas;

Thursday, August 25, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 17 Education Service Center, 1111 West Loop 289, Room 229 North, Lubbock, Texas; and

Tuesday, August 30, 1994 from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 5 Education Service Center, 2295 Delaware Street, Rooms A and B, Beaumont, Texas.

The State Board of Education periodically reviews the educational needs of the state, establishes goals for Texas public education, and adopts and promotes a long-range plan for meeting those goals. The goals developed for this Long-Range Plan will carry Texas public education to the next century. The hearings are conducted to gather comment about the educational needs of the state, proposed goals for Texas public education, and how those goals can best be achieved.

In order to allow the committee to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Individuals desiring to present testimony to the Committee on Long-Range Planning are asked to register for the hearing by calling the Texas Education Agency Office of Policy Planning and Evaluation, at (512) 463-9701, by 5:00 p.m. on the last working day prior to the public hearing at which they wish to speak. To accommodate as many speakers as possible, individuals are asked to limit their testimony to the committee to three minutes. Speakers will be asked to testify in the order in which their calls were received.

Individuals may also register on-site the day of the hearing. These individuals will be allowed to give testimony on a first-come, first-served basis following those who have pre-registered.

Speakers needing translation services or other special accommodations should notify the Office of Policy Planning and Evaluation by 5:00 p.m. at least five working days prior to the public hearing at which they wish to speak.

Speakers are encouraged to provide 15 written copies of their testimony for distribution to the committee. Written information for the committee can be sent to the Office of Policy Planning and Evaluation at any time.

Additional information concerning these hearings may be obtained from the Division of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or at (512) 463-9701.

Issued in Austin, Texas, on July 8, 1994

TRD-9443735      Lionel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: July 8, 1994

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**RFA #701-94-016: Connections  
Applications Program for Texas Public  
Schools, 1994-1995**

RFA #701-94-016 This request for applications is filed under the Texas Education Code, §14.042.

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications (RFA #701-94-016) from school districts in Texas to develop electronic networks to improve and promote systemic changes in education.

**Description.** The purpose of this project is to encourage Texas public school districts to directly connect to the Texas Education Network (TENET). In general, it is expected that districts will propose to connect to the The Higher Education Network (THEnet) and TENET by installing an Internet Protocol (IP) Router/Gateway on their district-wide network. This gateway will link the campuses to the THEnet using leased communications circuits of varying speeds (a minimum of 56 Kb).

**Dates of Project** The Connections Applications Program for Texas Public Schools will be implemented during the 1994-1995 school year. Applicants should plan for a starting date of no earlier than August 26, 1994, and an ending date of no later than July 15, 1995.

**Project Amount.** Funding will be provided for 10-15 projects. Each project will receive a maximum of \$30,000 for the 1994-1995 school year for a total of approximately \$435,000.

**Selection Criteria** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the request for application. Special consideration (or priority) will be given to applicants that are low performing and have a student body of whom 25% are identified as at risk of failure. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the request for application.

The TEA is under no obligation to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before an application is approved. The issuance of this RFA in no way obligates TEA to award a grant or to pay any costs incurred in the preparation of a response.

Requesting the Application. A copy of the complete request for application (RFA #701-94-016) may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA# in your request.

**Further Information.** For clarifying information about the request for application, contact Richard LaGow, Division of Technology Services, Texas Education Agency, (512) 463-9400; or Connie Stout, The University of Texas at Austin, Computation Center, (512) 471-3241.

**Deadline for Receipt of Application** The deadline for receiving an application in the Document Control Center of the Texas Education Agency is 5:00 p.m., Wednesday, August 10, 1994.

Issued in Austin, Texas, on July 6, 1994.

TRD-9443521      Lionel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: July 6, 1994

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**Texas Environmental Awareness  
Network  
Notice of Monthly Meeting**

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, July 13, 1994, at 9:00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744; by phone at (512) 389-4360; or by fax at (512) 389-4394.

Issued in Austin, Texas, on June 13, 1994

TRD-9442332      John Williams  
Secretary  
Texas Environmental Awareness Network

Filed: June 14, 1994

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**Office of the Governor, Budget and  
Planning  
Legislative Budget Board Budget  
Execution Proposal**

Pursuant to Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993. We find that the backlog of offenders confined in the county jails awaiting transfer to state prisons creates an emergency requiring additional funding, including funding for additional payments to counties.

We propose that appropriations made to the Treasury Department in rider provision 4, Appropriation for Statutory Obligations, in the amount of \$33,400,000 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for the University of Texas System, in the amount of \$7,758,216 for fiscal year 1995 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. The various items of appropriation in Objective "A.1.: State Contribution, University of Texas and Texas A&M Systems" on pages I-103 and I-104 relating to the University of Texas System and its various components shall be reduced as necessary to provide for this transfer.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for the Texas A&M University System, in the amount of \$3,980,162 for fiscal year 1995 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. The various items of appropriation in Objective "A.1., State Contribution, University of Texas and Texas A&M Systems" on page I-103 and I-104 relating to the Texas A&M University System and its various components shall be reduced as necessary to provide for this transfer.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for fiscal year 1994, in the appropriation items and amounts indicated below, be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

A.1.1., UT System Administration-\$4,908; A.1.12., UT Medical Branch at Galveston-\$306,904; A.1.28., Texas Agricultural Extension Service-\$342,156; A.1.31., Texas Engineering Extension Service-\$200,137.

We also propose that none of the General Revenue Fund amounts appropriated to the Employees Retirement System for fiscal year 1994 in appropriation item B.1.1., Uniform Group Insurance Program-General State Employees, in excess of \$200,458,681 be available for expenditure by the Employees Retirement System.

