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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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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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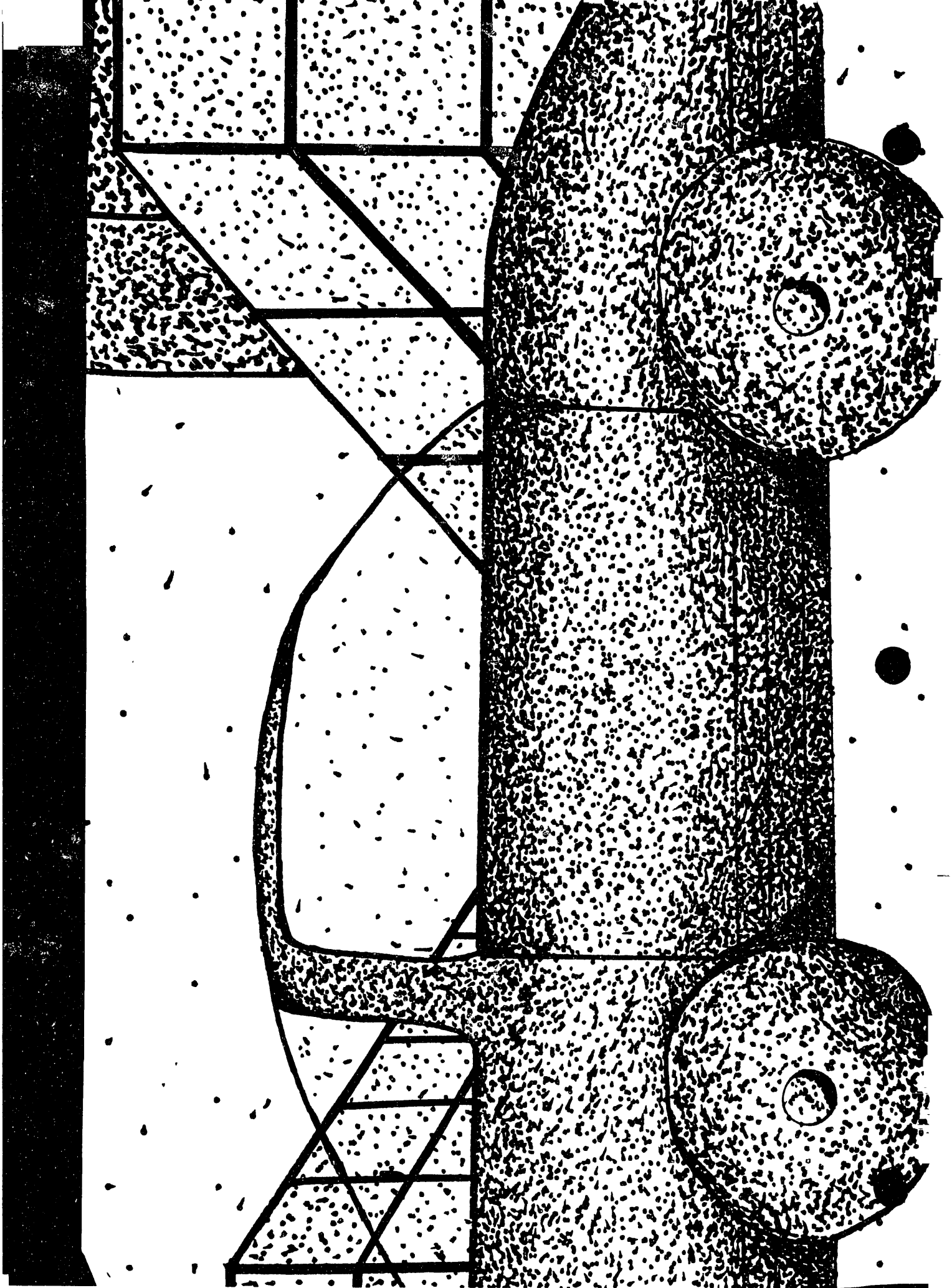
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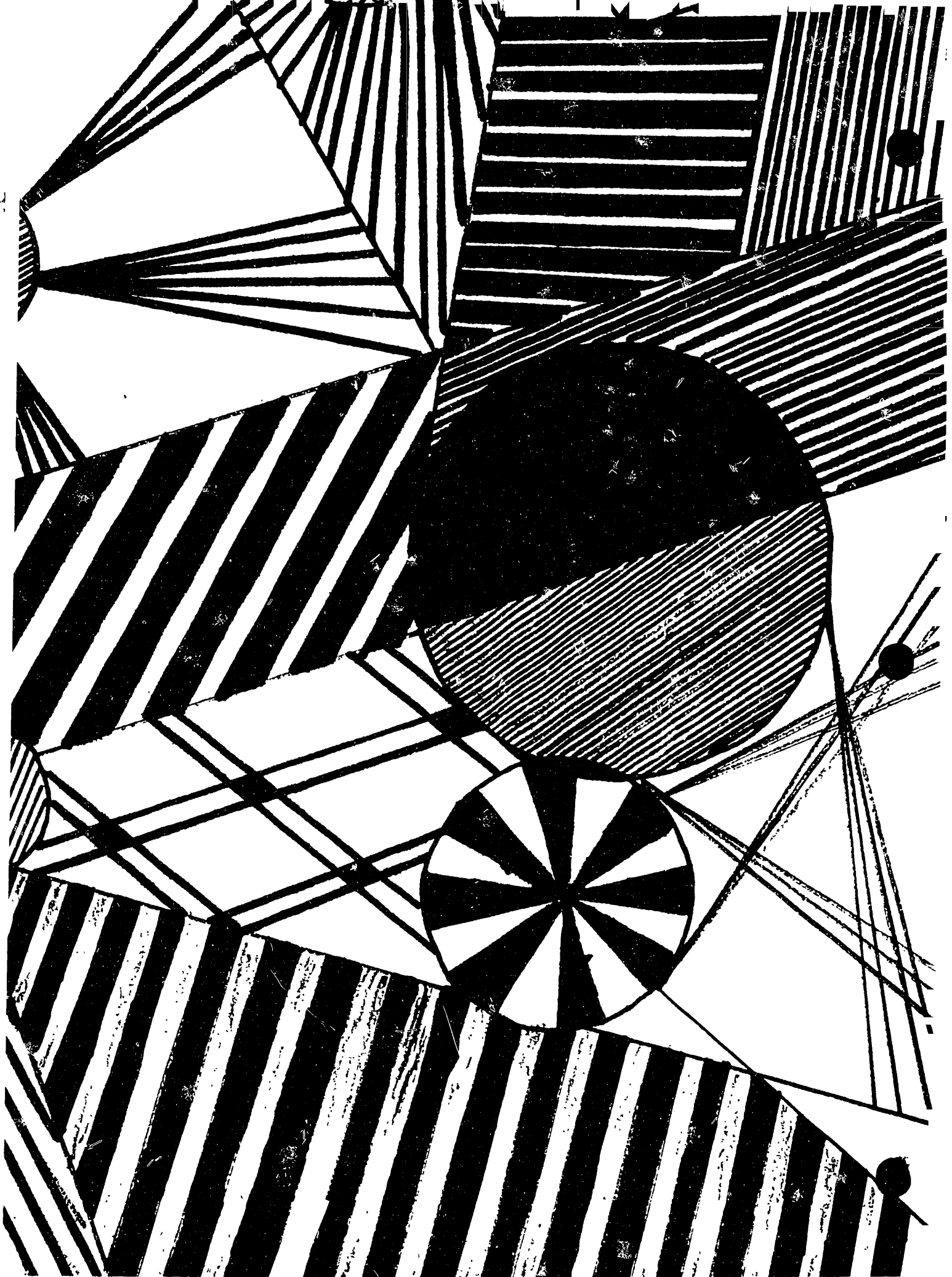
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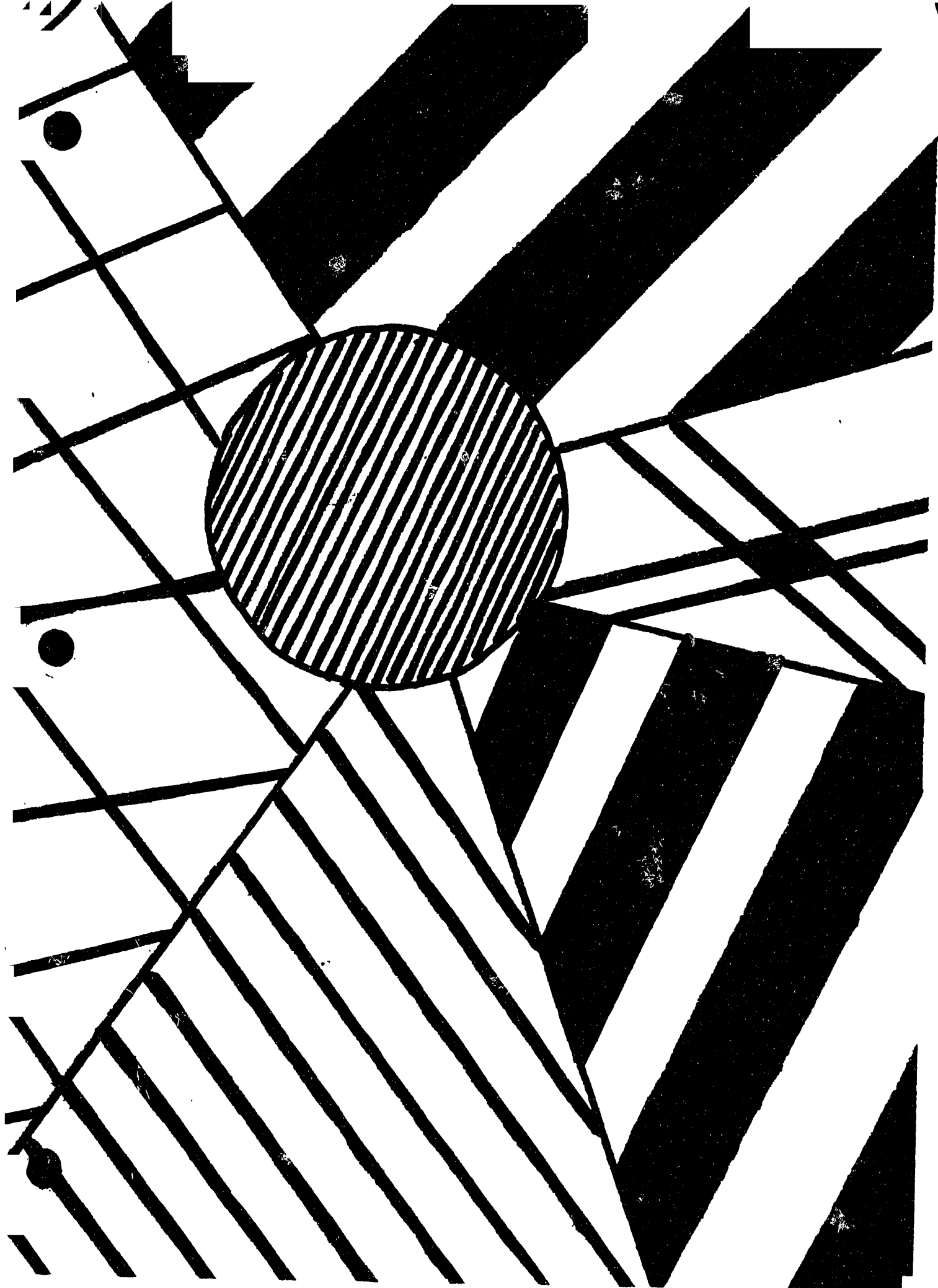
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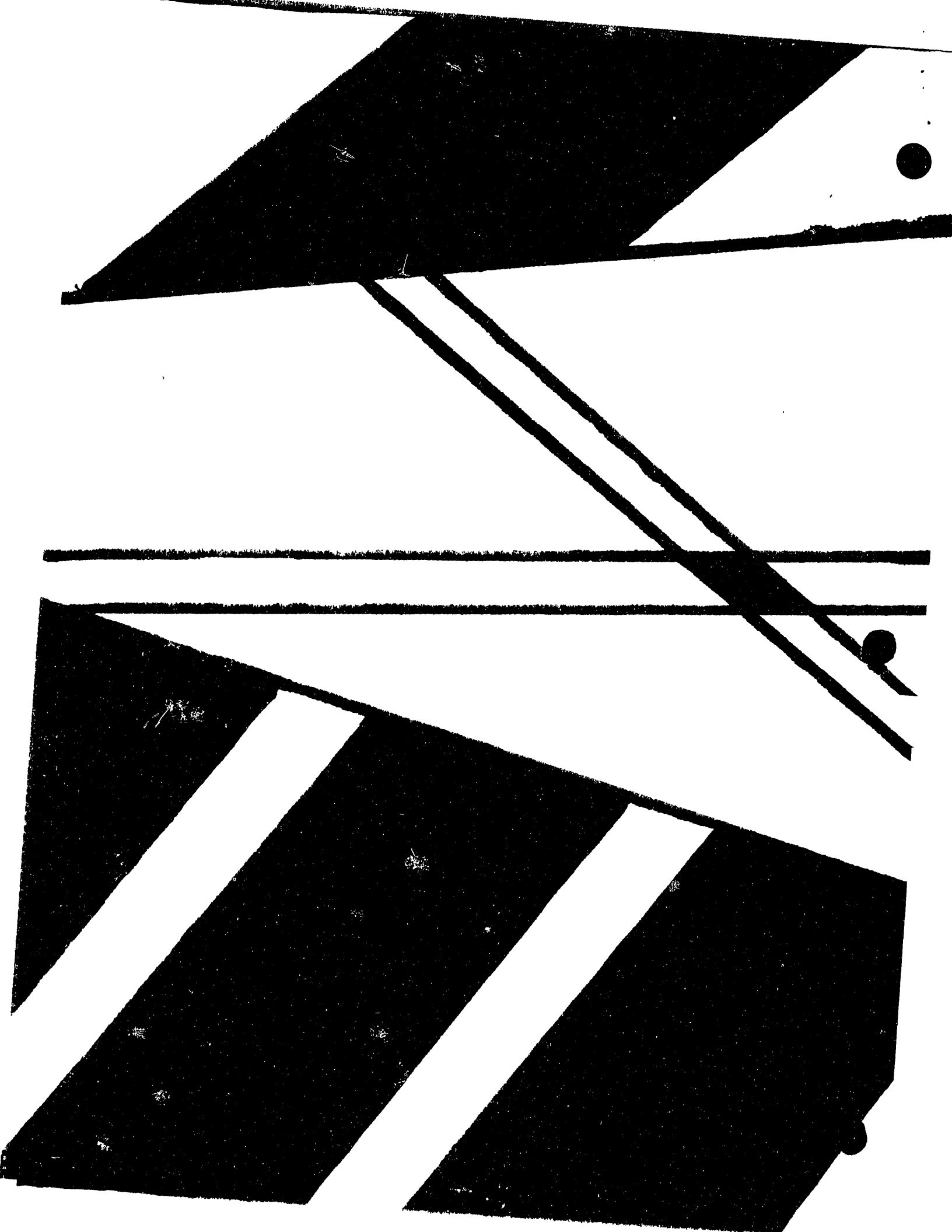
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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter E. Boll Weevil Quarantine

• 4 TAC §§3.100-3.107

The Texas Department of Agriculture (the department) proposes new §§3.100-3.107, concerning quarantine rules governing movement of infested cotton or other regulated articles into, within or through established eradication zones. Section 3.100 defines the quarantined pest. Section 3.101 defines definitions concerning cotton products. Section 3.102 and §3.103 designate what areas of the state and what articles are regulated. Sections 3.104-3.106 specify instances in which regulated articles can be moved under permit after the department's inspection. Section 3.107 establishes penalties for violations of quarantine regulations.