We also propose that the General Revenue Fund appropriations made to the Employees Retirement System for fiscal year 1994 in appropriation item B.1.1., Uniform Group Insurance Program-General State Employees, but which the Employees Retirement System would be prohibited from expending pursuant to this order, in the amount of \$50,464,817, be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

We also propose that none of the funds appropriated to the Employees Retirement System and that none of the funds appropriated for Higher Education Employees Group Insurance Contributions be expended during fiscal year 1995 to pay group health insurance contributions at rates which exceed the rates established for fiscal year 1994 by Senate Bill 5, 73rd Legislature, 1993, in rider 5, State Contribution to Group Insurance for General State Employees, page I-101, and in rider 1, State Contribution to Group Insurance for Higher Education Employees, page I-105, respectively.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for fiscal year 1994, in the various items of appropriation in Objective "A.2: State Contributions, Other Institutions," pages I-104 and I-105, in the amount of \$18,151,901, be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. Authority to expend funds from the various items of appropriation in Objective A.2 shall be reduced on a proportionate basis to provide for this transfer.

We also propose that none of the funds appropriated for Higher Education Group Insurance Contributions for fiscal year 1994 in the various items of appropriation in Objective "A.2: State Contributions, Other Institutions" page I-104 and I-105, in excess of \$95,042,084, be available for expenditure. Authority to expend funds from the various items of appropriation in Objective A.2 shall be reduced on a proportionate basis to provide for this limitation.

Bob Bullock  
Lieutenant Governor  
Chair

Legislative Budget Board  
Pete Laney  
Speaker of the House  
Vice-Chairman  
Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on July 7, 1994, by the following vote:

On the part of the Senate: Yeas: 4 Nays: 0  
On the part of the House: Yeas: 4 Nays: 0

John Keel  
Director

Legislative Budget Board

Issued in Austin, Texas, on July 7, 1994.

TRD-9443759 Ann W. Richards  
Governor of Texas

Filed: July 8, 1994

◆ ◆ ◆  
**Texas Department of Health**  
**Licensing Action for Radioactive**  
**Materials**

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

## NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Odessa	Frank W. Hake Associates	L04796	Memphis, TN	0	06/23/94
The Woodlands	Argus Pharmaceuticals, Inc.	L04784	The Woodlands	0	06/14/94
Throughout Texas	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	0	06/15/94
Throughout Texas	Cobblestone Engineering, Inc.	L04789	Harlingen	0	06/14/94
Throughout Texas	Vulcan Materials Company	L04793	San Antonio	0	06/23/94

## AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	Shivers Cancer Center	L03726	Austin	7	06/14/94
Brownwood	3M/Health Physics Services	L00918	Brownwood	24	06/22/94
Commerce	East Texas State University	L00604	Commerce	30	06/13/94
Conroe	Doctors Hospital	L02515	Conroe	13	06/15/94
Dallas	Baylor University Medical Center	L01290	Dallas	30	06/14/94
El Paso	Sun Towers Hospital	L02715	El Paso	13	06/14/94
Galveston	Saint Mary's Hospital	L00138	Galveston	35	06/14/94
Houston	Twelve Oaks Hospital	L02432	Houston	16	06/14/94
Houston	MacGregor Medical Association	L04646	Houston	2	06/15/94
Houston	Houston Department of Health and Human Services	L00149	Houston	51	06/17/94
Houston	West Houston Medical Center	L02224	Houston	24	06/20/94
Kilgore	Roy H. Laird Memorial Hospital	L03496	Kilgore	7	06/20/94
Longview	LeTourneau, Inc.	L02304	Longview	12	06/09/94
Paris	St. Joseph's Hospital and Health Center	L03199	Paris	10	06/17/94
Rockdale	Alcoa Power Plant	L04386	Rockdale	5	06/23/94
San Antonio	MedCenter Imaging	L04098	San Antonio	12	06/15/94
San Antonio	MPI Pharmacy Services, Inc.	L04764	San Antonio	1	06/20/94
San Antonio	Cancer Therapy and Research Foundation of South Texas	L03350	San Antonio	12	06/28/94
Sugarland	Fort Bend Imaging, Inc.	L04459	Sugarland	2	06/15/94
Sweeny	Phillips 66 Company	L00337	Sweeny	33	06/24/94
Throughout Texas	Selective Tools, Inc.	L04669	Houston	1	06/17/94
Throughout Texas	Phoenix Non-Destructive Testing Co., Inc.	L04454	Channelview	18	06/15/94
Throughout Texas	Corpus Christi Inspection & Engineering, Inc.	L04379	Corpus Christi	31	06/15/94

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	Dyess-Peterson Testing Laboratory, Inc.	L01123	Amarillo	41	06/14/94
Throughout Texas	Raba-Kistner Consultants, Inc.	L02337	El Paso	13	06/17/94
Throughout Texas	American Wireline, Inc.	L04675	Brenham	3	06/16/94
Throughout Texas	Quality Assurance Services Inc.	L04601	Grand Prairie	6	06/20/94
Throughout Texas	Norton Chemical Process Products Corporation	L04042	Houston	5	06/17/94
Throughout Texas	Longview Inspection	L01774	Houston	82	06/15/94
Throughout Texas	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	1	06/21/94
Throughout Texas	D-Arrow Inspection, Inc.	L03816	Houston	42	06/22/94
Throughout Texas	Heflin Testing Services	L04671	Denison	2	06/22/94
Throughout Texas	Terra Engineers Inc.	L02464	Lubbock	21	06/23/94
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	91	06/17/94
Throughout Texas	Lone Star Testing Laboratories	L04013	Houston	6	06/30/94
Throughout Texas	Radiographic Specialists, Inc.	L02742	Houston	30	06/29/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
El Paso	Johnson & Johnson Medical Inc.	L04178	El Paso	6	06/21/94
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	23	06/17/94
Houston	Cypress Fairbanks Medical Center, Inc.	L03424	Houston	20	06/06/94
La Porte	Air Products, Inc.	L03475	La Porte	4	06/22/94
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	4	06/14/94
Throughout Texas	Law Engineering, Inc.	L02453	Houston	18	06/23/94

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Houston	Uncle Ben's, Inc.	L04086	Houston	4	06/22/94
Houston	Big Three Industrial Gas, Inc.	L03382	Houston	2	06/30/94
Throughout Texas	ICO, Inc.	L02697	Houston	11	05/13/94
Throughout Texas	Baker Hughes Tubular Services, Inc.	L00916	Houston	48	06/13/94

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county,

or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health,



Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on July 5, 1994.