Rick Smathers, coordinator for cotton programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Smathers also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a reduced possibility of re-infestation of an eradication zone due to movement of boll weevil-infested equipment or material. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rick Smathers, Coordinator for Cotton Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

New rules are proposed under the Texas Agriculture Code, §74.122, which provides the Texas Department of Agriculture with the

authority to adopt rules relating to quarantining areas of the state that are infested with the boll weevil.

The Texas Agriculture Code, Chapter 74 is affected by this proposal.

§3.100. Quarantined Pest. The quarantined pest is the boll weevil (*Anthonomus grandis Boheman*).

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

Boll weevil—The insect known as boll weevil, *Anthonomus grandis*, classified in the order coleoptera, family curculionidae, and all its life stages

Compliance agreement—A written agreement between a person engaged in growing, selling or moving regulated articles and the department, wherein the former agrees to comply with conditions specified in the agreement to prevent dissemination of the boll weevil.

Cotton—All parts of cotton and wild cotton plants of the genera gossypium and thirberia, except cotton products.

Cotton products—Seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, all other forms of unmanufactured cotton fiber, cottonseed, cottonseed hulls, cottonseed cake, and cottonseed meal.

Department—Texas Department of Agriculture.

Gin trash—All of the material produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton except the lint, cottonseed, and gin waste.

Gin waste—All forms of unmanufactured waste cotton fiber, including gin notes, resulting from the ginning of seed cotton.

Infestation or infested—The presence of the boll weevil.

Inspector—Any employee of the department or designee of the commissioner of agriculture authorized to enforce the provisions of this section

Lint—All forms of raw ginned cotton except linters and waste.

Linters—All forms of unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

Moved or movement—Shipped, offered for shipment to a common carrier, received for transportation or transported, moved, or allowed to be moved by any person within or from any quarantined area.

Oil mill waste—Waste products, including notes, derived from the milling of cottonseed.

Permit—An approved document issued by a department inspector allowing movement of a quarantined article.

Quarantined area—Any portion of a boll weevil eradication zone established by grower referendum, which is recommended by the Texas Boll Weevil Foundation to the department as a quarantined area, and is subsequently designated in writing as quarantined by the Commissioner of Agriculture.

Quarantined articles—Products and articles that may move under the restrictions of boll weevil eradication quarantine regulations.

Seed cotton—All forms of cotton lint from which the seed has not been separated.

Treatment—A treatment applied in accordance with methods known to be effective under the conditions of infestation and verified by a department representative through visual observation or an invoice of treatment by a commercial applicator.

§3.102. Quarantined Areas. Those designated parts of the State of Texas established as boll weevil eradication zones by cotton grower referenda held in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D and recommended by the Texas Boll Weevil Eradication Foundation. The Commissioner of agriculture may then designate in writing the area as quarantined.

§3.103. Quarantined Articles. The following articles are subject to regulation under the provisions of this subchapter:

(1) the boll weevil (*Anthonomus grandis Boheman*) in any stage of development;

- (2) seed cotton;
- (3) gin trash;
- (4) cotton harvesting equipment.

(5) any other products, articles, means of conveyance, of any character whatsoever, not covered in paragraphs (1) - (4) of this section, when it is determined by the commissioner or his inspector that they might result in the dissemination of the boll weevil.

§3.104. Movement of Quarantined Articles.

(a) Within quarantined areas. There are no restrictions on movement of quarantined articles within a quarantined area under normal conditions. However, if the commissioner of agriculture or his inspector determines that the movement may result in expansion of the quarantined area or in increased infestation, a permit may be required.

(b) Within non-quarantined areas. There are no restrictions on movement of quarantined articles within non-quarantined areas under normal conditions. However, if the commissioner of agriculture or his inspector determines that such movement may result in expansion of the quarantined area or in increased infestation, a permit may be required.

(c) From a non-quarantined area to a quarantined area. A permit is required except where the commissioner of agriculture or his inspector determines that there will be little or no danger of increased infestation or expansion of the quarantined area by such movement. Under this exception, a permit requirement may be waived.

(d) From a quarantined area to a non-quarantined area. No permit is required except where the commissioner of agriculture or his inspector determines that the movement may cause an increase in infestation or expansion of a quarantined area. A permit may then be required.

(e) From a quarantined area to another quarantined area. No permit is required except where the commissioner of agriculture or his inspector determines that the movement may cause an increase in infestation or expansion of a quarantined area. A permit may then be required.

§3.105. Permits.

(a) Issuing authority. Movement permits are issued by the commissioner of agriculture or his inspector.

(b) Attachments. When permits are required, they shall be securely fastened to the outside of the container in which the articles are being moved, except where the permit is attached to the shipping documents

and the quarantined articles are adequately described on the shipping documents or on the permit. The attachment of the permit to each of the containers is not required.

(c) Conditions of issuance. Permits may be issued by an inspector if the quarantined articles:

(1) have been treated to destroy infestation in accordance with approved procedures; and

(2) are being moved for particular handling, utilization, processing, or for treatment in accordance with approved procedures, provided that the inspector has determined that such movement will not result in the spread of the boll weevil.

(d) Exemptions. An inspector may exempt any article from any condition governing movement of articles if he determines that such movement will not result in the spread of the boll weevil.

(e) Cancellation. Any permits issued under these regulations may be withdrawn or canceled and further permits refused whenever, in the judgment of the commissioner of agriculture or an inspector, the further use of such permits might result in the dissemination of the boll weevil.

§3.106. Inspection and Disposal

(a) Individuals authorized to inspect and dispose. 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 carries articles infested with the boll weevil; and such inspector is authorized to seize, treat or cause to be treated, destroy, or otherwise dispose of articles found to be moving in violation of these regulations.

(b) Articles subject to inspection and destruction. All quarantined articles imported into the State of Texas or transported from counties within the state in violation of these rules are subject to destruction or return to the point of origin at the discretion of the commissioner of agriculture or his inspector.

§3.107. Penalties.

(a) It is a violation for any person to use a false, invalid or altered permit for the movement of quarantined articles pursuant to these rules.

(b) It is a violation for any person to wrongfully use a permit or move quarantined articles without a permit issued pursuant to any provision of these rules.

(c) A violation under this section is a Class C misdemeanor. In addition, the

Code §12.020, which provides for the assessment of administrative penalties, applies to a person who violates the Texas Agriculture Code, Chapter 74, or these rules.

(d) If the commissioner determines that a violation of these rules has occurred, the commissioner may request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil, injunctive, and/or other appropriate relief.

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 August 15, 1994

TRD-9446653

Dolores Alvarado Hibbe
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: September 19, 1994

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

Chapter 5. Quarantines

Citrus Seed, Citrus Budwood, and Citrus Nursery Stock Quarantine

• 4 TAC §5.154

The Texas Department of Agriculture (the department) proposes an amendment to §5 154, concerning shipment of Florida miniature citrus house plants. The amendment is proposed in order to require the plants to be inspected and certified free of the citrus leafminer, *Phyllocnistis citrella* Stainton, before entry into the state. Currently, miniature citrus house plants from Florida may enter the state of Texas under conditions specified by the department. However, it is necessary to amend §5 154 to require inspection and certification of miniature citrus house plants in order to assure that only citrus leafminer-free citrus plants are allowed into this state.

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

Dr. Nilakhe also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be that Texas businesses will be importing only certified citrus leafminer-free plants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on this proposal may be submitted to Shashank Nilakhe, Director, for Agrisystems, Texas Department of Agriculture,

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 amendment is 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 chapter affected by this proposal is the Texas Agriculture Code, Chapter 71.

§5.154. Shipment of Florida Miniature Citrus House Plants. Miniature citrus house plants from Florida may be shipped into Texas, except to the prohibited counties of Hidalgo, Willacy, Starr, Cameron, Dimmit, and Zavala, if they meet the following conditions:

(1) are grown in a nursery certified free of burrowing nematodes by the Florida Department of Agriculture and Consumer Services.

(2) plants have been treated in Florida according to a procedure approved by the Texas Commissioner of Agriculture, witnessed by Florida Department of Agriculture and Consumer Services officials.

(3) (No change.)

(4) plants must be examined by inspectors of the Florida Department of Agriculture and Consumer Services certified free of the citrus leafminer, *Ayllochnis citrella* Stainton.

(5)[(4)] plants must have a certificate from the Florida Department of Agriculture and Consumer Services attesting inspection and treatment and the tag must state that the plants are barred from the six-county prohibited zone in Texas. These inspection tags must remain attached to the plants until sold to the ultimate customer. 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 August 11, 1994.

TRD-9446507 Dolores Alvarado Hibbe
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: September 19, 1994

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

Chapter 30. Young Farmer Loan Guarantee Program

Subchapter A. General Proce- dures

4 TAC §30.4

The Board of Directors of the Texas Agricultural Finance Authority (TAFE) of the Texas

Department of Agriculture proposes an amendment to §30.4, concerning the level of equity required for loans to be made under the Texas Young Farmer Loan Guarantee Program. Section 30.4 currently requires that an applicant must provide evidence of at least 20% equity in their first farm or ranch operation. The amendment will decrease the required equity to 5.0%. The amendment is proposed in order to allow for greater participation in the program by young farmers who, as this is their first farming or ranching operation, may not have established a higher degree of equity.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Kennedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater participation of young farmers in the guarantee program, thereby increasing the number of young people within the State of Texas entering the field of agricultural production. This resulting increase in new farming and ranching operations will also provide the benefits of potential job creation and commercial benefits to the agricultural industry. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under the authority of the Texas Agriculture Code (the Code), §253.007(e), which provides the Board of Directors of the Texas Agricultural Finance Authority with the same authority in administering the Young Farmer Loan Guarantee Program as it has in administering programs established by the board under the Code, Chapter 58; Texas Agriculture Code, §58.022, which provides the board with the authority to adopt rules and procedures for administration of its programs; Texas Agriculture Code, §58.023, which provides the TAFE Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFE Loan Guaranty Program; and, Texas Government Code, §2001.004, which requires that the department adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Agriculture Code, Chapter 253, is affected by the proposed amendment

§30.4. Applicant Requirements. An applicant may submit an application to the Authority if the applicant meets the following requirements:

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

(4) applicant provides evidence of a minimum of 5.0 [20]% equity in the first farm or ranch operation; and

(5) (No change.)

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

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

TRD-9446506 Dolores Alvarado Hibbe
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: September 19, 1994

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

TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 401. Administration of the State Lottery Act

• 16 TAC §401.368

The Texas Lottery Commission proposes new §401.368, concerning the use of instant ticket vending machines. The rule sets out the guidelines for the use of instant ticket vending machines by lottery sales agents. The purpose of the rule is to preserve the integrity and security of the Lottery.

Ernest Pereya, Financial Operations Supervisor, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Pereya also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be the assurances to the public that the Lottery is operated under the highest degree of security and integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Ridgely Bennett, Staff Attorney, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6330.

The proposed new section implements the Texas Government Code, §466.015.

The new section is proposed under the Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the security for the Lottery and provides the Lottery Commission with the authority to adopt rules governing the method to be used in selling a ticket.

§401.368. *Instant Ticket Vending Machines.* No sales agent may distribute or sell Texas Lottery instant tickets from an instant ticket vending machine, except those instant ticket vending machines supplied and placed by the Texas Lottery. For purposes of this section an instant ticket vending machine is defined as a ticket dispensing machine that dispenses instant ticket without the assistance of sales agent's personnel.

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 August 15, 1994.

TRD-9446845 Kiberty L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 323-3791

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter EE. Licensed Professional Counselors and Advanced Clinical Practitioners

• 25 TAC §29.3001, §29.3002

On behalf of the State Medicaid Director, the Texas Department of Health proposes new §29.3001 and §29.3002, concerning Medicaid coverage for outpatient mental health counseling provided by licensed professional counselors (LPCs) and advanced clinical practitioners (ACPs). These sections state that LPCs and ACPs may enroll in the Texas Medicaid Assistance Program and receive reimbursement for outpatient mental health counseling for emotional disorders or conditions provided to Medicaid eligible clients. These services fall under the outpatient mental health services limitation of 30 visits to enrolled practitioners per client per calendar year. This limitation may be exceeded when prior authorized on a case-by-case basis.

Gary Bego, Health Care Financing budget director, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated additional cost of \$40,430 for fiscal year 1995; \$46,971 for fiscal year 1996; \$53,246 for fiscal year 1997; \$59,768 for fiscal year 1998; and \$67,090 for fiscal year 1999. There will be no fiscal implications for local government.

Mr. Bego also has determined that for each year of the first five years the sections are in

effect the public benefit anticipated as a result of enforcing the sections will be increased access for Medicaid clients to needed outpatient mental health counseling services. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the proposed sections. There will be no impact on local employment.

Comments on the proposal may be submitted to Genie DeKneef, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6509. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed 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).

The specific statute affected is Human Resources Code, §32.021; and Texas Civil Statutes, Article 4413 (502), §16.

§29.3001. *Benefits and Limitations.*

(a) Counseling for emotional disorders or conditions provided by licensed professional counselors (LPCs) and advanced clinical practitioners (ACPs) are covered services.

(b) To be considered payable, the services must be reasonable and medically necessary as determined by the department or its designee.

(c) Covered counseling services shall be reimbursed at 70% of the existing fee for similar services provided by psychiatrists and psychologists.

(d) LPCs or ACPs who are employed by or remunerated by another provider may not bill the Texas Medical Assistance Program directly for counseling services if that billing would result in duplicate payment for the same services.

§29.3002. *Conditions for Participation.*

(a) To participate in the Texas Medical Assistance Program, licensed professional counselors (LPCs) must be licensed by the Texas Board of Examiners of Professional Counselors in accordance with the Texas Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

(b) To participate in the Texas Medical Assistance Program, advanced clinical practitioners (ACPs) must be licensed as a master social worker and be recognized as being qualified for the practice of clinical social work by the Texas State Board of Social Worker Examiners.

(c) These providers must:

(1) meet the appropriate licensing requirements as required in subsections (a) and (b) of this section;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) be enrolled and participating in Medicare (this applies to ACPs only as Medicare does not reimburse for services rendered by LPCs);

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with the department or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by the department or its designee; and

(7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the department or its designee.

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

Issued in Austin, Texas, on August 15, 1994.

TRD-9446634 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption: October 28, 1994

For further information, please call: (512) 338-6509

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter FF. Credit Life and Accident and Health Insurance Responsibilities and Obligations of Insurance Companies and Their Agents and Representatives

• 28 TAC §3.6011

The Commissioner of Insurance of the Texas Department of Insurance proposes an amendment to §3.6011, concerning the re-

sponsibility and obligation of an insurer to provide a copy of a TDI-promulgated form entitled Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance with each new policy and certificate of credit life, credit disability and involuntary unemployment insurance. The proposed amended section requires that all insurers provide the Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance with each policy and certificate of credit life, credit disability and involuntary unemployment insurance in English, and that the Spanish version be provided upon request. This Consumer Bill of Rights must also accompany each renewal notice for credit life, credit disability and involuntary unemployment insurance, unless the current version of this Consumer Bill of Rights has been previously provided to the insured by the insurer. Form CL-CD-IU-CBR (SP) Declaracin de Derechos del Consumidor para Seguros de Credito de Vida, por Incapacidad, y por Desempleo Involuntario, the Spanish version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance, is filed with the Office of the Secretary of State, Texas Register Section, and is incorporated in the section by reference. Both English and Spanish forms can be obtained from the Texas Department of Insurance, Publications Department, Mail Code 108-5A, P O Box 149104, Austin, Texas 78714-9104

Beth Hill, director of the life, annuity, and credit insurance Division, Texas Department of Insurance, has determined that for the first five-year period the proposed amended section will be in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the proposed amended section

Mr. Hill also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing this section is the benefit of increasing the knowledge of consumers so that consumers can make better choices in purchasing credit life, credit disability and involuntary unemployment insurance and can enforce their rights under the policies. The anticipated economic cost to entities who are required to comply with the proposed amendment to this section is \$200 to \$6,000, annually, for the first year of the first five year period the proposed amended section is in effect, depending upon the method of compliance chosen by the entity and the entity's volume of business. The anticipated economic cost to those entities for the second through the fifth year of the first five year period the proposed rule is in effect, depending upon the method of compliance, and the entity's volume of business, is \$200 to \$5,000.

Comments on the proposal, to be considered by the Commissioner of Insurance, must be submitted in writing within 30 days after publication of the proposed amended section in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P O Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Beth Hill, Director of the Life, Annuity, and Credit Insur-

ance Division, Texas Department of Insurance, P O Box 149104, Mail Code 106-1E, Austin, Texas 78714-9104. A request for public hearing on the proposed section should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code, Articles 1.35A §§5(b) (8), 3.53 §12, 21.79E and 1.03A. The Insurance Code, Article 1.35A §5(b)(8) requires the Office of Public Insurance Counsel to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department. Insurance Code, Article 3.53 §12 authorizes the department to issue such rules and regulations as it deems appropriate for the regulation of credit life insurance and credit accident and health insurance. Insurance Code, Article 21.79E authorizes the writing of involuntary unemployment insurance insurance Code, Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute

The following are the statutes affected by this rule: Rule Number Statute Insurance Code, Article 1.10, 1.35, 1.35A, 1.35D, 1.37, 3.44, 3.53, 5.13-2, 5.14, 5.15, 21.16, 21.17, 21.18, 21.21, 21.21-2, 21.55, 21.71, and 21.79E

§16011 Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance to each Insured

(a)-(b) (No change)

(c) The Texas Department of Insurance has promulgated [will promulgate] a Spanish language version of the Consumer Bill of Rights contained in Form CL-CD-IU-CBR which is called Form CL-CD-IU-CBR (SP) and is [will be] filed with the Secretary of State's Office. The [Following promulgation of the Spanish language version, the] Spanish language version of the Consumer Bill of Rights must be provided to any consumer who requests it from the company. The form can be obtained from the Texas Department of Insurance, Publications Department, Mail Code 108-5A, P.O. Box 149104, Austin, Texas 78714-9104.

(d) Insurers may reproduce Form CL-CD-IU-CBR(SP) for the distribution required by subsection (c) of this section. Alternatively, insurers may generate the form on their own equipment. If the form is generated by the insurers, it must appear in no less than 10 point type and be on separate pages with no other text on those pages.

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 August 15, 1994.

TRD-9446642

D. J. Powers
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-6027

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 321. Control of Certain Activities by Rule

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeal of §§321.133-321.138, amendments to §§321.51-321.54, 321.56, 321.57, 321.131-321.132, and new §§321.58, 321.133-321.138, 321.151-321.160, 321.171-321.180, 321.191-321.200, 321.211-321.220, and 321.231-321.240, concerning management of wastewater at meat and seafood processing facilities, discharge to surface waters from treatment of petroleum contaminated wastewaters, discharges to surface waters from ready-mixed concrete plants and/or concrete products plants or associated facilities, discharges to surface waters from sand and gravel mining and processing facilities, the handling of wastes from livestock trailer cleaning facilities, discharges to surface waters from motor vehicles cleaning facilities, discharges to surface waters from petroleum bulk stations and terminals.

The purpose of the proposed amendments to §§321.51-321.54, 321.56, 321.57 and new 321.58, Subchapter C, is to regulate by rule the management of wastewater at meat and seafood processing facilities.

The purpose of the proposed amendments to §321.131 and §321.132 and new §§321.133-321.138 is to regulate by rule the discharge of wastewaters generated from the treatment of water contaminated by petroleum substances.

The purpose of the proposed new §§321.151-321.160, Subchapter J, is to regulate by rule certain discharges to surface waters from ready-mixed concrete plants and concrete products plants and their associated facilities.

The purpose of the proposed new §§321.171-321.180, Subchapter K, is to regulate by rule, rather than by permit, the surface discharge of storm water, process generated wastewater and mine dewatering wastewaters from sand and gravel mining and processing facilities.

The purpose of the proposed new §§321 191-321.200, Subchapter L, is to regulate by rule the removal, containment, treatment and disposal of wastes from livestock trailer cleaning facilities. This subchapter only regulates waste generated from cleaning facilities of a commercial nature.

The purpose of the proposed new §§321 211-321 220, Subchapter M, is to regulate by rule, rather than by permit, the surface discharge to waters in the state of treated wastewaters and point source storm waters from motor vehicle cleaning facilities in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in this subchapter. This subchapter does not regulate car wash facilities which primarily clean commercial or industrial vehicles

The purpose of the proposed new §§321 231-321 240, Subchapter N, is to regulate by rule the surface discharge of storm water and treated facility wastewaters from petroleum bulk stations and terminals Subchapter N does not regulate facilities which are part of a petroleum refinery or facilities which store or transfer non-petroleum products such as organic, inorganic, or toxic chemicals

Section 321 51 (relating to Definitions) defines terms that are used throughout Subchapter C Section 321 52 (relating to Application of Subchapter) delineates which facilities will be regulated under this subchapter Section 321 53 (relating to Permit Alternative) dictates that an operation subject to this subchapter may but is not required to submit an application to the executive director for a permit. Section 321 54 (relating to Protection of Surface Water) delineates how specific waste control facilities are to be designed in order to protect the surface water Section 321 56 (relating to Disposal of Solid Wastes) dictates that disposal of solid waste shall comply with applicable portions of the Texas Natural Resource Conservation Commission regulations Section 321.57 (relating to Prohibition of Unauthorized Discharge) dictates that no discharge is to be made without commission authorization Section 321 58 (relating to Enforcement) provides that the executive director may take enforcement action under the Texas Water Code against any facility regulated under subchapter C that fails to comply with the terms of the subchapter

Section 321 131 (relating to Definitions) defines terms that are used throughout Subchapter H Section 321 132 (relating to Applicability) defines what types of wastewaters may be discharged under the provisions of the rule Section 321.133 (relating to Discharge of waters which were or may have been contaminated by gasoline, jet fuel, or kerosene) outlines general and specific requirements for discharge, sets forth numerical criteria, and establishes monitoring and reporting requirements. Amendments to this section consist of changes to the monitoring and reporting requirements Section 321 134 (relating to Discharge of waters which were or may have been contaminated by petroleum substances other than gasoline, jet fuel, or kerosene) expands the scope of the rule to include wastewaters that may have been contaminated by heavier petroleum products

such as crude and refined oils, solvents, and certain building materials Monitoring and reporting requirements are established, including criteria for Polynuclear Aromatic Hydrocarbons, a common component of the petroleum substances proposed to be regulated by this section Section 321.135 (relating to Telephone Utilities) establishes discharge requirements for wastewaters generated from telephone utility vaults. Section 321 136 (relating to Restrictions) sets forth restrictions on authority conveyed by the rule, and recognizes the right of other agencies or jurisdictions to regulate the discharge in addition to the requirements of the proposed rule Section 321 137 (relating to Enforcement) establishes remedies available to the Executive Director to maintain compliance with the requirements of the proposed rule, and provides that any penalties imposed may not be reimbursed from agency funds. Section 321 138 (relating to Reservation) allows the Executive Director to require individual permits where the requirements of the rule are insufficient to protect the quality of water in the state

Section 321 151 (relating to Definitions) defines terms that are used throughout Subchapter J Section 321 152 (relating to Applicability) delineates which facilities will be regulated under this subchapter Section 321 153 (relating to Certificate of Registration and Public Notice) delineates the application and review process for a certificate of registration Section 321 154 (relating to Active TNRCC Permits) concerns facilities that currently hold TNRCC permits and the effects this subchapter will have on those facilities Section 321 155 (relating to General Requirements for Discharge) sets forth general requirements that facilities must meet to apply for registration under this subchapter Section 321 156 (relating to Specific Requirements for Discharge) sets forth specific requirements that facilities must meet to apply for registration under this subchapter Section 321 157 (relating to Sampling, Reporting, and Recordkeeping) delineates the sampling and reporting requirements for facilities regulated under this subchapter Section 321 158 (relating to Restrictions) excludes the conveyance of property rights or exclusive privileges and states that other entities may require separate authorizations for facility operations Section 321 159 (relating to Enforcement and Revocation) provides for enforcement actions and revocation actions by the Texas Natural Resource Conservation Commission under this subchapter Section 321 160 (relating to Annual Waste Treatment Fee) provides for the assessment of a minimum fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code, §26 0291 and the existing fee schedule found in §§305 501-305 507 of this title (relating to Waste Treatment Fee Program) The TNRCC intends to automatically raise the minimum fee assessments specified in §321 160 if and when the fee schedule in §§305 501-305 507 is raised through future rule making

Section 321 171 (relating to Definitions) defines terms that are used throughout Subchapter K Section 321 172 (relating to Applicability) delineates which facilities will be regulated under this subchapter Section

321 173 (relating to Active TNRCC Permits) concerns facilities that currently hold TNRCC permits and the effects this subchapter will have on those facilities. Section 321.174 (relating to Certificate of Registration and Public Notice) delineates the application and review process for a certificate of registration. Section 321 175 (relating to General Requirements for Discharge) sets forth general requirements that facilities must meet to apply for registration under this subchapter. Section 321.176 (relating to Specific Requirements for Discharge) sets forth specific requirements that facilities must meet to apply for registration under this subchapter. Section 321 177 (relating to Sampling, Reporting, and Recordkeeping) delineates the sampling and reporting requirements for facilities regulated under this subchapter. Section 321.178 (relating to Restrictions) excludes the conveyance of property rights or exclusive privileges and states that other entities may require separate authorizations for facility operations Section 321 179 (relating to Enforcement and Revocation) provides for enforcement actions and revocation actions by the Texas Natural Resource Conservation Commission under this subchapter Section 321.180 (relating to Annual Waste Treatment Fee) provides for the assessment of a minimum fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code, §26 0291 and the existing fee schedule found in §§305 501-305 507 of this title (relating to Waste Treatment Fee Program) The TNRCC intends to automatically raise the minimum fee assessments specified in §321.180 if and when the fee schedule in §§305 501-305 507 is raised through future rule making.

Section 321 191 (relating to Statement of Discharge Policy) delineates the policy of the Commission as to discharges from livestock trailer cleaning facilities Section 321.192 (relating to Definitions) defines terms that are used throughout Subchapter L. Section 321 193 (relating to Applicability) delineates which facilities will be regulated under this subchapter Section 321.194 (relating to Active TNRCC Land Disposal Permits) concerns facilities that currently hold TNRCC permits and the effects this subchapter will have on those facilities Section 321.195 (relating to Certificate of Registration and Public Notice) delineates the application and review process for a certificate of registration. Section 321 196 (relating to General Requirements for Containment of Wastes and Pond(s)) sets forth general requirements that facilities must meet to contain waste in ponds Section 321.197 (relating to General Requirements for Land Application) sets forth general requirements that facilities must meet to dispose of waste on land. Section 321.198 (relating to Restrictions) excludes the conveyance of property rights or exclusive privileges and states that other entities may require separate authorizations for facility operations. Section 321 199 (relating to Enforcement and Revocation) provides for enforcement actions and revocation actions by the Texas Natural Resource Conservation Commission under this subchapter Section 321 200 (relating to Annual Waste Treatment Fee) provides for the assessment of a minimum fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code,

§26.0291 and the existing fee schedule found in §§305.501-305.507 of this title (relating to Waste Treatment Fee Program) The TNRCC intends to automatically raise the minimum assessments specified in §321.200 if and when the fee schedule in §§305.501-305.507 is raised through future rule making.

Section 321.211 (relating to Purpose and Applicability) delineates which facilities will be regulated under this subchapter. Section 321.212 (relating to Definitions) defines terms that are used throughout Subchapter M. Section 321.213 (relating to Certificate of Registration and Public Notice) delineates the application and review process for a certificate of registration. Section 321.214 (relating to Active TNRCC Permits) concerns facilities that currently hold TNRCC permits and the effects this subchapter will have on those facilities. Section 321.215 (relating to General Requirements for Discharge) sets forth general requirements that facilities must meet to apply for registration under this subchapter. Section 321.216 (relating to Specific Requirements for Discharge) sets forth specific requirements that facilities must meet to apply for registration under this subchapter. Section 321.217 (relating to Sampling, Reporting and Recordkeeping) delineates the sampling and reporting requirements for facilities regulated under this subchapter. Section 321.218 (relating to Restrictions) excludes the conveyance of property rights or exclusive privileges and states that other entities may require separate authorizations for facility operations. Section 321.219 (relating to Enforcement and Revocation) provides for enforcement and revocation actions by the Texas Natural Resource Conservation Commission under this subchapter. Section 321.220 (relating to Annual Waste Treatment Fee) provides for the assessment of a minimum fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code, §26.0291 and the existing fee schedule found in §§305.501-305.507 of this title (relating to Waste Treatment Fee Program). The TNRCC intends to automatically raise the minimum fee assessments specified in §321.220 if and when the fee schedule in §§305.501-305.507 is raised through future rule making.

Section 321.231 (relating to Definitions) defines terms that are used throughout Subchapter N. Section 321.232 (relating to Applicability) delineates which facilities will be regulated under this subchapter. Section 321.233 (relating to Active TNRCC Permits) concerns facilities that currently hold TNRCC permits and the effects this subchapter will have on those facilities. Section 321.234 (relating to Certificate of Registration and Public Notice) delineates the application and review process for a certificate of registration. Section 321.235 (relating to General Requirements for Discharge) sets forth general requirements that facilities must meet to apply for registration under this subchapter. Section 321.236 (relating to Specific Requirements for Discharge) sets forth specific requirements that facilities must meet to apply for registration under this subchapter. Section 321.237 (relating to Sampling, Reporting, and Recordkeeping) delineates the sampling and reporting requirements for facilities regulated under this subchapter. Section 321.238 (relat-

ing to Restrictions) excludes the conveyance of property rights or exclusive privileges and states that other entities may require separate authorizations for facility operations. Section 321.239 (relating to Enforcement and Revocation) provides for enforcement and revocation actions by the Texas Natural Resource Conservation Commission under this subchapter. Section 321.240 (relating to Annual Waste Treatment Fee) provides for the assessment of a minimum fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code, §26.0291 and the existing fee schedule found in §§305.501-305.507 of this title (relating to Waste Treatment Fee Program) The TNRCC intends to automatically raise the minimum fee assessments specified in §321.240 if and when the fee schedule in §§305.501-305.507 is raised through future rule making.

Stephen Minick, Division of Budget and Planning, has determined that for the first five-year period these sections as proposed are in effect there will be fiscal implications anticipated as a result of enforcement and administration of the sections. Adoption of these sections will result in a general cost savings to state government, local government and small businesses. The effect of the proposed sections will be to regulate certain wastewater treatment facilities or discharges to surface waters by rule rather than permit. The cost savings to state government are those related to the review and processing and approval of permit applications. Owners or operators of facilities qualifying for regulation by rule will realize potential savings related to the costs of preparation of permit applications, participation in the approval process and the time savings from accelerated approval of operations. These savings cannot be estimated at this time but will vary on a case-by-case basis depending on the particular facility, its size and complexity, and the extent to which it qualifies under the proposed rule. The savings to businesses will apply equally to small businesses as well as larger concerns based on these factors. There are no costs anticipated for state government, local government or small businesses.

Mr Minick also has determined that for the first five-year period these sections are in effect the public benefit anticipated as a result of enforcement of or compliance with the sections is improvements in the processes and procedures related to authorization of wastewater discharges, more efficient use of the public resources available for regulation of wastewater facilities and improved protection of the quality of the surface water resources of the state. There are no known costs to persons required to comply with these sections as proposed.

Comments on these proposals may be submitted to Kathy Keils, Staff Attorney, Legal Services Division, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087, (512) 239-0600. Comments will be accepted until 5:00 p.m. 30 days after the date of this publication. For further information, please call (512) 239-0600.