TRD-9443627 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: July 7, 1994

◆ ◆ ◆  
**Notice of Intent to Revoke Certificates  
of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Railhead Animal Hospital, Fort Worth, R14171; Lobel Chiropractic and Nutrition, Dallas, R15755; Clinica Espana, Dallas, R16135; Jack and Beth LoCascio, D.C., Dallas, R17961; Benedict Chiropractic Office, Granbury, R17971; Family Care Chiropractic, P.C., Rockwall, R18024; Ward Animal Hospital, Nacogdoches, R18687; Don Quillen, M.D., Vidor, R18751; Cliff P. Watkins, D.D.S., Dilley, R16671; Alamo Madras, Inc., San Antonio, R20264; Wadley Blood Bank, Dallas, Z00147; Dan F. Bida, D.D.S., Arlington, Z00733.

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 July 11, 1994.

TRD-9443789 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: July 11, 1994

**Notice of Intent to Revoke Radioactive  
Material License**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: BDC Electronics, Inc., Midland, L03865.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license 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 radioactive material license 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 July 11, 1994.

TRD-9443790 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: July 11, 1994

◆ ◆ ◆  
**Texas Department of Insurance  
Notice**

The Commissioner of Insurance, or his designee, will consider approval of a rate filing outside the promulgated flexibility bands filed by Vesta Fire Insurance Corporation, Birmingham, AL pursuant to Article 5.101 §3(f) requesting various rate deviations of +7.7% to -76.6%, from the benchmark rate for commercial automobile. Copies of the filing may be obtained by contacting Gifford Ensey, Chief Clerk's Office, ext. 475-1761, 333 Guadalupe, Austin, Texas 78701.

This rate filing is subject to Department approval without a hearing unless an objection is filed with the Associate Commissioner of Policy and Research, 333 Guadalupe, P.O. Box 149140, Austin, Texas 78714-9140 within 30 days after publication of this notice.

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

TRD-9443775 D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: July 11, 1994

The Texas Department of Insurance has postponed the hearing originally scheduled for 9:00 a.m. on July 18, 1994 regarding Docket Number 2102, the auto classification system for private passenger automobile insurance. The Department will accept written comments from all interested parties through September 1, 1994 and will determine whether a hearing is necessary at that time.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443645 D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: July 7, 1994

◆ ◆ ◆  
**Notice of Application by Foundation Health, a Texas Health Plan, Inc. Austin, Texas, for issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas**

Notice is given to the public of the application of Foundation Health, a Texas Health Plan, Inc., Austin, Texas, for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The Application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

If you wish to object to the issuance of a certificate of authority to Foundation Health, a Texas Health Plan, Inc. to operate an HMO in the State of Texas, you must submit your written objection to Leah Rummel, Director of the HMO Unit, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104, no later than 20 days after the date of publication of this notice. Upon consideration of the objections raised and the application of Foundation Health, a Texas Health Plan, Inc., if the Commissioner is satisfied that Foundation Health, a Texas Health Plan, Inc. has met all requirements of law, the Commissioner may order the issuance of a certificate of authority without a public hearing.

Issued in Austin, Texas, on July 11, 1994

TRD-9443777 D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: July 11, 1994

◆ ◆ ◆  
**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 admission in Texas for Harden and Company Insurance Services, Inc., a foreign third party administrator. The home office is in Concord, California.

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 78714-9104.

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

TRD-9443776 D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: July 11, 1994

◆ ◆ ◆  
**Legislative Budget Board  
Budget Execution Proposals--Legislative Budget Board**

Pursuant to the Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993. We find that there is an imperative need to purchase additional textbooks for the school children of Texas, creating an emergency.

We propose that excess appropriations made to the Treasury Department, in rider 4, Appropriation for Statutory Obligations, page I-319, for the fiscal biennium ending August 31, 1995, shall be transferred in the amount of \$11,800,000 to the Central Education Agency for the fiscal biennium ending August 31, 1995, for the purchase of textbooks used by the school children of Texas.

Bob Bullock

Chairman

Legislative Budget Board

Pete Laney

Speaker of the House

Vice-Chairman

Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on July 7, 1994, by the following vote.

On the part of the Senate: Yeas: 4 Nays: 0

On the part of the House: Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on July 7, 1994.

TRD-9443630 Ann W. Richards  
Governor of Texas  
Office of the Governor

Filed: July 7, 1994

◆ ◆ ◆  
Pursuant to the Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993. We find that the backlog of offenders confined in the county jails awaiting transfer to state prisons creates an emergency requiring additional funding, including funding for additional payments to counties.

We propose that appropriations made to the Treasury Department in rider provision 4., Appropriation for Statutory Obligations, in the amount of \$33,400,000 be trans-

ferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for the University of Texas System, in the amount of \$7,758,216 for fiscal year 1995 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. The various items of appropriation in Objective "A 1.: State Contribution, University of Texas and Texas A&M Systems" on pages I-103 and I-104 relating to the University of Texas System and its various components shall be reduced as necessary to provide for this transfer

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for the Texas A&M University System, in the amount of \$3,980,162 for fiscal year 1995 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. The various items of appropriation in Objective "A 1., State Contribution, University of Texas and Texas A&M Systems" on pages I-103 and I-104 relating to the Texas A&M University System and its various components shall be reduced as necessary to provide for this transfer

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for fiscal year 1994, in the appropriation items and amounts indicated as follows, be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. A 1.1., UT System Administration-\$4,908, A. 1.12., UT Medical Branch at Galveston-\$306,904, A 1.28., Texas Agricultural Extension Service-\$342,156; A.1.31., Texas Engineering Extension Service-\$200,137.