Subchapter C. Meat and Seafood Processing

• 30 TAC §§321.51-321.54, 321.56-321.58

The amendments and new section are proposed under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC.

There are no other statutes, codes, and/or regulations which are affected by the amended and new sections.

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

Seafood-Raw material from fresh water, brackish or marine water species (including shrimp, other crustaceans, fin fish, mollusks, reptiles and similar creatures) to be processed, in the form in which it is received at the processing plant.

Seafood Processing Operation-A plant, facility, establishment or enterprise in the business of processing seafood by packing as fresh or frozen product, canning, smoking, salting, drying or otherwise curing, or rendering for use as human or animal food.

Wastewater-Water that is routed to drains or sewers associated with a meat or seafood processing operation, including but not limited to process water, wash water, holding tanks, and drainage from [livestock] unloading areas and holding pens and/or [poultry] unloading areas; provided, however, that nothing in the definition shall be interpreted as requiring the construction of drainage systems for essentially uncontaminated areas, such as areas used solely as parking lot areas where trucks transporting such livestock and/or poultry may be parked prior to entering unloading areas.

§321.52 Application of Subchapter. This subchapter applies to the disposal of wastes from meat or seafood processing operations.

§321.53. Permit Alternative. A person whose meat or seafood processing operation is subject to this subchapter may submit an application to the executive director for a permit. This subchapter shall continue to apply to any permitted meat or seafood processing operation [permittee] except where the provisions of a permit supersede provisions of this subchapter.

§321.54. *Protection of Surface Water.* The degree of protection of surface waters is sufficient if waste control facilities are designed and operated in accordance with the following paragraphs.

(1) **Wastewater Holding Facilities.** If a meat or seafood processing operation utilizes holding facilities, any holding facility shall be designed and operated to retain all wastewater produced by the meat or seafood processing operation for a 30-day period plus all rainwater which would enter the holding facilities as a result of a 25-year, 24-hour rainfall as defined by Hershfield, "Rainfall Frequency Atlas of the United States", U.S. Weather Bureau, Technical Paper Number 40, 1961, or the latest revision thereof. Wastewater holding facilities shall be dewatered within 14 days after any one of the following events occur:

(A) (No change.)

(B) Collection of more than 50% of the volume of wastewater which the pond was designed to retain such that sufficient capacity is no longer available to retain an addition of all rainwater that would enter the holding facilities as a result of a 25-year, 24-hour rainfall plus all wastewater produced by the meat or seafood processing operation for a 15-day period.

(2) **Evaporation Facility.** If a meat or seafood processing operation utilizes an evaporation facility, it shall be designed to retain wastewater with no overflow during a 10-year period of above-normal rainfall. Local weather bureau rainfall data or other data approved by the executive director may be used in designing these facilities.

(3) **Irrigation Facility.** If a meat or seafood processing operation utilizes an irrigation facility, it shall be of adequate capacity to dewater all wastewater holding facilities within a 14-day period. If farmland or pastureland is irrigated with wastewater from the meat or seafood processing operation or its waste control facilities, the annual application rate (including rainfall) shall not exceed 200% of the expected consumptive use for the particular crop as defined by McDaniels, *Consumptive Use of Water by Major Crops in Texas*, Texas Board of Water Engineers, Bulletin Number 6010, 1960.

(4) (No change.)

§321.56. *Disposal of Solid Wastes.* Disposal of solid wastes (hoof, hair, hide, bone, paunch manure, sludge, salt, shells, scales, skins, guts, heads, etc.) shall comply with the applicable portions of the Texas Natural Resource Conservation Commission [Texas Department of Health] regulations.

The executive director may request evidence of an acceptable method of disposal of all solid process waste not covered specifically by Texas Natural Resource Conservation Commission [Texas Department of Health] regulations.

§321.57. *Prohibition of Unauthorized Discharge.* Any person owning or operating a meat or seafood processing operation who makes, or proposes to make, any discharge into any water in the state shall submit to the executive director an application for a discharge permit. No person shall make such discharge without authorization from the commission.

§321.58. *Enforcement.* If any person regulated by this subchapter fails to comply with the terms of this subchapter, or any other rules of the commission, the executive director may take enforcement action as provided by the Texas Water Code.

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

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Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption September 19, 1994

For further information, please call (512) 463-8069

◆ ◆ ◆
Subchapter H. Discharge to
Surface Waters from Treat-
ment of Petroleum **Sub-
stance** Contaminated Wa-
ters

• 30 TAC §§321.131-321.138

The amendments and new sections are proposed under the authority of the Texas Water Code, §§5 103, 5.105 and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC

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

Aboveground storage tank (or **AST**)—A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or

above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of petroleum substances.

Free product—Floating gasoline, diesel fuel, fuel oil, kerosene, jet fuel or other petroleum substance.

[Free product—Gasoline, diesel fuel, fuel oil, kerosene, and jet fuel which is floating on top of groundwater.]

Gasoline—leaded or unleaded gasoline, all grades of aviation gasoline and all grades of gasohol.

Motor fuel—A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in transportation vehicles and marine vessels), and which is one of the following types of fuels: leaded or unleaded gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, and any grades of gasohol.

Operator—Any person in control of or having responsibility for, the daily operation of an aboveground or underground storage tank system.

Owner—Any person who currently holds legal possession or ownership of a total or partial interest in an aboveground storage tank (AST) or underground storage tank system (UST). For the purpose of the subchapter, where the actual ownership of an AST or UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the AST or UST is located shall be considered the AST or the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the AST or the UST system is owned by others. "Other" does not include a person who holds an interest in an AST or UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the AST or UST system.

Petroleum Fuel Contaminated Waters Report—A form provided by the responsible party or delegated agent by the executive director in response to the filing of a registration form to enable compliance with the reporting requirements at §321.133(c)(3) and §321.134(c)(3) of this title (relating to the discharge of waters which were or may have been contaminated by gasoline, jet fuel or kerosene and relating to the discharge of waters which were or may have been contaminated by petroleum substances other than gasoline, jet fuel or kerosene)

Petroleum substance—A crude oil or any refined or unrefined fraction or

derivative of crude oil which is liquid at standard conditions of temperature and pressure. For the purposes of this chapter, a "petroleum substance" shall be limited to one or a combination of the substances or mixtures in the following list (except for any substance regulated as a hazardous waste under §335.1 of this title (relating to Definitions)).

(A) Basic petroleum substances—Crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions.

(B) Motor fuels—(see definition for "motor fuel" in this section.)

(C) Aviation gasolines—Grade 80, Grade 100, and Grade 100-LL.

(D) Aviation jet fuels—Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8.

(E) Distillate fuel oils—Number 1-D, Number 1, Number 2-D, and Number 2.

(F) Residual fuel oils—Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6.

(G) Gas-turbine fuel oils—Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT.

(H) Illuminating oils—Kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil.

(I) Solvents—Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(J) Lubricants—Automotive and industrial lubricants.

(K) Building materials—Liquid asphalt and dust-laying oils.

(L) Insulating and waterproofing materials—Transformer oils and cable.

(M) Used oils—(See definition for "used oil" in this section.)

(N) Any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.

(O) Examples of materials which are not petroleum substances include: aldehydes and ketones (e.g. acetone, methyl ethyl ketone); halogenated solvents (e.g. carbon tetrachloride, trichloroethylene), alcohols (e.g. methanol), phenols, nitrogen-containing compounds and transformer oils containing polychlorinated biphenyl compounds.

Responsible Party—For the purpose of this subchapter, the responsible party is the operator or the owner as defined above or any person having responsibility for or exercising control over activities covered by this subchapter.

Registration Form—An application form as provided by the executive director which is completed by the responsible party or a delegated agent for the purpose of discharging petroleum substance contaminated waters pursuant to the authorization provided by this subchapter. Any person signing as a delegated agent must have the express authority of the responsible party to sign the registration form and/or petroleum fuel contaminated waters report form. The registration must be an original document with the signature of the responsible party or delegated agent being signed preferably in blue ink.

TNRCC—Texas Natural Resource Conservation Commission.

[TWC—Texas Water Commission]

Underground storage tank—Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is ten percent or more beneath the surface of the ground.

Underground storage tank system—An underground storage tank, all associated piping and ancillary equipment, spill and overfill prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.

Used oil—Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g. car and truck engine oil, transmission fluid, and brake fluid), spent industrial

oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.

Water in the state—Groundwater, percolating or otherwise, lakes, bays, ponds, [impounding reservoirs] impounded waters, springs, rivers, streams, creeks, wetlands, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

§321.132. Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge of water, not otherwise prohibited elsewhere in the rules of the TNRCC which was or may have been contaminated as a result of: [which is contaminated as a result of a release associated with above ground and/or underground petroleum fuel tank systems or pipeline]

(1) a release of a petroleum substance from an aboveground storage tank and/or underground storage tank, their tank system or pipelines;

(2) any water in an in-place and inactive/abandoned tank which had previously contained a petroleum substance;

(3) waters produced during the on-site remediation of petroleum substance contaminated soils; or

(4) waters adversely affected as the result of a release of one or more petroleum substances occurring during transport. Additional limitations may be established on a case-by-case basis to ensure that water quality standards are met. Surface discharge may [can] occur during groundwater pump tests, groundwater remediation, tank tests, on-site soil remediation activities, cleanup activities following the release of one or more petroleum substances occurring during transport, removal of water from a tank previously containing a petroleum substance and/or other activities including the removal of petroleum substance contaminated water from groundwater wells, excavations and utility vaults

(b) Subject to the conditions in subsection (a) of this section and §321.133 of this title (relating to Discharge to Surface Waters from Treatment of Petroleum Substance Contaminated Waters) regulates the discharge of water which was or may have

been contaminated by gasoline, jet fuel or kerosene. This subchapter is applicable only to discharges into or adjacent to water in the state which was contaminated as a result of releases from above ground and/or underground gasoline, diesel fuel, fuel oil, kerosene, and jet fuel tanks, tank accessories and/or pipelines.

(c) Subject to the conditions in subsection (a) of this section and §321.134 of this title (relating to Discharge of waters which were or may have been contaminated by petroleum substances other than gasoline, jet fuel or kerosene) regulates the discharge of water which was or may have been contaminated by petroleum substances other than gasoline, jet fuel or kerosene.

(d) This subchapter is applicable only to the discharge of water into or adjacent to water in the state.

(e)[(c)] An application for an emergency order, temporary order, or permit as provided by Chapter 305 of this title (relating to Consolidated Permits) must be submitted and approved before [the discharge of] any [which was] water contaminated by releases from above ground and/or underground tanks systems [which contain materials other than gasoline, diesel fuel, fuel oil, kerosene, or jet fuel], not otherwise specifically authorized by this subchapter or water which cannot be discharged in accordance with §321.133(c) or §321.134(c) [§321.135] of this title (related to Discharge of Waters Which Were or May Have Been Contaminated by Gasoline, Jet Fuel or Kerosene and Discharge of Waters Which Were or May Have Been Contaminated by Petroleum Substances other than Gasoline, Jet Fuel or Kerosene may be discharged) [Specific Requirements].

(f)[(d)] TNRCC [TWC] registration in accordance with §321.133 or §321.134 of this title is not required if free product is removed and the remaining contaminated water is routed to an existing TNRCC [TWC] permitted wastewater treatment system capable of treating the wastes. [Additional authorization may be required as noted in §321.137 of this title (relating to Restrictions).

(g)[(e)] TNRCC [TWC] registration in accordance with §321.133(a) or §321.134(a) of this title is not required for discharges of uncontaminated water associated with tank tests of aboveground and/or underground storage tanks which have not previously contained wastes, wastewater, or products provided these discharges are in compliance with the criteria as found in Chapter 321, Subchapter G of this title (Hydrostatic Test Discharges).

(h)[(f)] For discharges located in or within ten stream miles upstream of the

Edwards Aquifer recharge zone as defined in Chapter 313 of this title (relating to Edwards Aquifer), the executive director may require a responsible party to obtain a permit or other authorization from the TNRCC for such a discharge, in accordance with §321.138 of this title (relating to Reservation) [separate authorization may be required].

[(g)] The executive director may, if conditions warrant, require a person to obtain a permit from the TWC for such a discharge.]

§321.133. Discharge of Waters Which Were or May Have Been Contaminated by Gasoline, Jet Fuel or Kerosene.

(a) Registration. Except as provided in §321.132(f) of this title (relating to Applicability) and §321.135 of this title (relating to Telephone Utilities), a registration form, as provided by the executive director, must be submitted to the Watershed Management Division, TNRCC Austin office prior to discharge. Submittal of the registration form is acknowledgment that the responsible party and his or her agent has determined that the requirements of this subchapter are applicable to the proposed discharge, and that all criteria for discharge can be satisfied. Submittal of a registration form, bearing an original signature, is sufficient notice to initiate discharge in accordance with this subchapter to include compliance with subsections (b) and (c) of this section.

(b) General Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following general requirements apply.

(1) The responsible party shall notify the appropriate TNRCC regional office at least 24 hours prior to initiating the discharge.

(2) There shall be no discharge of free product at any time.

(3) Disposal of solid wastes shall be in accordance with the Texas Health and Safety Code, Chapter 361.

(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.

(5) The responsible party shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment,

and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional offices within five working days of the discovery of a problem. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems during further discharge events.

(6) Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(c) Specific Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following specific requirements apply.

(1) Point of discharge.

(A) All discharges shall be to a splash pad to aerate the treated water.

(B) The rate of discharge shall be controlled to prevent flooding and erosion.

(2) Effluent limitations and monitoring requirements.

(A) The following maximum effluent limitations and minimum monitoring requirements apply to the discharge of wastewater:

Figure 1: 30 TAC §321.133(c)(2)(A)

(B) If the responsible party determines through sample collection and analysis that the wastewater is not contaminated with lead or lead compounds then such information shall be noted on the registration and analysis for lead or lead compounds is not required.

(C) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be measured once per week by grab sample. The petroleum fuel contaminated waters report form does not require the reporting of pH, however, records must be maintained to demonstrate that monitoring was accomplished per this requirement.

(D) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.

(E) All samples shall be collected after any final treatment unit that may be used. All sample collection shall be conducted in accordance with the requirements of §319.11 of this title (relating to Sampling and Laboratory Test Methods).

(F) Sample containers, holding times, preservation methods and the physical, chemical and microbiological analyses of effluent shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136 pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of "Standard Methods for the Examination of Water and Wastewater"

(3) Reporting Requirements. All analytical results shall be reported to the Watershed Management Division, TNRCC Austin office on the "Petroleum Substance Contaminated Waters Report" form provided by the executive director. Results of sampling activities shall be submitted to the TNRCC no later than the 20th day of the month following the discharge unless the discharge occurs one day per quarter based on the frequency of discharge noted on the registration form and reports for these discharges are due no later than the 20th day in the months of April, July, October, and January. Any report form reflecting that a discharge limit was exceeded must be accompanied by a report prepared in accordance with subsection (b)(5) of this section.

§321.134. Discharge of Waters Which Were or May Have Been Contaminated by Petroleum Substances Other Than Gasoline, Jet Fuel or Kerosene.

(a) Registration. Except as provided in §321.132(f) of this title (relating to Applicability) and §321.135 of this title (relating to Telephone Utilities), a registration form, as provided by the executive director, must be submitted to the Watershed Management Division, TNRCC Austin office. Submittal of the registration form does not constitute an authorization to discharge. The TNRCC will review requests for registration on a case-by-case basis and the agency may request additional information, including additional sampling and analytical data. Submittal of a registration form is acknowledgement that the responsible party and his or her agent has determined that the requirements of this subchapter are applicable to the proposed discharge, and that all criteria for the discharge can be satisfied. If the registration is approved, the executive director

shall notify the responsible party in writing and this notification shall constitute an authorization to discharge wastewater. Requirements in addition to those listed in §321.134(c)(2)(A) may be specified on a case-by-case basis. The registration form, bearing an original signature, shall be submitted a minimum of 60 days prior to the expected date of discharge and shall include:

(1) analytical test results for the parameters listed in subsection (c)(2)(A) and (C) of this section;

(2) an original USGS Topographic map; and

(3) a written description of the discharge route.

(b) General Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following general requirements apply.

(1) The responsible party shall notify the appropriate TNRCC regional office at least 24 hours prior to initiating the discharge.

(2) There shall be no discharge of free product at any time

(3) Disposal of solid wastes shall be in accordance with the Texas Health and Safety Code, Chapter 361.

(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.

(5) The responsible party shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional office within five working days of the discovery of a problem. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems during further groundwater remediation or tank testing.

(6) Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(c) Specific Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following specific requirements apply.

(1) Point of discharge.

(A) All discharges shall be to a splash pad to aerate the treated water.

(B) The rate of discharge shall be controlled to prevent flooding and erosion

(2) Effluent limitations and monitoring requirements.

(A) The following maximum effluent limitations and minimum monitoring requirements apply to the discharge of water:

Figure 2. 30 TAC §321.134(c)(2)(A)

(B) If the responsible party determines through sample collection and analysis that the wastewater is not contaminated with lead or lead compounds then such information shall be noted on the registration and analysis for lead or lead compounds is not required.

(C) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be measured once per week by grab sample. The petroleum fuel contaminated waters report form does not require the reporting of pH, however, records must be maintained to demonstrate that monitoring was accomplished per this requirement.

(D) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.

(E) Discharge of wastewater shall cease within 24 hours of the time that the responsible party learns that any one of the polynuclear aromatic hydrocarbons has been detected at a concentration of 0.01 mg/l or greater. A written report shall be provided to the TNRCC Austin and regional offices within five working days. Discharge may not be resumed under the provisions of this subchapter without written authorization from the executive director. The executive director may require the responsible

party to obtain a permit from the TNRCC for such a discharge.

(F) All samples shall be collected after any final treatment unit that may be used. All sample collection shall be conducted in accordance with the requirements of §319.11 of this title (pertaining to Sampling and Laboratory Test Methods)

(G) Sample containers, holding times, preservation methods and the physical, chemical and microbiological analyses of effluent shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136 pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of "Standard Methods for the Examination of Water and Wastewater"

(3) Reporting Requirements All analytical results shall be reported to the Watershed Management Division, TNRCC Austin office on the "Petroleum Substance Contaminated Waters Report" form provided by the executive director. Results of sampling activities shall be submitted to the TNRCC no later than the 20th day of the month following the discharge unless the discharge occurs one day per quarter based on the frequency of discharge noted on the registration form and reports for these discharge are due no later than the 20th day in the months of April, July, October, and January. Any report form reflecting that a discharge limit was exceeded must be accompanied by a report prepared in accordance with subsection (b)(5) of this section

§321.135. Telephone Utilities.

(a) Authorization to discharge where registration is not required. Telephone utilities are exempt from registration pursuant to §§321.133-321.134 of this title (related to Discharge of Waters Which Were or May Have Been Contaminated by Gasoline, Jet Fuel or Kerosene and Discharge of Waters Which were or May have been Contaminated by Petroleum Substance Other Than Gasoline, Jet Fuel or Kerosene). The following general requirements apply to discharges from utility vaults.

(1) There shall be no discharge of free product at any time. Free product shall be collected, reused, or disposed of in accordance with state law.

(2) If the responsible party detects the presence of any hydrocarbon vapors as indicated by standard explosimeter test, the responsible party shall air purge the vault before discharging its contents. Following this initial air purging, the responsible party shall again perform a standard explosimeter test. If this second test reveals

the presence of hydrocarbon vapors, the responsible party shall take a water sample and have a laboratory analysis made to determine whether the Benzene concentration is equal to or greater than 0.05 mg/l or the Total BTEX concentration is equal to or greater than 0.50 mg/l. If the analysis confirms exceedance of the Benzene or BTEX concentration in the water the entire contents of the utility vault may not be discharged under this subsection but must be disposed of in some other legal manner

(3) Disposal of solid wastes shall be in accordance with the Texas Health and Safety Code, Chapter 361

(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.

(5) The responsible party shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional offices within five working days of the discovery of a problem. The report shall contain a description of the location, the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment, the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems during further discharge events.

(6) Concentration of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(b) Authorization to discharge where registration is required. If concentrations of Benzene is 0.05 mg/l or greater and/or Total BTEX is equal to or greater than 0.50 mg/l, the telephone utility may elect to treat the water to discharge levels and submit a registration in accordance with either §321.133 or §321.134 of this title (relating to The Discharge of Waters Which Were or May Have Been Contaminated by Gasoline, Jet Fuel or Kerosene and The

Discharge of Waters Which Were or May Have Been Contaminated by Petroleum Substances Other Than Gasoline, Jet Fuel or Kerosene).

§321.136. Restrictions.

(a) This subchapter does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Separate authorizations may be required by other municipalities or agencies for discharges to domestic sewage plants and/or separate storm sewer systems. Air emissions for any activity regulated by this subchapter must be in accordance with TNRCC air regulations.

§321.137. Enforcement. If a responsible party or his or her agent fails to comply with the terms of this subchapter the executive director may take enforcement action as provided by the Texas Water Code, and the rules of the TNRCC. Any penalty imposed or technical measures required by an order of the TNRCC for violation of this subchapter is not eligible for reimbursement from any fund administered by the TNRCC.

§321.138. Reservation. The executive director may on a case-by-case basis, where conditions warrant, prohibit the discharge of petroleum substance contaminated water under this subchapter and require the owner:

(1) obtain an individual permit or seek other authorization to discharge from the TNRCC; or

(2) dispose of the water in some other legal manner. Additionally, the executive director may cancel, revoke or suspend authorization to discharge under this subchapter where the owner has discharged water in significant noncompliance of discharge limits or has had a history of non-compliance with discharge limits.

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 August 10, 1994.

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Mary Ruth Holder
Director, Legal Division
Texas Natural Resources
Conservation
Commission

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8069

◆ ◆ ◆
• 30 TAC §§321.133-321.138

(Editor's note The text of the following sections proposed for repeal will not be published The

sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC

§321.133. Registration.

§321.134. General Requirements for Discharge.

§321.135. Specific Requirements.

§321.136. Telephone Utilities.

§321.137. Restrictions

§321.138. Enforcement.

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) 463-8069

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Subchapter J. Discharges to
Surface Waters From Ready-
Mixed Concrete Plants
and/or Concrete Products
Plants or Associated Facili-
ties

• 30 TAC §§321.151-321.160

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC

§321.151. Definitions. The following words and terms, when used in this subchapter, shall have the following mean-

ings, unless the context clearly indicates otherwise.

Associated facilities—Facilities associated with ready-mixed concrete plants and/or concrete products plants including the ready mix concrete delivery site(s), construction site(s) and establishments where ready-mix vehicle maintenance and washing of ready-mix vehicles (both interior and exterior) or equipment occurs.

Domestic Sewage—Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Executive Director—The executive director of the Texas Natural Resource Conservation Commission, or his/her designated representative.

Facility Wastewaters—Any wastewaters which are generated at associated facilities authorized by this rule, but not including domestic sewage.

Grab Sample—An individual sample collected in less than 15 minutes

Outfall—A point source discharge

Point Source Discharge—A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"—A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and the discharges from such a treatment works.

Registrant—An individual or entity authorized by the executive director to discharge wastewater from facilities associated with ready-mixed concrete plants and/or concrete products plants under the terms and requirements of this subchapter

Ready-Mixed Concrete Plants and/or Concrete Products Plants—Facilities primarily engaged in mixing and delivering ready-mixed concrete as classified per Standard Industrial Classification Code (SIC) 3273, and facilities primarily engaged in manufacturing concrete products, (SIC) 3272, and facilities primarily engaged in manufacturing concrete building blocks and bricks from a combination of cement and aggregate, (SIC) 3271.

Runoff—Rainwater, leachate or other liquid that drains overland on any part of the land surface and runs off of the land surface

Storm Water—Runoff, snow melt runoff and surface runoff, and drainage.

TNRCC—Texas Natural Resource Conservation Commission and its predecessor agencies responsible for regulating wastewater discharges.

§321.152. Applicability.

(a) The purpose of this subchapter is to regulate by rule certain discharges to surface waters from ready-mixed concrete and/or concrete products plants and their associated facilities.

(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate of registration issued by the Executive Director under §321.153 of this title (relating to Certificate of Registration), and §321.155 of this title (relating to General Requirements for Discharge) and §321.156 of this title (relating to Specific Requirements for Discharge) For new facilities, a certificate of registration issued by the Executive Director under §321.153 of this title (relating to Certificate of Registration), and §321.155 of this title (relating to General Requirements for Discharge) and §321.156 of this title (relating to Specific Requirements for Discharge) shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.155 and §321.156, of this title (relating to General Requirements for Discharge and Specific Requirements for Discharge) and do not discharge or transport facility wastewaters to a Publicly Owned Treatment Works (POTW) which has a wastewater discharge permit issued by the TNRCC must apply for an Emergency Order, Temporary Order, or permit as provided by Chapter 305, Subchapter B of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state

§321.153. Certificate of Registration and Public Notice

(a) An applicant must apply for registration on a form approved by the TNRCC. A completed application shall be submitted to the TNRCC's Permitting Section of the Watershed Management Division. An existing facility that does not hold a valid TNRCC wastewater discharge permit must submit an application for registration or an application for a permit within 90 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.155 of this title (relating to General Requirements for Discharge) and §321.156 of this title (relating to Specific Requirements for Discharge)

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) at least 30 days prior to approving of an application and issuing the certificate of registration, notice of the application has been given by the commission by publication in the *Texas Register*; and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or a potentially affected party.

(c) A notice of application as described in subsection (b) of this section shall fairly set forth the substance of the application and proposed action, including but not limited to the location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting a response of protest to the application and request for a hearing.

(d) A request for a public hearing must be made in accordance to the requirements specified in §305.105 of this title (relating to Request for Public Hearing).

(e) If, before the close of the 30-day period following publication of the notice of application, a request for a public hearing has been received, the commission may conduct a public hearing on the application, before any action is taken on the application, if the commission determines that the request complies with commission rules or it is in the public interest. Notice of the hearing shall be provided in accordance to §305.101 of this title (relating to Notice of Hearing).

(f) The public notice and opportunity for public hearing provisions of this section do not apply to a facility which is operating under an active TNRCC wastewater discharge permit and is seeking to register the facility in accordance with this subchapter.

§321.154. Active TNRCC Permits. Ready-mixed concrete plants and/or concrete products plants that are currently operating under a valid TNRCC wastewater discharge permit shall be required to apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final TNRCC registration, the TNRCC shall void the permit. This subchapter does not prevent the TNRCC from denying a registration or registration application and requiring the facility to have a permit.

§321.155 General Requirements for Discharge.

(a) Only storm water and treated facility wastewaters which meet the requirements of this subchapter can be discharged into or adjacent to waters in the state.

(b) Facility wastewaters shall be treated as required to conform to effluent discharge requirements, including reducing total suspended solids, oil and grease, and other possible pollutants and, if necessary, adjusting pH.

(c) There shall be no discharge of domestic sewage into or adjacent to waters in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drainfield system, POTW, or transported to an approved off-site disposal facility.

(d) Sludges and solid wastes, including tank and truck cleaning and contaminated solids for disposal, shall be disposed of in accordance with the Health and Safety Code, Chapter 361.

(e) The discharge shall not cause any nuisance conditions to adjacent land owners along the discharge route.

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following.

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the regional office and to the Austin office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which deviates more than 40% from the authorized effluent limitations or exceeds a daily minimum, a daily maximum limit, or a single grab limit as expressed in §321.156 of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the regional office and to the Austin Office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change

in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the Permit Applications in the Watershed Management Division.

(h) The executive director may require a facility seeking to become authorized to discharge wastewater under the terms of this subchapter to apply for and obtain a TNRCC permit. The executive director may declare that this rule not be employed and application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider potential or actual adverse impacts or close physical proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such a determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. Opposition by the applicant or another affected party to either the approval or denial of the application by the executive director may be appealed to the commission by submitting a request for a hearing to the Office of the Chief Clerk.

(i) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Texas Surface Water Quality Standards).

(j) A person shall not discharge, or allow to be discharged wastewater generated by either washing or maintaining ready-mix vehicles (both interior and exterior) or equipment except at sites registered under this subchapter. However, wastewaters may be routed/transported to a Publicly Owned Treatment Works.

§321.156. Specific Requirements for Discharge.

(a) Effluent Limitations and Monitoring Requirements. The following maximum effluent limitations apply to the point source discharges of treated facility wastewaters.

Figure 3 30 TAC §321.156(a)

(1) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored 1/month by grab sample.

(2) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.

(b) Effluent Limitations and Monitoring Requirements. The following maximum effluent limitations apply to the point source discharges of storm water (storm water which is not commingled with facility wastewater).

Figure 4: 30 TAC §321.156(b)

(1) The pH of the discharge shall not be less than 6.0 nor greater than 10.0 standard units and shall be monitored every 3 months (*2) by grab sample.

(2) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.

§321.157. Sampling, Reporting, and Recordkeeping.

(a) All sample collection, preservation, holding time and testing shall be conducted according to recommendations found in the latest edition of *Standard Methods for the Examination of Water and Wastewater* (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, *Methods for Chemical Analysis of Water and Wastes* (1979), or Environmental Protection Agency, *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents* (1973).

(b) All analytical results shall be reported by the registrant to the TNRCC Austin Office on the Ready-Mixed Concrete Plants and/or Concrete Products Report form approved by the executive director. All results obtained in a calendar year shall be submitted to the TNRCC within 30 days after December 31st of each calendar year.

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.156 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.158. Restrictions.

(a) This rule does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Separate authorizations may be required by TNRCC, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.

(c) Any discharge of wastewater at a site other than the registered site or the publicly owned treatment works site is prohibited.

§321.159. Enforcement and Revocation. If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code. The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an Emergency Order, or Temporary Order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state.

§321.160 Annual Waste Treatment Fee.

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from ready-mixed concrete plants and/or concrete products plants or associated facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee assessed annually shall be accordance with the following fee rate schedule.

(1) For any active facility, the fee shall be no less than \$450 if the facility discharges less than 30 days in the calendar year, as reported on the Ready-Mixed Concrete Plants and/or Concrete Products Report form.

(2) For any active facility, the fee shall be no less than \$450 if the facility discharges less than or equal to 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Ready-Mixed Concrete Plants and/or Concrete Products Report form submitted at the end of each calendar year.

(3) For any active facility, the fee shall be no less than \$1,650 if the facility discharges greater than 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Ready-Mixed Concrete Plants and/or Concrete Products Report form submitted at the end of each calendar year.

(4) For any inactive facility, the fee shall be no less than \$225.

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) 463-8069

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**Subchapter K. Discharges to
Surface Waters From Sand
and Gravel Mining and Pro-
cessing Facilities**

• **30 TAC §§321.171-321.180**

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC.

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

Construction Sand—Any sand (or gravel) used for construction and fill purposes except for on board processing of dredged sand and gravel.

Domestic Sewage—Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Executive Director—The executive director of the Texas Natural Resource Conservation Commission, or his/her designated representative.

Facility Wastewaters—Any mine dewatering wastewater or process generated wastewater from facilities engaged in sand and gravel mining and processing.

Grab Sample—An individual sample collected in less than 15 minutes.

Industrial Sand—Any sand processed or used for purposes other than construction and fill purposes.

Material Storage Piles—Any raw material, finished product, mine overburden or waste material that is stored in uncovered piles (exposed to the weather) on the ground surface.

Mine—An area of land, surface or underground, actively mined for the production of sand and gravel from natural deposits.

Mine Dewatering Wastewater—Any water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine. This term shall also include wet pit overflows caused solely by direct rainfall and ground water seepage. However, if a mine is also used for treatment of process generated wastewater, discharges of commingled water from the mine shall be deemed discharges of process generated wastewater. This term does not include domestic sewage.