We also propose that none of the General Revenue Fund amounts appropriated to the Employees Retirement System for fiscal year 1994 in appropriation item B.1.1., Uniform Group Insurance Program-General State Employees, in excess of \$200,458,681 be available for expenditure by the Employees Retirement System.

We also propose that the General Revenue Fund appropriations made to the Employees Retirement System for fiscal year 1994 in appropriation item B.1.1., Uniform Group Insurance Program-General State Employees, but which the Employees Retirement System would be prohibited from expending pursuant to this order, in the amount of \$50,464,817 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

We also propose that none of the funds appropriated to the Employees Retirement System and that none of the funds appropriated for Higher Education Employees Group Insurance Contributions be expended during fiscal year 1995 to pay group health insurance contributions at rates which exceed the rates established for fiscal year 1994 by Senate Bill 5, 73rd Legislature, 1993, in rider 5, State Contribution to Group Insurance for General State Employees, page I-101, and in rider 1, State Contribution to Group Insurance for Higher Education Employees, page I-105, respectively.

We also propose that appropriations made for Higher Education Employees Group Insurance Contributions for

fiscal year 1994, in the various items of appropriation in Objective "A.2: State Contributions, Other Institutions", pages I-104 and I-105, in the amount of \$18,151,901 be transferred to the Department of Criminal Justice for the fiscal biennium ending August 31, 1995, for the purposes necessary to meet this emergency. Authority to expend funds from the various items of appropriation in Objective A.2 shall be reduced on a proportionate basis to provide for this transfer.

We also propose that none of the funds appropriated for Higher Education Employees Group Insurance Contributions for fiscal year 1994 in the various items of appropriation in Objective "A 2: State Contributions, Other Institutions", pages I-104 and I-105, in excess of \$95,042,084 be available for expenditure. Authority to expend funds from the various items of appropriation in Objective A.2 shall be reduced on a proportionate basis to provide for this limitation.

Bob Bullock  
Chairman  
Legislative Budget Board  
Pete Laney  
Speaker of the House  
Vice-Chairman  
Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on July 7, 1994, by the following vote.

On the part of the Senate Yeas: 4 Nays: 0

On the part of the House. Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on July 7, 1994.

TRD-9443629

Ann W Richards  
Governor of Texas  
Office of the Governor

Filed: July 7, 1994

## Texas Lottery Commission

### Invitation for Bids (IFB) for Banking Services

The Texas Lottery Commission is soliciting bids for banking services for the Texas Lottery Commission, as provided in this IFB

#### Objectives

The Texas Lottery Commission intends to obtain from the selected Vendor general banking services including check writing and automated clearing house (ACH) transactions.

The objective is to minimize the expense for the Texas Lottery Commission

#### Background Information

Since the Texas Lottery began operating in May, 1992 the use of banking services has been required to pay prize winners and the subsequent withheld taxes on these prizes

There are 24 claim centers that issue payments to prize winners by check. In addition, the Texas Lottery Commission's Financial Operations section issues payments to 6 of 6 Lotto winners and specific large dollar scratch-off game winners either by check or EFT. The withheld taxes for these prizes are paid through a tax (zero-balance) checking account.

An initial deposit of \$4 million was made to establish the current prize payment account. The account is monitored daily with funds being wired from the State Treasury to cover daily debits. All Treasury wires are made to the prize payment account. Funds are transferred from the prize payment account to the tax account via a check/deposit slip system when withheld taxes are due. The average monthly activity, for the combined accounts, is 4,800 checks, 16 outgoing wires, 21 incoming wires, 65 local deposit items and 4,290 serial sorts.

Beginning April 1, 1994 a travel advance fund account was established with an initial deposit of \$25,000. Funds for this account are reimbursed via a state issued warrant as travel reimbursement vouchers are processed.

The Texas Lottery Commission will establish an investigatory reimbursement account. The account will be established with an initial deposit of \$5,000.

As of March, 1994 the Texas Lottery Commission has an accountant on staff to serve as liaison between the bank and Lottery staff members. This person is responsible for all contact with the bank and reconciles the prize payment account monthly.

#### Schedule

Event	Date
IFB Issued	July 11, 1994
Vendor Questions Due	July 19, 1994 4:00 p.m. Central Standard Time
Response to Questions	July 26, 1994
Bid Due Date	August 1, 1994 4:00 p.m. Central Standard Time
Banking Services	

The Texas Lottery Commission will establish four accounts: the prize payment account, tax (zero balance) account, travel advance fund account and investigatory reimbursement account.

The Texas Lottery Commission must receive two bank statements: one sorted by check cleared date and one sorted by check number. The date cleared bank statement must be additionally sorted by amount of check within an individual day.

The bank shall provide electronic data on a 3480 or TEK85 cartridge for all bank information on the prize payment account bank statement.

All checks listed on the bank statement and subsequent electronic device will have a valid check number. No zero (0) or all 9999999 numbers are allowed. Liquidated damages for not providing valid check number will be \$3.00 per check.

A printout of the data on the 3480 or TEK85 cartridge must accompany the media.

All prize winning wires submitted to the bank by 11:30 a.m. must be processed by 1:30 p.m. on the same day.

Minimum banking requirements/qualifications to submit a bid.

By submitting a bid, the Vendor certifies the following:

it is a federally-insured financial institution,

it can provide all services required,

a branch is located in Austin.

The accounts are to be fully-collateralized by United States governmental securities.

The accounts will be the equivalent of money-market (interest bearing) checking accounts.