Mine Overburden—That layer of native soil which overlays the product to be mined.

Outfall—A point source discharge.

Point Source Discharge—A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"—A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and the discharges from such a treatment works.

Process Generated Wastewater—Any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such wastewater in a pit, pond, lagoon, mine or other facility used for treatment of such wastewater. This term does not include domestic sewage nor does it include wastewater used for the suction dredging of deposits in a body of water which is returned directly to the body of water without being used for other purposes or combined with other wastewater.

Registrant—An individual or entity authorized by the executive director to discharge wastewater from sand and gravel mining and processing facilities under the terms and requirements of this subchapter.

Runoff—Rainwater, leachate or other liquid that drains overland on any part of the land surface and runs off of the land surface.

Sand and Gravel Mining and Processing Facilities—Facilities engaged in sand and gravel mining and processing. These facilities include both "construction sand" and "industrial sand" and are limited to those facilities classified as Standard Industrial Classification Code 1442.

Storm Water—Runoff, snow melt runoff and surface runoff, and drainage.

Ten Year, 24-Hour Rainfall Event—A 24-hour rainfall event with the probable recurrence interval of once in ten

years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

TNRCC—Texas Natural Resource Conservation Commission and its predecessor agencies responsible for regulating wastewater discharge.

§321.172. Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge of storm water, process generated wastewater and mine dewatering wastewaters from sand and gravel mining and processing facilities.

(b) Discharges are allowable under this subchapter by only those registrants of facilities which have a certificate of registration issued by the executive director under §321.174 of this title (relating to Certificate of Registration), and which meet the requirements of §321.175 of this title (relating to General Requirements for Discharge) and §321.176 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the Executive Director under §321.174 of this title (relating to Certificate of Registration), and §321.175 of this title (relating to General Requirements for Discharge) and §321.176 of this title (relating to Specific Requirements for Discharge) shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.175 of this title (relating to General Requirements for Discharge) and §321.176 of this title (relating to Specific Requirements for Discharge), and do not discharge or transport facility wastewaters to a Publicly Owned Treatment Works (POTW) which has a wastewater discharge permit issued by the TNRCC must apply for an Emergency Order, Temporary Order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewaters into or adjacent to waters in the state.

§321.173. Active TNRCC Permits. Sand and gravel mining and processing facilities that are currently operating under a TNRCC wastewater discharge permit must apply for registration of these operations prior to the expiration date of the TNRCC permit. Upon issuance of the final TNRCC registration, the TNRCC shall void the permit. This subchapter does not prevent the TNRCC from denying a registration or registration application.

§321.174. Certificate of Registration and Public Notice.

(a) An applicant must apply for registration on a form approved by TNRCC. A completed application shall be submitted to the TNRCC's Permitting Section of the Watershed Management Division. An existing facility that does not hold a valid TNRCC wastewater discharge permit must submit an application for registration or an application for a permit within 90 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.175 of this title (relating to General Requirements for Discharge) and §321.176 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) at least 30 days prior to approving of an application and issuing the certificate of registration, notice of the application has been given by the commission by publication in the *Texas Register*; and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or a potentially affected party.

(c) A notice of application as described in subsection (b) of this section shall fairly set forth the substance of the application and proposed action, including, but not limited to, the location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting a response of protest to the application and request for a hearing.

(d) A request for a public hearing must be made in accordance to the requirements specified in §305.105 of this title (relating to Request for Public Hearing).

(e) If, before the close of the 30-day period following publication of the notice of application, a request for a public hearing has been received, the commission may conduct a public hearing on the application, before any action is taken on the application, if the commission determines that the request complies with commission rules or it is in the public interest. Notice of the hearing shall be provided in accordance to §305.101 of this title (relating to Notice of Hearing).

(f) The public notice and opportunity for public hearing provisions of this section do not apply to a facility which is operating under an active TNRCC wastewater discharge permit and is seeking to reenter the facility in accordance with this subchapter.

§321.175. General Requirements for Discharge.

(a) Only storm water, process generated and mine dewatering wastewaters which meet the requirements of this subchapter can be discharged adjacent to or to waters in the state.

(b) Disposal of solid wastes shall be in accordance with Chapter 361 of the Health and Safety Code of Texas.

(c) There shall be no discharge of domestic sewage into or adjacent to waters in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drainfield system, POTW, or transported to an approved off-site disposal facility.

(d) Storm water which is combined with process generated and mine dewatering wastewaters prior to discharge from the ponds/treatment facilities is subject to the discharge limitations of this rule.

(e) Registrants operating under this rule shall submit a storm water management plan. The registrant shall provide any necessary berms, ditches and/or other facilities as needed to control/reduce the sediment load contained in storm water from material storage piles and mine overburden. A copy of the storm water runoff management plan shall be readily available at the plant site(s) inspection by TNRCC staff.

(f) The discharge shall not cause any nuisance conditions to adjacent land owners along the discharge route.

(g) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following.

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the regional office and to the Austin office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the

noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which deviates more than 40% from the authorized effluent limitations or exceeds a daily minimum, a daily maximum limit, or a single grab limit as expressed in §321.176 of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the regional office and to the Austin Office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the condition.

(h) The registrant must notify the executive director in writing of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the Permit Applications Unit in the Watershed Management Division.

(i) The executive director may require a facility seeking to become authorized to discharge wastewater under the terms of this subchapter to apply for and obtain a TNRCC permit. The executive director may declare that this rule not be employed and application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider potential or actual adverse impacts or close physical proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such a determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. Opposition by the applicant or another affected party to either the approval or denial of the application by the executive director may be appealed to the commission by submitting a request for a hearing to the Office of the Chief Clerk.

(j) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Supplemental Surface Water Quality Standards).

§321.176. Specific Requirements for Discharge.

(a) Effluent Limitations and Monitoring Requirements. The following maximum effluent limitations apply to the point source discharges of process generated and mine dewatering wastewaters and storm water commingled with process generated and mine dewatering wastewaters.
Figure 5: 30 TAC §321.176(a)

(b) pH Variance. The executive director of the TNRCC may grant a variance to the pH limitations upon a demonstration

by the registrant that background conditions in a receiving water has either a pH less than 6.0 standard units or greater than 9.0 standard units.

(c) Effluent Limitations and Monitoring Requirements. The following maximum effluent limitations apply to the point source discharges of storm water (storm water which is not commingled with facility wastewater).

Figure 6: 30 TAC §321.176(c)

(1) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored 1/3 months (*2) by grab sample.

(2) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.

§321.177. Sampling, Reporting, and Recordkeeping.

(a) All sample collection, preservation, holding time and testing shall be conducted according to recommendations found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, "Methods for Chemical Analysis of Water and Wastes" (1979), or Environmental Protection Agency, "Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents" (1973).

(b) All analytical results shall be reported by the registrant to the TNRCC Austin Office on the Sand and Gravel Mining and Processing Report form approved by the executive director. All results obtained in a calendar year shall be submitted to the TNRCC within 30 days after December 31st of each calendar year.

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.176 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.178. *Restrictions.*

(a) This subchapter does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Separate authorizations may be required by the TNRCC, municipalities, or other agencies for discharges to domestic sewage plants, storm water sewers, or for air emissions.

§321.179. *Enforcement and Revocation.* If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code. The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an Emergency Order, or Temporary Order as provided by Chapter 305, Subchapter B, (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state.

§321.180. *Annual Waste Treatment Fee.*

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from sand and gravel mining and processing facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee assessed annually shall be accordance with the following fee rate schedule.

(1) For any active facility, the fee shall be no less than \$375 if the facility discharges less than 30 days in the calendar year, as reported on the Sand and Gravel Mining and Processing Report form.

(2) For any active facility, the fee shall be no less than \$375 if the facility discharges less than or equal to 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Sand and Gravel Mining and Processing Report form submitted at the end of each calendar year.

(3) For any active facility, the fee shall be no less than \$900 if the facility discharges greater than 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Sand and Gravel Mining and Processing Report form submitted at the end of each calendar year.

(4) For any inactive facility, the fee shall be no less than \$188.

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 August 10, 1994.

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Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8069

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Subchapter L. Handling of
Wastes from Livestock
Trailer Cleaning Facilities

• 30 TAC §§321.191-321.200

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC.

§321.191. *Statement of No Discharge Policy.* It is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge of waste and/or wastewater from livestock trailer cleaning facilities into waters in the state, but rather that these materials shall be retained and utilized or disposed of on agricultural land. Any discharges from livestock trailer cleaning facilities into or adjacent to waters in the state shall be considered unauthorized discharges. No person shall make such discharge without authorization or permit from the TNRCC.

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

Agronomic Rate—The wastewater application rate designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the wastewater that passes below the root zone of the crop or vegetation grown on the land to the ground water.

Commercial Facility—A livestock trailer cleaning operation associated with an industry, or business, or from which a monetary profit is a chief aim.

Executive Director—The executive director of the Texas Natural Resource Conservation Commission, or his/her designated representative.

Facility Wastewaters—Any cattle trailer cleaning wastewaters collected for treatment and disposal, in accordance with the requirements of this subchapter.

Grab Sample—An individual sample collected in less than 15 minutes.

Livestock trailer cleaning facilities—Facilities which provide means to remove, contain, treat and dispose of wastes from livestock trailers.

Publicly Owned Treatment Works or "POTW"—A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and the discharges from such a treatment works.

Registrant—An individual or entity authorized by the executive director to discharge wastewater from facilities associated with the handling of waste from livestock trailer cleaning facilities under the terms and requirements of this subchapter.

TNRCC—Texas Natural Resource Conservation Commission and its predecessor agencies responsible for regulating wastewater discharges.

§321.193. *Applicability.*

(a) The purpose of this subchapter is to regulate by rule the removal, containment, treatment and disposal of wastes from livestock trailer cleaning facilities. This subchapter only covers facilities which utilize evaporation or storage pond(s) or pond(s) with land application as a means of treatment and disposal. This subchapter only covers facilities which are commercial in nature, and does not include waste generated by persons owning livestock trailers used for non-commercial purposes. For new facilities, a certificate of registration shall be obtained prior to discharge of wastewater from the subject facility.

(b) An application for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) must be submitted for the discharge of other wastewaters to the waters in the State.

(c) TNRCC authorization by an emergency order, temporary order, or a permit is not required if untreated facility wastewaters and/or other wastewaters are either discharged or transported to a publicly owned treatment works (POTW) which has a wastewater permit issued by the Texas

Natural Resource Conservation Commission.

(d) This subchapter does not apply to the removal, containment, treatment and disposal of wastes from livestock trailer cleaning facilities occurs at a facility which is a component of a feedlot/concentrated animal feeding operation either regulated by the requirements of Subchapter B of this Chapter or regulated by permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits).

§321.194 Active TNRCC Land Disposal Permits. Livestock trailer cleaning facilities that are currently operating under a valid TNRCC wastewater discharge permit shall be required to apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final TNRCC registration, the TNRCC shall void the permit. This subchapter does not prevent the TNRCC from denying a registration or registration application and requiring the facility to have a permit.

§321.195. Certificate of Registration and Public Notice.

(a) An applicant must apply for registration on a form approved by the TNRCC. A completed application shall be submitted to the TNRCC's Permitting Section of the Watershed Management Division. An existing facility that does not hold a valid TNRCC wastewater discharge permit must submit an application for registration or an application for a permit within 90 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.196 of this title (relating to General Requirements for Containment of Wastes and Pond(s)) and §321.197 of this title (relating to General Requirements for Land Application).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) at least 30 days prior to approving of an application and issuing the certificate of registration, notice of the application has been given by the commission by publication in the *Texas Register*; and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or a potentially affected party.

(c) A notice of application as described in subsection (b) of this section shall fairly set forth the substance of the application and proposed action, including but not limited to the location of any point

of discharge, the method of obtaining additional information about the application, and the method for submitting a response of protest to the application and request for a hearing.

(d) A request for a public hearing must be made in accordance to the requirements specified in §305.105 of this title (relating to Request for Public Hearing).

(e) If, before the close of the 30-day period following publication of the notice of application, a request for a public hearing has been received, the commission may conduct a public hearing on the application, before any action is taken on the application, if the commission determines that the request complies with commission rules or it is in the public interest. Notice of the hearing shall be provided in accordance to §305.101 of this title (relating to Notice of Hearing).

(f) The public notice and opportunity for public hearing provisions of this section do not apply to a facility which is operating under an active TNRCC wastewater discharge permit and is seeking to register the facility in accordance with this subchapter.

§321.196. General Requirements for Containment of Wastes and Pond(s) .

(a) All livestock trailers shall be washed out in a concrete area which is adequately curbed and sloped to allow for containment of all solids and liquids removed from trailers. Manure may be separated and allowed to dry in this contained concrete area. Wastewaters containing solids shall be conveyed directly from the contained concrete area to the treatment or storage pond(s). The pond(s) may be designed to treat wastewaters using evaporation, with or without recycle of wastewaters, as the sole means of disposal or in conjunction with land application.

(b) All pond(s) used for the retention of treated or untreated wastewater shall be adequately lined to control seepage. The following methods of pond lining are acceptable.

(1) In-situ clay soils or placed and compacted clay soils meeting the following requirements:

(A) more than 30% passing a Number 200 mesh sieve;

(B) liquid limit greater than 30%;

(C) plasticity index greater than 15;

(D) a minimum thickness of one foot;

(E) permeability equal to or less than 1×10^{-7} cm/sec; and

(F) soil compaction will be 95% standard proctor at optimum moisture content* (For new and/or modified ponds only). The requirements described in this subparagraph and subparagraph (E) of this paragraph apply only to new ponds constructed or modified after the effective date of these regulations

(2) Membrane lining with a minimum thickness of 20 mils, and an underdrain leak detection system.

(3) An alternate method of pond lining may be utilized with prior approval from the executive director.

(4) The registrant shall furnish certification by a Texas Registered Professional Engineer that the completed pond lining meets the appropriate criteria described in this section prior to utilization of the facilities. The certification shall be sent to the Enforcement Section, Watershed Management Division of the Texas Natural Resource Conservation Commission and a copy to the appropriate TNRCC regional office.

(c) All wastewater retention ponds shall be operated in such a manner as to maintain a minimum freeboard of two feet and shall be monitored in each pond by use of an in-place gage. Gage measurements of freeboard shall be taken from each pond on each day that any of the ponds are in operation, and the measurements shall be recorded. These records shall be maintained for a minimum of three years and shall be readily available for inspection by commission staff.

§321.197. General Requirements for Land Application.

(a) If land application is utilized for disposal of waste and/or wastewater, the following requirements shall apply.

(1) Utilization and disposal methods.

(A) Liquid and solid waste shall be distributed on agricultural lands so that neither the waste nor rainfall runoff will adversely affect the quality of receiving waters.

(B) When irrigation disposal of wastewater is used, tailwater facilities shall be provided as necessary to prevent the release of applied wastewater to waters in the state.

(C) Disposal of waste and wastewater shall be conducted in such a manner as to prevent nuisance conditions such as odors and flies.

(D) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events.

(2) Application rates. Liquid and solid waste, and/or wastewater shall be applied in such concentrations, and application shall be made at an agronomic rate suitable to the crop being grown, so as to not inhibit the growth of crops or forage or result in wastewater runoff.

(3) Management of wastes. Collection, storage, and disposal of liquid and solid waste shall be carried out in accordance with recognized practices of good agricultural management.

(b) All solid waste materials stockpiled or retained on-site shall be isolated from all run-on storm waters by dikes, terraces, berms, ditches, or other similar structures and shall be maintained so as to retain all rainfall which comes in contact with the stockpiled solid waste material.

(c) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the regional office and to the Austin office, Watershed Management, Enforcement Section, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(d) The executive director must be notified, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the TNRCC's Watershed Management Permitting Section.

(e) The executive director may require a facility seeking to become autho-

rized to discharge wastewater under the terms of this subchapter to apply for and obtain a TNRCC permit. The executive director may declare that this rule not be employed and application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider such factors as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. Opposition by the applicant or another affected party to either the approval or denial of the application by the executive director may be appealed to the commission by submitting a request for a hearing to the Office of the Chief Clerk.

(f) The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed from the facility, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.198. Restrictions.

(a) This rule does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Separate authorizations may be required by the TNRCC, municipalities, or other agencies for discharges to domestic sewage plants, storm water sewers, or for air emissions.

§321.199. Enforcement and Revocation. If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code. The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an Emergency Order, or Temporary Order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state.

§321.200. Annual Waste Treatment Fee. In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge livestock trailer cleaning wastes under the requirements of this subchapter shall remit to the

commission an annual waste treatment fee. The fee assessed annually shall be no less than \$375 for any active facility or no less than \$188 for any inactive 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 August 10, 1994.

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Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8069

◆ ◆ ◆ Subchapter M. Discharges to Surface Waters from Motor Vehicles Cleaning Facilities

• 30 TAC §§321.211-321.220

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish, approve all general policies of the TNRCC.

§321.211. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge to waters in the state of treated wastewaters and point source storm waters from motor vehicle cleaning facilities in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein. It is not the purpose of this subchapter to regulate car wash facilities which primarily clean commercial vehicles.

(b) Discharges are allowable under this subchapter only by those registrants of facilities which have a certificate of registration issued by the Executive Director under §321.213 of this title (relating to Certificate of Registration), and §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the Executive Director under §321.213 of this title (relating to Certificate of Registration), and §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge) shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.215 and §321.216, of this title (relating to General Requirements for Discharge and Specific Requirements for Discharge) and do not discharge or transport facility wastewaters to a Publicly Owned Treatment Works (POTW) which has a wastewater discharge permit issued by the TNRCC must apply for an Emergency Order, Temporary Order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state.

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

Domestic Sewage-Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Executive Director—The executive director of the Texas Natural Resource Conservation Commission, or his/her designated representative.

Facility Wastewaters—Any wastewaters which are generated at motor vehicle cleaning facilities, not including domestic sewage.

Grab Sample—An individual sample collected in less than 15 minutes.

Motor Vehicles Cleaning Facilities—Establishments primarily engaged in washing, waxing, and polishing motor vehicles, or in furnishing facilities for the self-service washing of motor vehicles. These facilities are limited to those classified as Standard Industrial Classification Code 7542.

Point Source Discharge—Means a discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"—A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and the discharges from such a treatment works.

Registrant—An individual or entity authorized by the executive director to discharge wastewater from facilities associated with motor vehicle cleaning under the terms and requirements of this subchapter.

Runoff—Rainwater, leachate or other liquid that drains overland on any part of the land surface and runs off of the land surface.

Storm Water-Runoff, snow melt runoff and surface runoff, and drainage.

TNRCC—Texas Natural Resource Conservation Commission and its predecessor agencies responsible for regulating wastewater discharges.

§321.213. *Certificate of Registration and Public Notice.*

(a) An applicant must apply for registration on a form approved by the TNRCC. A completed application shall be submitted to the TNRCC's Permitting Section of the Watershed Management Division. An existing facility that does not hold a valid TNRCC wastewater discharge permit must submit an application for registration or an application for a permit within 90 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) at least 30 days prior to approving of an application and issuing the certificate of registration, notice of the application has been given by the commission by publication in the *Texas Register*; and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or a potentially affected party.

(c) A notice of application as described in subsection (b) of this section shall fairly set forth the substance of the application and proposed action, including but not limited to the location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting a response of protest to the application and request for a hearing.

(d) A request for a public hearing must be made in accordance to the requirements specified in §305.105 of this title (relating to Request for Public Hearing).

(e) If, before the close of the 30-day period following publication of the notice of application, a request for a public hearing has been received, the commission may conduct a public hearing on the application, if the commission determines that the request complies with commission rules or it is in the public interest. Notice of the hearing shall be provided in accordance to §305.101 of this title (relating to Notice of Hearing).

(f) The public notice and opportunity for public hearing provisions of this section do not apply to a facility which is operating under an active TNRCC wastewater discharge permit and is seeking to register the facility in accordance with this subchapter.

§321.214. *Active TNRCC Permits.* Motor vehicle cleaning facilities that are currently operating under a valid TNRCC wastewater discharge permit shall be required to apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final TNRCC registration, the TNRCC shall void the permit. This subchapter does not prevent the TNRCC from denying a registration or registration application and requiring the facility to have a permit.

§321.215. *General Requirements for Discharge.*

(a) Only storm water and treated facility wastewaters that comply with the General Requirements for Discharge as described in this section and Specific Requirements for Discharge as described in §321.216 of this title, (relating to Specific Requirements for Discharge) can be discharged into or adjacent to waters in the state.

(b) Facility wastewaters shall be treated to reduce total suspended solids, oil and grease and other possible pollutants.

(c) There shall be no discharge of domestic sewage into or adjacent to waters in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drainfield system, POTW, or transported to an approved off-site disposal facility.

(d) Disposal of solid wastes shall be in accordance with Chapter 361 of the Texas Health and Safety Code.

(e) The discharge shall not cause any nuisance conditions to adjacent land owners along the discharge route.

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following.

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to

the regional office and to the Austin office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which deviates more than 40% from the authorized effluent limitations or exceeds a daily minimum, a daily maximum limit, or a single grab limit as expressed in §321.216 of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the regional office and to the Austin Office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the Permit Applications Unit in the Watershed Management Division.

(h) The executive director may require a facility seeking to become authorized to discharge wastewater under the terms of this subchapter to apply for and obtain a TNRCC permit. The executive director may declare that this rule not be employed and application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider potential or actual adverse impacts or close physical proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such a determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. Opposition by the applicant or another affected party to either the approval or denial of the application by the executive director may be appealed to the commission by submitting a request for a hearing to the Office of the Chief Clerk.

(i) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Texas Surface Water Quality Standards).

§321.216. *Specific Requirements for Discharge and Effluent Limitations and Moni-*

toring Requirements. All facilities regulated under this rule are authorized to discharge treated facility wastewater from automatic and self-serve car wash facilities in accordance with the following limitations and monitoring requirements.

Figure 7: 30 TAC §321.216(a)

(1) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per month (1/month) by grab sample.

(2) There shall be no discharge of floating solids. There shall be no foaming or frothing of a persistent nature, and no discharge of visible oil.

(b) *Effluent Limitations and Monitoring Requirements.* All facilities regulated under this rule are authorized to discharge storm water from automatic and self-serve car wash facilities in accordance with the following limitations and monitoring requirements.

Figure 8: 30 TAC §321.216(b)

(1) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per three months (1/3 months) (*2) by grab sample.

(2) There shall be no discharge of floating solids. There shall be no foaming or frothing of a persistent nature, and no discharge of visible oil.

§321.217. *Sampling, Reporting, and Recordkeeping.*

(a) All sample collection, preservation, holding time and testing shall be conducted according to recommendations found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, "Methods for Chemical Analysis of Water and Wastes" (1979), or Environmental Protection Agency, "Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents" (1973).

(b) All analytical results shall be reported by the registrant to the TNRCC Austin Office on the Motor Vehicles Cleaning Facilities Report form approved by the executive director. All quarterly monitoring results obtained in a calendar year shall be submitted to the TNRCC within 30 days after December 31st of each calendar year. Monthly monitoring results shall be reported to the TNRCC in accordance with the following schedule:

Figure 9: 30 TAC §321.217(b)

(c) The registrant shall maintain results of monitoring of each constituent spec-

ified in §321.216 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.218. *Restrictions.*

(a) This rule does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Separate authorizations may be required by TNRCC, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.

§321.219. *Enforcement and Revocation.* If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by Texas Water Code. The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an Emergency Order, or Temporary Order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to waters in the state.

§321.220. *Annual Waste Treatment Fee.*

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from motor vehicle cleaning facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee assessed annually shall be accordance with the following fee rate schedule.

(1) For any active facility, the fee shall be no less than \$450 if the facility discharges less than 30 days in the calendar year, as reported on the Motor Vehicle Cleaning Facilities Report form.

(2) For any active facility, the fee shall be no less than \$450 if the facility discharges less than or equal to 0.05 mgd as monthly average flow, as determined by either the information specified on the application for registration or on the Motor Vehicles Cleaning Facilities Report form submitted at the end of each calendar year.

(3) For any active facility, the fee shall be no less than \$1,650 if the facility discharges greater than 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Motor Vehicles Cleaning Facilities Report form submitted at the end of each calendar year.

(4) For any inactive facility, the fee shall be no less than \$225.

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

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8069

Subchapter N. Discharge to Surface Waters from Petroleum Bulk Stations and Terminals

• 30 TAC §§321.231-321.240

The new sections are proposed under the authority of the Texas Water Code, §§5 103, 5.105 and 5.120, which provide the Texas Natural Resource Conservation Commission (TNRCC) with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the TNRCC

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

Domestic Sewage—Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Executive Director—The executive director of the Texas Natural Resource Conservation Commission, or his/her designated representative.

Facility Wastewaters—Any liquids which are accidentally released from storage facilities or condensed water and hydro-

carbon mixtures drawn from a system and piped directly to a wastewater treatment system designed to discharge treated wastewaters to or adjacent to waters in the state. Facility wastewaters shall not include domestic sewage.

Grab Sample—An individual sample collected in less than 15 minutes.

Indirect Discharge—The introduction of pollutants into a POTW from any non-domestic source.

Petroleum Bulk Stations and Terminals (PBST)—Establishments primarily engaged in the wholesale distribution of petroleum products or petroleum fuels from bulk liquid storage facilities.

Petroleum fuel—Gasoline, diesel fuel, fuel oil, kerosene and jet fuel, or any other petroleum-based material having physical and chemical properties similar to the listed materials and receiving approval by the executive director for designation as a petroleum fuel.

Point Source Discharge—A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"—A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and the discharges from such a treatment works.

Registrant—An individual or entity authorized by the executive director to discharge wastewater from establishments primarily engaged in the wholesale distribution of petroleum products or petroleum fuels from bulk liquid storage facilities.

Runoff—Rainwater, leachate or other liquid that drains overland on any part of the land surface and runs off of the land surface.

Storm Water—Runoff, snow melt runoff and surface runoff, and drainage.

TNRCC—Texas Natural Resource Conservation Commission and its predecessor agencies responsible for regulating wastewater discharges.

Treated Facility Wastewaters—Facility wastewaters which have been biologically, chemically, or mechanically treated, or which have been treated using other advanced treatment methods and achieve a level of treatment which complies with this subchapter and the Texas Supplemental Surface Water Quality Standards, 30 TAC §§307.1-307.10.

§321.232. Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge of storm water and treated facility wastewaters from petroleum bulk stations and terminals.

(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate or registration issued by the Executive Director under §321.234 of this title (relating to Certificate of Registration and Public Notice), and which meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the Executive Director under §321.234 of this title (relating to Certificate of Registration and Public Notice), and which meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge) shall be obtained prior to discharge of wastewater from the subject facility.

(c) This rule does not cover facilities which are part of a petroleum refinery or facilities which store or transfer non-petroleum products such as organic, inorganic, or toxic chemicals.

(d) An application for an Emergency Order, Temporary Order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) must be submitted for the discharge of any other wastewater not authorized by this rule to the waters in the state.

(e) TNRCC authorization by an Emergency Order, Temporary Order, or a separate permit is not required if treated or untreated facility wastewaters, or other wastewaters are either discharged or transported to a Publicly Owned Treatment Works (POTW) which has a wastewater discharge permit issued by the Texas Natural Resource Conservation Commission.

(f) This rule does not authorize the discharge of any domestic sewage into or adjacent to waters in the state.

(g) A TNRCC Emergency Order, Temporary Order, or permit for discharge of any wastewater from a petroleum bulk station or terminal may supersede the provisions of this rule.

§321.233 Active TNRCC Permits Petroleum bulk stations and terminals that are currently operating under a valid TNRCC wastewater discharge permit shall be required to apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final TNRCC registration, the TNRCC shall void the per-

mit. This subchapter does not prevent the TNRCC from denying a registration or registration application and requiring the facility to have a permit.

§321.234. Certificate of Registration and Public Notice.

(a) An applicant must apply for registration on a form approved by the TNRCC. A completed application shall be submitted to the TNRCC's Permitting Section of the Watershed Management Division. An existing facility that does not hold a valid TNRCC wastewater discharge permit must submit an application for registration or an application for a permit within 90 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) at least 30 days prior to approving of an application and issuing the certificate of registration, notice of the application has been given by the commission by publication in the "Texas Register", and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or a potentially affected party.

(c) A notice of application as described in subsection (b) of this section shall fairly set forth the substance of the application and proposed action, including but not limited to the location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting a response of protest to the application and request for a hearing.

(d) A request for a public hearing must be made in accordance to the requirements specified in §305.105 of this title (relating to Request for Public Hearing)

(e) If, before the close of the 30-day period following publication of the notice of application, a request for a public hearing has been received, the commission may conduct a public hearing on the application, before any action is taken on the application, if the commission determines that the request complies with commission rules or it is in the public interest. Notice of the hearing shall be provided in accordance to §305.101 of this title (relating to Notice of Hearing).

(f) The public notice and opportunity for public hearing provisions of this section do not apply to a facility which is operating under an active TNRCC wastewater discharge permit and is seeking to register the facility in accordance with this subchapter.

§321.235. General Requirements for Discharge.

(a) Only storm water and treated facility wastewaters can be discharged into or adjacent to waters in the state. Facility wastewaters shall be treated to reduce total petroleum hydrocarbons, benzene, BTEX, lead, and other possible pollutants.

(b) Disposal of solid wastes shall be in accordance with Chapter 361 of the Texas Health and Safety Code.

(c) The discharge shall not cause any nuisance conditions to adjacent land owners along the discharge route.

(d) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Supplement Surface Water Quality Standards).

(e) There shall be no discharge of floating solids, or oil in amounts that cause a visible iridescent sheen on the surface of the water.

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the regional office and to the Austin office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause, the potential danger to human health or safety, or the environment, the period of noncompliance, including exact dates and times, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which deviates more than 40% from the authorized effluent limitations or exceeds a daily mini-

mum, a daily maximum limit, or a single grab limit as expressed in §321.236 of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the regional office and to the Austin Office, Watershed Management Division, Enforcement Section, within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the Permit Applications Unit in the Watershed Management Division.

(h) The executive director may require a facility seeking to become authorized to discharge wastewater under the terms of this subchapter to apply for and obtain a TNRCC permit. The executive director may declare that this rule not be employed and application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider potential or actual adverse impacts or close physical proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such a determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. Opposition by the applicant or another affected party to either the approval or denial of the application by the executive director may be appealed to the commission by submitting a request for a hearing to the Office of the Chief Clerk.

§321.236. Specific Requirements for Discharge

(a) Effluent Limitations and Monitoring Requirements. Facilities regulated under this rule are authorized to discharge treated facility wastewaters in accordance with the following limitations and monitoring requirements.

Figure 10. 30 TAC §321.236(a)

(b) Effluent Limitations and Monitoring Requirements. Facilities regulated under this rule are authorized to discharge storm water from point sources in accordance with the following limitations and monitoring requirements.

Figure 11. 30 TAC §321.236(b)

§321.237. Sampling, Reporting, and Recordkeeping.

(a) All sample collection, preservation, holding time and testing shall be conducted by methods approved in Title 40, Code of Federal Regulations, Part 136. Methods found in "Standard Methods for the Examination of Water and Wastewater" (prepared and published jointly by the

American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation) may be used only when specifically listed in 40 CFR 136.