The accounts will be assigned a customer representative located in Austin.

Monthly bank statements and cleared checks will be received by the 10th of each month.

Monthly account analysis will be received by the 10th of each month.

The accounts will have no minimum balance requirements and interest will be computed daily on the average balance.

Primary term: Prices quoted must be in effect for the primary term of this contract which is the date of execution through August 31, 1995. At its sole option, the Texas Lottery Commission may extend this contract for one fiscal year following the primary term (August 31, 1995).

For a copy of the complete Invitation for Bids please contact:

Ridgely C. Bennett

Staff Attorney

(512) 371-4935

Issued in Austin, Texas, on July 11, 1994

TRD-9443773  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission

Filed: July 11, 1994

## Texas Department of Mental Health and Mental Retardation

### Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TXMHMR) will hold a public hearing at 1:30 p.m., Thursday, July 14, 1994 in the Central Office Auditorium located at 909 West 45th Street, Austin, Texas. The purpose of this hearing will be to accept oral and written testimony concerning the Plan on Long-Term Care for Persons with Mental Retardation as required in the Texas Health and Safety Code, §533.062. Copies of the draft document are available from TXMHMR's ICF/MR Program Office at 3305 Northland Drive, Suite 400 in Austin or by calling the ICF/MR Program Office at (512) 323-3261. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, Director, Office of Policy Development, by calling (512) 206-4516 at least 72 hours prior to the hearing.

Issued in Austin, Texas, on June 30, 1994.

TRD-9443495      Ann K. Utley  
Chair  
Texas Department of Mental Health and  
Mental Retardation

Filed: July 5, 1994

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**Notice of Request for Comment  
regarding Block Grant Application for  
Community Mental Health Services**

Public Law 102-321 requires that public comment be solicited concerning the Block Grant Application for Community Mental Health Services. The Texas Department of Mental Health and Mental Retardation announces that the Fiscal Year 1994 Block Grant Application for Community Mental Health Services is available. The application complies with Public Law 102-321 and describes the range of community mental health programs available throughout the state. Approval of the application by the Center for Mental Health Services entitles Texas to \$16 million in block grant funding to be used for strengthening community mental health programs. The document contains the State Plan for Community Mental Health Services for fiscal year 1994 as well as the 1993 Implementation Report. Requests for copies should be sent to Office of Strategic Planning, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or phone (512) 206-4569. Written comments concerning the application should be submitted to the same address.

Issued in Austin, Texas, on June 30, 1994

TRD-9443494      Ann K. Utley  
Chair  
Texas Department of Mental Health and  
Mental Retardation

Filed: July 5, 1994

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**Texas Natural Resource Conservation  
Commission  
Consultant Proposal Request Correction**

The Texas Natural Resource Conservation Commission published a notice of intent to issue a "Request for Proposal: Strategic Plan for Air Programs Stationary Source Information Management" in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4776). That notice stated that the closing date for proposal responses is July 17, 1994, which is a Sunday. The correct closing date for proposal responses is Monday, July 18, 1994, at 3:00 p.m.

Issued in Austin, Texas, on June 28, 1994

TRD-9443558      Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed July 6, 1994

**Notice of Application on a Municipal  
Solid Waste Proposed Permit, Number  
MSW2229**

Attached are Notices of Applications for municipal solid waste permits issued during the period of June 20-24, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing," a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission on later than 20 days after the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

IMC Waste Disposal; Type V (Dewatering Liquid Wastes); 1900 Waurika, Wichita Falls, Wichita County, Texas; new, MSW2229.

Issued in Austin, Texas, on June 24, 1994

TRD-9443433      Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: July 1, 1994

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**Notice of Application for Waste Disposal  
Permits**

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of June 27-July 1, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number, the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations, and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711, (512) 463-7908.

Kenneth Allison; the Eastwood Hills Subdivision Wastewater Treatment Facilities, the facilities are in the Eastwood Hills Subdivision, east of the Missouri-Pacific Railroad and approximately 2,500 feet south of Robinson Road in Montgomery County, Texas; renewal, 12788-01.

City of Cisco, the wastewater treatment facilities; are approximately 4,500 feet north and 1,900 feet east of the intersection of U.S. Highway 183 and U.S. Highway 80 in Eastland County, Texas, renewal; 10424-01, and the water treatment facilities, are approximately 800 feet downstream of the Lake Cisco Dam, approximately 400 feet west of State Highway 6 and approximately 3.5 miles north of the intersection of U.S. Highway 80 and State Highway 6 in Eastland County, Texas; renewal; 10424-02.

Cypress Bayou, Inc.; the Little Cypress Bayou Estates Wastewater Treatment Facilities, are north of Orange, at a point approximately 1,200 feet east and 1,600 feet north of the intersection of State Highway 87 and FM Road 1130 in Orange County, Texas, amendment; 12109-01.

Hartley Feeders, Inc., the feedlot; is on the north side of FM Road 998 approximately 3.5 miles west of the intersection of FM Road 998 and FM Road 2357 in Hartley County, Texas; amendment; 01790.

Koch Cathering Systems, Inc.; a petroleum bulk storage terminal, the plant site is on Navigation Boulevard on the north side of the Corpus Christi Ship Channel in the City of Corpus Christi, Nueces County, Texas; renewal, 02578.

Steven and Rose Lewis; the Fresno Mobile Home Park Wastewater Treatment Facilities; the plant site is on County Road 739 (Trammel-Fresno Road) approximately two miles north of the intersection of State Highway 6 and FM Road 521 in Fort Bend County, Texas; renewal; 12804-01.

Maverick County; the wastewater treatment facility will serve the Maverick County Radar Base; the plant site is approximately 2,000 feet southeast of the intersection of U.S. Highway 277 and State Highway 131 in Maverick County, Texas; new; 13716-01

Seaboard Farms of Oklahoma, Inc.; a swine farm; the swine farm is at the intersection of State Highway 207 and FM Road 2535, approximately six miles northeast of the City of Gruver in Hansford County, Texas; new; 03702.

City of Spearman, the wastewater treatment plant; is approximately one mile northwest of the intersection of FM Road 760 and State Highway 15 and 1.6 miles northeast of the intersection of State Highway 15 and FM Road 2387 in Hansford County, Texas; renewal.

Texas Parks and Wildlife Department; the Sea Center Texas facility which consists of a fish hatchery, visitor and educational center; the plant site is at 300 Medical Drive in the City of Lake Jackson, Brazoria County, Texas; new; 03652.

City of White Oak, the wastewater treatment facilities; are approximately 1,500 feet east of State Highway 42 and 3,800 feet south of U.S. Highway 80 in Gregg County, Texas; renewal; 10940-01

Issued in Austin, Texas, on July 1, 1994.

TRD-9443432  
Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: July 1, 1994

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### Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations, and your proposed conditions which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days

after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application by Ronald J. Persyn and Wife, Gladys Persyn for an Amendment to Certificate of Adjudication Number 23-2657, as amended pursuant to Texas Water Code, §11.122. For Executive Director's consideration. Applicant seeks to amend the certificate by adding 89.31 acres of land adjacent to the currently authorized irrigated land. The certificate authorizes the diversion and use of 150 acre-feet of water per annum from Cienegas Creek, Rio Grande Basin, to irrigate 75 acres of land out of a 89.45 acre tract in Val Verde County, approximately two and one-half miles southwest of Del Rio, Texas.

Application Number 5481 Texas A&M University for a Water Use Permit, pursuant to Texas Water Code, §11.121. For Executive Director's consideration. Applicant seeks authorization to divert and use not to exceed 5,600 acre-feet of water per annum from Laguna Madre, Nueces-Rio Grande Basin in Nueces County at a maximum rate of 7.7 cubic feet per second (3,472 gallons per minute) for industrial use (to perform oilspill cleanup research). The location of the diversion point is approximately 0.5 southwest of Corpus Christi, Texas.

Application Number 1980A by the Public Utilities Board of Brownsville, Texas and the Brownsville Navigation District of Cameron County to amend Water Use Permit Number 1838. For Executive Director's consideration. Applicants seek to amend Permit Number 1838, which authorizes diversion and use of 40,000 acre-feet of water per annum (37,500 acre-feet for industrial use and 2,500 acre-feet for municipal use) from the Rio Grande, by allowing use of the 40,000 acre-feet of water per annum for municipal and industrial use in Cameron County without allocating a specific amount of water for each use. The proposed amendment will not change restrictions in the existing permit that allow diversions only when the remaining downstream flow of the Rio Grande is at least 25 cubic feet per second or that state that the permittee can not request releases of water from Falcon Reservoir for use.

Application Number 23-1246A by City of Eagle Pass, Texas, for an Amendment to Certificate of Adjudication Number 23-124, pursuant to Texas Water Code, §11.122. For Executive Director's consideration. Certificate was issued September 7, 1971, to Mrs. Refugia T. Leal, and authorized the diversion and use of 22.5 acre-feet of Class "B" water per year from the Rio Grande, Rio Grande Basin, to irrigate nine acres of land out of a tract located in TWC Tract Number C-175 (Court Number 637), Cameron County, Texas. Commission records show that the Certificate was purchased from Mrs. Leal by the City of Eagle Pass, Texas. The City of Eagle Pass (applicant) seeks amendments to: move the diversion point and place of use to the City of Eagle Pass, in Maverick County; change the irrigated area to ten acres out of 76.17 acres of golf course land; and specify a diversion rate 1.34 cfs (600 gpm)

City of Laredo (Certificate Number 23-3997L) Applicant seeks to change the ownership of 2,500 acre-feet of Class "A" irrigation water rights authorized in Certificate of Adjudication Number 23-829, change the point of diversion, type (from irrigation to municipal) and place of use to the service area of the City of Laredo by severing that portion from aforesaid certificate and combining these rights under the City of Laredo's Certificate Number 23-3997, as amended, Rio Grande Basin, Webb county, Texas.

Application Number 5482 Walnut Creek Mining Company, a Water Use Permit, pursuant to Texas Water Code, §11.121. For Executive Director's consideration. Applicant seeks authorization to construct and maintain at its Calvert Lignite Mine, a sediment control dam creating a reservoir (Pond SPC-22) on an unnamed tributary of Walnut Creek, tributary of Little Brazos River, tributary of the Brazos River, Brazos River Basin in Robertson county, approximately ten miles northwest of Franklin, Texas, for sediment Control.

David Munson, Jr. doing business as 3M Ranch, Application Number TA-7309 for a permit under Texas Water Code, §11.138 and TNRC rules 30 TAC §§295.61, 295.62, 295.125, 295.154, 295.174, and 297.13 to divert and use a total of 300 acre-feet of water for a three-year period from the Red River, Red River Basin, for irrigation purposes in Red River County, Texas. The proposed point of diversion is on the Red River just northwest of the Kanawha community and approximately 24 miles northwest of Clarksville, Red River County, Texas, where water will be diverted at a maximum rate of 1.67 cfs (750 gpm).

Application by Grand Canyon Dairy for a minor amendment to Permit Number 02950 to authorize the disposal of waste and wastewater from a dairy. The proposed amendment is to include: an additional storage pond (Pond Number 8), additional land to be used for irrigation and disposal of manure; and additional improvements completed after the permit was originally approved. The dairy consists of a maximum of 1,450 milking head and a maximum of 1,950 total head Washdown water, flushwater and stormwater is retained in seven storage ponds. Wastewater is disposed of by evaporation and/or irrigation on approximately 950 acres of land used for growing agricultural crops and pastures. Manure and/or solids are applied as fertilizer on about 1,237 acres of agricultural land on site and on adjacent properties. No discharge of pollutants into the waters of the State is authorized by this permit. The dairy is on the east side of FM Road 219, approximately five miles south of the intersection of FM Road 219 and County Road 1702 and seven miles southeast of the City of Dublin in Erath County, Texas.

Application by Woodmark Development Corporation for a minor amendment to Permit Number 13168-01 to add an Interim I phase with a discharge volume not to exceed an average flow of 30,000 gallons per day. The proposed amendment also authorizes a decrease in the discharge of treated domestic wastewater effluent in the Final phase from a volume not to exceed an average flow of 120,000 gallons per day to a volume not to exceed an average flow of 94,000 gallons per day. The applicant operates a wastewater treatment facility. The plant site is south of FM Road 346, approximately 3,500 feet east of the intersection of FM Roads 2493 and 346 in Smith County, Texas.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443436 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: July 15, 1994

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**Texas Department of Public Safety**  
**Notice of Request for Proposal**  
**Cancellation**

As no Request for Proposal was received during the published timeframe, the Emergency Management Service, Texas Department of Public Safety announces the cancellation of Request for Proposal to gather information needed to facilitate the safe and efficient evacuation of special needs population from Corpus Christi to San Antonio, Texas.

Issued in Austin, Texas, on June 16, 1994.

TRD-9443640 James R. Wilson  
Director  
Texas Department of Public Safety

Filed: July 7, 1994

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**Public Utility Commission of Texas**  
**Notices of Application to Amend**  
**Certificate of Convenience and**  
**Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on July 1, 1994, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§(a), 18(b), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend Certificate of Convenience and Necessity Within Bexar County, Docket Number 13181, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 13181, Guadalupe Valley Telephone Cooperative, Inc. seeks approval of the application to amend the existing exchange area boundary between its Bulverde exchange and the Elm Creek Zone of Southwestern Bell Telephone Company's San Antonio Metropolitan exchange so that an entire subdivision may be served by a single local exchange carrier.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before August 2, 1994.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443757 John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 8, 1994

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on June 28, 1994, to amend a certificate of convenience and necessity pursuant to (a), 18(b), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity within Milam County. Docket Number 13159, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 13159, Southwestern Bell Telephone Company seeks approval of the application to amend the existing exchange area boundary between its Rockdale exchange and GTE Southwest, Inc. Thorndale-Thrall exchange in order to reflect the manner in which service is currently being administered.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before August 2, 1994.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443456 John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 1, 1994

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**Notices of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the City of Fort Worth, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of a 20-Station Addition to the Existing Plexar-Custom Service for the City of Fort Worth pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13187.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a 20-station addition to the existing Plexar-Custom Service for the City of Fort Worth. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443758 John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 8, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for IBM Corporation, Austin, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a new Plexar-Custom Service for IBM Corporation pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13179.

The Application. Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for IBM Corporation. The geographic service market for this specific service is the Austin, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443755      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 8, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Northside ISD, San Antonio, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 385-Station Addition to the Existing Plexar-Custom Service for Northside ISD pursuant to Public Utility Commission Substantive Rule 23. 27. Docket Number 13180.

The Application. Southwestern Bell Telephone Company is requesting approval of a 385-station addition to the existing Plexar-Custom Service for Northside ISD. The geographic service market for this specific service is the San Antonio, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443756      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 8, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Texas Bank, N.A., San Antonio, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a new Plexar-

Custom Service for Texas Bank, N.A pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13176.

The Application. Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for Texas Bank, N.A.. The geographic service market for this specific service is the San Antonio, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 6, 1994.

TRD-9443754      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 8, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Fort Worth ISD, Fort Worth, Texas.

Docket Title and Number Application of Southwestern Bell Telephone Company for Approval of a 403-Station Addition to the Existing Plexar-Custom Service for Fort Worth ISD pursuant to Public Utility Commission Substantive Rule 23. 27. Docket Number 13160.

The Application Southwestern Bell Telephone Company is requesting approval of a 403-station addition to the existing Plexar-Custom Service for Fort Worth ISD The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443459      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 1, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Tyler Bank and Trust, Tyler, Texas

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 64-Station Addition to the Existing Plexar-Custom Service for Tyler Bank and Trust pursuant to Public Utility Commission Substantive Rule 23 27 Docket Number 13161.

The Application. Southwestern Bell Telephone Company is requesting approval of a 64-station addition to the existing Plexar-Custom Service for Tyler Bank and Trust

The geographic service market for this specific service is the Tyler, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443458      John M Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 1, 1994



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 GTE Southwest Incorporated

Tariff Title and Number. Application of GTE Southwest Incorporated for Approval to Provide Customized Automatic Call Distribution (ACD) for the Federal Emergency Management Agency Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 13165.

The Application. GTE Southwest Incorporated is requesting approval of a Customer-Specific Contract for the Federal Emergency Management Agency (FEMA). The geographic service market for this specific service to FEMA is at its business operations in GTE Southwest Incorporated's Denton exchange.

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) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443455      John M Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 1, 1994



### PUC Requests Comments Related to Amending Rule 23.45-Billing Practices of Electric and Telephone Companies

The Public Utility Commission of Texas has established a project (Project Number 10900) to consider amending Substantive Rule 23.45-Billing Practices. The Commission seeks comments from interested parties in response to the following questions. Parties should include their reasons supporting the response to each question. The Commission requests that parties respond to the questions in the order in which they are presented below and encourages parties to include an executive summary of their comments.

1. Should utilities be required to allow customers to specify the monthly due date of bills for electric or telephone

service? Should a customer's ability to specify the monthly due date be restricted to certain "good cause" situations? If yes, what would constitute "good cause"?

2. Should the due date of bills for electric or telephone service be altered so that payment is coordinated with the billing cycle of major creditors?

3. Should a one-time penalty be assessed against residential bills for delinquent payments? If so, what should the penalty be? Is the current penalty limit for commercial and industrial bills appropriate? If not, what should the penalty be?

4. Should the provisions relating to deferred payment plans be amended to substitute "electric or telephone utility" for "utility," thereby explicitly making deferred payment plans applicable to both electric and telephone providers?

5. Should the rules require a utility to offer deferred payment plans to all customers? If not required for all customers, should utilities be required to offer deferred payment plans to small commercial customers in addition to residential customers? How should small commercial customers for electric and telephone services be defined for this purpose?

6. Should customers defaulting under a level or average payment plan entered into pursuant to §23.45(e) be provided an opportunity to enter into a deferred payment plan on the due, but unpaid, balance prior to disconnection of service?

7. Should telephone and electric utilities be required to reduce to writing and the customer sign all agreements extending time for payments? If not, for of documentation of such agreements is appropriate?

8. Should §23.35(c)(1) be amended to require utilities to allow customers to enter into deferred payment plans with payment of less than one-third of the total deferred amount? What percent of the total deferred amount is appropriate?

9. If a deferred payment plan is not reduced to writing, should utilities be required to have a customer sign a waiver of right to dispute the amount of a bill similar to that required by §23.45(c)(3)?

10. Should the provisions relating to waiver of right to dispute the amount of a bill be removed from the deferred payment plan and placed in a separate document?

11. Should electric utilities be required to show the energy charge per kilowatt hour on customer bills? If so, should the energy charge be broken out to show cost per kilowatt hour for each energy block?

12. Should electric utilities be required to show on the bill average temperature during the billing period, as compared to the preceding period and/or same period in the preceding year?

13. Should electric utilities be required to show on the bill average daily cost for electric service?

14. Should electric utilities be required to show on the bill components of the energy charge, for example, cogeneration power cost factor?

15. Should electric and telephone utilities be required to file representative sample bills with the Commission to provide billing data necessary to compile monthly bill surveys?



curriculum vitae, demonstrated competence; previous experience and knowledge will be strongly evaluated.

An original and two copies of the proposal must be submitted to the President's office prior to 5:00 p.m., on July 22, 1994. Proposals received after the above date will not be considered.

For additional information regarding this proposal request, please contact President Ryan C. Amacher, (817) 273-2101

Issued in Arlington, Texas, on July 1, 1994.

TRD-9443414 Arthur H Dilly  
Executive Secretary to the Board  
The University of Texas System

Filed July 1, 1994

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**On-Site Wastewater Treatment  
Research Council**

**Request for Proposal-Technology  
Transfer Symposium**

The On-Site Wastewater Treatment Research Council (Council) issues this Request for Proposal (RFP), pursuant to the Texas Health and Safety Code, Chapter 367, for the possible award of a contract for a technology transfer project. The project is to be funded with on-site wastewater treatment research account funds.

**Purpose of grant and scope of work.** The purpose of this project is to provide the Council with a meeting space, technical and administrative support, and planning assistance for a symposium to be held in Austin, Texas during the month of January 1995 or February 1995. The purpose of the symposium is to promote research projects, demonstration projects and technology transfer in the field of on-site wastewater treatment. The duration of this symposium shall not exceed three days. The grantee shall be responsible for the management of all aspects of the planning and execution of the symposium, including procuring meetings and hotel accommodations, advance and on-site registration of attendees, procurement of program participants, development of program schedule, procurement of vendors and displays, provision of meeting proceedings, and provisions of adequate personnel to accomplish the above. The acquisition of meeting space and hotel accommodations shall be accomplished in accordance with applicable State statutes. The proposal should identify strategies for recruiting subjects and encouraging participation. Other potential funding sources and the availability of matching funds will be taken into consideration, however, this is not a specific grant requirement.

**Funding Information.** The total funding available for this project is approximately \$12,000. Each proposal should identify other funding sources, if applicable.

**Criteria for Eligibility:** A corporation organized under the Texas Business Corporation Act must submit proof that it is not delinquent in taxes owed the State of Texas under the Texas Tax Code, Chapter 171. In order to assure equitable distribution of limited funds and to avoid conflicts of interest, the following criteria are established for acceptability.

**Evaluation and Selection.** Funds will be awarded on a competitive basis to those applicants that can demonstrate the necessary expertise and the greatest aptitude for effectively providing the desired results.

In addition to providing specific comments, each evaluator will, where appropriate, rate the proposals in the following areas: degree to which the proposal is responsive to the overall purpose and funding criteria; qualifications of project staff and directly-related project and staff experience; reasonableness of the proposed budget and time schedule; project organization and management; availability of matching funds or services, if any, and other information as may be required.

The final selection of grantees for award shall be made by the council after careful evaluation of each proposal. Proposers may be asked to make oral presentations prior to final selection. Any negotiations deemed necessary by the council will be conducted prior to the first day of the contract period.

A proposal will not be reviewed unless all applicant information and documentation specified in this RFP is submitted.

**Submission Requirements.** Twelve copies of the proposal must be submitted to the On-site Wastewater Treatment Research Council, in care of the Texas Natural Resource Conservation Commission, Flood Management and Groundwater Programs Section, P O Box 13087, Austin, Texas 78711-3087, Attention: Ted Johns, Executive Secretary. Proposals must be submitted no later than 5:00 p.m. on August 15, 1994. Proposals received after the stated time will not be considered.

The council reserves the right to accept or reject any or all proposals submitted. The council has sole discretion to determine the successful grantee and is under no obligation to award a grant or to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the council to pay for any costs incurred prior to the execution of a contract.

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

TRD-9443791 Ted Johns  
Executive Secretary  
On-Site Wastewater Treatment Research  
Council

Filed July 11, 1994