(b) Results of monitoring of each constituent specified in §321.236 of this title (relating to Specific Requirements for Discharge) shall be reported by the registrant to the TNRCC Austin Office on the Petroleum Bulk Stations and Terminals Report form approved by the executive director. Monitoring results obtained in each calendar month shall be submitted to the TNRCC within 20 days after the end of each month.

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.236 of this title (relating to specific requirements for discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.238 Restrictions

(a) This rule does not convey property rights of any sort and does not grant any exclusive privilege.

(b) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.

(c) Separate authorizations may be required by TNRCC, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.

§321.239 Enforcement and Revocation If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code. The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency Order, or Temporary Order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits)

for the discharge of wastewater into or adjacent to waters in the state

§321.240 Annual Waste Treatment Fee

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from petroleum bulk stations and terminals under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee assessed annually shall be accordance with the following fee rate schedule.

(1) For any active facility, the fee shall be no less than \$1,050 if the facility discharges less than 30 days in the calendar year, as reported on the Petroleum Bulk Stations and Terminals Report form.

(2) For any active facility, the fee shall be no less than \$1,050 if the facility discharges less than or equal to 0.05 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Petroleum Bulk Stations and Terminals Report form submitted at the end of each calendar year.

(3) For any active facility, the fee shall be no less than \$1,275 if the facility discharges greater than 0.05 mgd or less than or equal to 0.25 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Petroleum Bulk Stations and Terminals Report form submitted at the end of each calendar year.

(4) For any active facility, the fee shall be no less than \$1,800 if the facility discharges greater than 0.25 mgd as a monthly average flow, as determined by either the information specified on the application for registration or on the Petroleum Bulk Stations and Terminals Report form submitted at the end of each calendar year.

(5) For any inactive facility, the fee shall be no less than \$525.

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 August 10, 1994

TRD-9446483

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption September 19, 1994

For further information, please call (512) 463-8069

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 20. Natural Resources Damage Assessment

The General Land Office proposes new §§20.1-20.44, concerning Natural Resources Damages Assessment. The new rules are proposed pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, Chapter 40, which directs the Commissioner of the Texas General Land Office (commissioner) and the state natural resource trustees to adopt administrative procedures and protocols for the assessment of natural resource damages resulting from an unauthorized discharge of oil to coastal waters. OSPRA directs the commissioner to adopt the rules as part of the State Coastal Discharge Contingency Plan (OSPRA, §40.053). The rules will be incorporated into and become part of the State Coastal Discharge Contingency Plan when that plan is fully adopted. The State Coastal Discharge Contingency Plan is intended to be consistent with the Area Contingency Plans developed under the Oil Pollution Act of 1990 (OPA), 33 United States Code Annotated, §2701 et seq, and with the National Contingency Plan, Code of Federal Regulations, Title 40, Part 300.

Senate Bill 1049 (73rd Legislature, 1993) amending OSPRA, became law in June, 1993; it instructed the commissioner to develop the procedures and protocols through negotiated rulemaking with the Texas natural resource trustees and other interested parties. Pursuant to Senate Bill 1049, the commissioner established a Negotiated Rulemaking Group (NRG), which included the Texas natural resource trustees: the Texas General Land Office (GLO); Texas Natural Resource Conservation Commission (TNRCC); and Texas Parks and Wildlife Department (TPWD). Other interested parties invited to participate in the negotiated rulemaking were the Texas Waterways Operators Association, the Texas Mid-Continent Oil and Gas Association, the Galveston Bay Foundation, and the Galveston Bay National Estuary Program. Those persons liable for natural resource damages resulting from coastal oil spills are the owners or operators of a facility or a vessel from which a spill emanates. The Mid-Continent Oil and Gas Association represented facility owners in the NRG; the Waterways Operators Association represented vessel owners; the Galveston Bay Foundation and the Galveston Bay National Estuary Program represented the public. One impetus behind the enactment of OSPRA was a major oil spill which occurred in 1990 in Galveston Bay. Thus, the two Galveston-based organizations had experience in assessing, for their own purposes, the effects of oil spills in their region of Texas.

The NRG met from November, 1993, through June, 1994. Notice of the NRG meetings

were published in the *Texas Register*. Through these meetings, the NRG achieved consensus on the scope and content of the rules. Each of the NRG members had an equal voice in the proceedings of the NRG; however, the trustees, because of their legal responsibilities, retained final authority over the scope and content of the rules. The NRG engaged the services of an independent facilitator who assisted in all but the first meeting of the NRG. He was available to all participants for private consultation. The facilitator did not represent any one participant and did not participate in the substantive decisions of the NRG. The GLO thanks Tom Reavley, Esquire, of Austin, Texas, for his invaluable services as the facilitator for the NRG. The GLO also gratefully acknowledges the expertise and assistance of the University of Texas Law School Center for Public Policy Dispute Resolution and its Executive Director, E. Janice Summer. The Center for Public Policy Dispute Resolution provided training in negotiated rulemaking for all participants in the NRG. The Center also provided the NRG with most of the language and the framework for the mediation section of the rules. The GLO proposes the rules today as the product of the Negotiated Rulemaking Group.

OSPRA, §40.107(c)(4), requires TNRCC and TPWD to adopt the rules. TNRCC and TPWD will adopt the rules after they have been adopted by the GLO. TNRCC and TPWD request that commenters structure their comments to address the effects of the rules at all trustee agencies. The NRG will participate in developing responses to the comments received by all trustees and will participate in any modification of the proposed rules in response to comments received.

The rules outline the procedures that trustees may use in assessing damages to natural resources caused by oil spills in coastal waters. The rules do not apply to oil spills that do not impact coastal waters or to any hazardous substance spills. The rules apply only to the actions of state trustees and are, to the extent permitted by OSPRA, intended to achieve consistency with existing and proposed federal rules for natural resource damage assessment. There are several ways the rules differ significantly from the existing and proposed federal rules. First, pursuant to OSPRA, §40.107(c)(5)(C), the rules require the trustees to invite the responsible person to participate in the damage assessment process (as detailed in §20.23, relating to Responsible Person Participation). Second, pursuant to OSPRA, §40.107(c)(6)(C), the trustees are required to conduct a field investigation (as detailed in §20.30, relating to Field Investigation). Third, pursuant to OSPRA, §40.107(c)(7)(F), mediation of a disputed natural resource damage assessment claim is a prerequisite to invoking the jurisdiction of any court, as detailed in §20.43 (relating to Mediation). Fourth, the rules provide that the trustees may invite the public to participate in determining whether an assessment is necessary (as detailed in §20.44, relating to Public Participation). The NRG believes that these procedures, designed to meet statutory requirements, will effectuate the legislative intent of "reasonably valuing the natural resources of the State of Texas in

the event of an oil spill and that the state recover monetary damages or have actions commenced by the spiller as early as possible to expedite the restoration, and/or replacement of injured natural resources" (OSPRA, §40.002(b)).

The rules provide definitions for terms commonly used in the natural resource damage assessment process and terms used in Senate Bill 1049, and require the trustees to coordinate their activities with the state on-scene coordinator and the federal trustees. Senate Bill 1049 specifically required the trustees to enter into a Memorandum of Agreement (MOA) wherein they would agree to resolve any disputes among them by mediation. The trustees did execute the required MOA and it was published in the *Texas Register* on August 2, 1994 (19 TexReg 6053). The rules also provide for public participation, review, and comment throughout the damage assessment process. Trustees are required by §20.31 (relating to Notice of Intent to Perform An Assessment) to issue a Notice of Intent to Perform an Assessment when a decision has been made to perform an assessment under these rules. The decision to perform an assessment is based upon an injury to natural resources, including any impairment of the services provided by the natural resource. Services include the human and ecological benefits and uses of the natural resource. The protocols and procedures for determining injury are listed at §20.32 (relating to Assessment Procedures and Protocols for Determining, Quantifying and Valuing Natural Resource Injury and Loss of Services). This section is the heart of the proposed rules, describing the scientific and economic methods which trustees may use in determining injury and damages.

The rules provide for three types of assessments: expedited, as defined in §20.33 (relating to Expedited Damage Assessment); comprehensive, as defined in §20.34 (relating to Comprehensive Damage Assessment); and negotiated, as defined in §20.35 (relating to Negotiated Assessment). In addition to recovering damages for the injury to natural resources, the trustees are also entitled to recover the costs of performing the assessment. The allowable recoverable costs are provided in §20.41 (relating to Recovery of Damages). The trustees must maintain an assessment record for each damage assessment. All closed assessment records will be permanently maintained in the Archives and Records Division of the Texas GLO and will be available to the public, as provided in §20.40 (relating to Assessment Record). The statutorily required mediation process is described in §20.43 (relating to Mediation). This section requires the trustees and the responsible person to mediate a disputed natural resource damage assessment prior to initiating a lawsuit.

The trustees have the option to proceed with a damage assessment under these rules or under rules pursuant to OPA. State natural resource trustees are designated by the Governor under both OPA and the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA), 42 United States Code Annotated, §9601 et seq. OPA allows state trustees to assert a claim for natural

resource damages from oil spills in federal court and OSPRA allows state trustees to present such a claim in state court. Thus, state trustees may opt to use the rules or the rules promulgated pursuant to OPA. The federal trustees may make a claim separate from, and in addition to, any claim made by the state trustees. The federal trustees can use federal rules, state rules and any other procedure allowed by federal law. Through the NRG, the state trustees agreed to invite participation by the responsible person, as provided for in the rules, in the damage assessment process whenever the trustees choose to use federal rules instead of the state rules. The state trustees have also agreed that a preliminary field investigation will be conducted by them in each case, regardless of which rules are used. This provision ensures compliance with the OSPRA mandate that trustees consider the unique circumstances of the each spill. Finally, the state trustees may invite public participation in determining whether an assessment shall be conducted and in the development of equivalent resource plans.

The rules are proposed pursuant to OSPRA, §40.017(c)(4), which requires the commissioner to adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil.

Timothy G. McKinna, deputy commissioner, Division of Oil Spill Prevention and Response, has determined that for the first five years they are in effect, the rules will not cause any additional costs to state and local governments. The Texas natural resource trustees have been conducting natural resource damage assessments for several years and these rules codify many of the procedures and protocols used in the past. There are no requirements in the rules which will increase the state's costs of performing natural resource damage assessments in cases of oil spills in coastal waters. Local governments are not required to perform any additional functions as the result of the rules. The new requirement of mediation is not expected to cause an increase in the overall costs of assessments because the use of mediation is expected to enhance speedy resolution of disputed claims and therefore reduce the overall costs by eliminating the need for litigation. Further, all costs incurred by the trustees in complying with the rules are reimbursable to the state by the person responsible for the unauthorized discharge of oil. The rule contains the statutory time lines for conducting natural resource damage assessments and may result in an overall reduction in the trustee's assessment costs. Natural resource damages are not considered revenues but are compensation for injuries to natural resources. The monies recovered by trustees may be used only to reimburse the trustees for the cost of performing the assessment and for restoring, rehabilitating, replacing and/or acquiring the equivalent of injured natural resources. In summary, Mr. McKinna concludes that the rules will not result in additional costs to state or local governments, nor will it result in a reduction of costs to state and local governments, nor will it impact revenues to state and local governments.

Mr. McKinna also has determined that for the first five years the rules are in effect certain benefits will accrue to the public. First, the public, at the discretion of the trustees, may participate in determining whether an assessment should be conducted. Second, the public is granted the opportunity to review and comment on proposed assessments and restoration plans. Third, the public will benefit from the delineation of the procedures and protocols that will be used to assess injury to and restore the resources they own. Finally, the public will benefit from the required use of mediation, which is expected to result in lower litigation costs and speedier restoration of injured resources.

There will not be any economic cost to persons or small businesses as a result of the rules because the rules do not require private persons to perform any activity. The rules are only applicable to state officials when they are fulfilling their statutory duty to restore, rehabilitate, replace or acquire the equivalent of natural resources injured as the result of a coastal oil spill.

Comments on the proposed rules may be addressed to Ingrid K. Hansen, Texas General Land Office, Legal Services Division, Room 630, 1700 North Congress Avenue, Austin, Texas 78701-1495, (512) 463-5007; fax (512)463-6311. Comments must be received by 5:00 p.m. CDT on September 19, 1994.

The rules are proposed under Texas Natural Resources Code, §40.107, which provides the GLO with the authority to promulgate procedures and protocols for assessing damages to natural resources injured by an unauthorized discharge of oil.

Subchapter A. General Provisions

• 31 TAC §§20.1-20.4, 20.10

The Texas Natural Resources Code, Chapter 40, is affected by the proposed rules.

§20.1. Declaration and Intent. The Commissioner of the Texas General Land Office (commissioner) adopts these rules pursuant to OSPRA, §40.107(c)(4). OSPRA, as defined in §20.10 of this title (relating to Definitions), also requires the Texas Natural Resources Conservation Commission and Texas Parks and Wildlife Department to adopt these rules. They will incorporate the rules, after they have been adopted by the General Land Office and become effective, into their rules. These rules are applicable in the event that an unauthorized discharge of oil to coastal waters results in injury to natural resources. These rules are intended to be consistent with the National Contingency Plan, the Area Contingency Plan, and the State Coastal Discharge Contingency Plan, all three of which are defined in §20.10 of this title (relating to Definitions). These rules are also intended to achieve consistency, to the extent allowed by OSPRA, §40.107, with existing and proposed federal rules for assessing damages to

injured natural resources. Thus, the state natural resource trustees are encouraged to cooperate and coordinate their actions with the federal trustees. The federal trustees are, of course, not bound by these rules and have the right to bring separate claims in addition to any claim made by the state trustees. The state trustees may bring a claim for natural resource damages pursuant to their authority under OPA, as defined in §20.10 of this title (relating to Definitions) or under OSPRA, §40.107. The state trustees may utilize the natural resource damage assessment procedures established under the rules or under the rules adopted pursuant to OPA, or a combination of procedures drawn from both OPA and OSPRA rules. Whether the state trustees utilize OPA procedures or a combination of OSPRA and OPA procedures, they will perform the field investigation as described in §20.30 of this title (relating to Natural Resource Damage Assessments). The state trustees, when utilizing some or all of the OPA procedures, will encourage the federal trustees, as defined in §20.10 of this title (relating to Definitions), to invite the responsible party to participate in the process pursuant to the procedure in §20.23 of this title (relating to Responsible Person Participation).

§20.2. Applicability. This chapter applies to any unauthorized discharge of oil that enters or poses an imminent threat to Texas coastal waters

§20.3. Usage. As used in these rules, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§20.4. Severability. If any section or provision of this chapter or the application of that section or provision to any person, situation, or circumstance is determined to be invalid by a court of competent jurisdiction for any reason, such adjudication shall not affect any other section or provision of this chapter or the application of the adjudicated section or provision to any other person, situation, or circumstance. The commissioner of the Texas General Land Office declares that he would have adopted the valid portions and applications of this chapter without the invalid part, and to this end the provisions of this chapter are declared to be severable

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

Acquisition of equivalent—The acquisition of a natural resource that provides services substantially equivalent to those injured as the result of an unauthorized discharge of oil.

Area Contingency Plan—The contingency plan required by the Federal Water Pollution Control Act, (33 United States Code Annotated, §1321(j)(4)).

Assessment or natural resource damage assessment—The process of collecting, compiling and analyzing information through prescribed procedures and protocols to determine damages for injuries to natural resources and any loss in the services provided by the natural resources resulting from an unauthorized discharge of oil.

Assessment area—The area or areas within which natural resources and the services they provide have been affected directly or indirectly by the unauthorized discharge of oil

Center—The Center for Public Policy Dispute Resolution and any successor entity established by the University of Texas providing statewide assistance and expertise to government agencies and courts for the design and implementation of alternative dispute resolution processes.

Coastal Protection Fund (CPF)—The fund established by the OSPRA, §40.151

Coastal waters—The waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo and as further defined in §192(a)(1) of this title (relating to Definitions)

Commissioner—The commissioner of the Texas General Land Office

Comprehensive damage assessment—A method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil

Cost-effective—When two or more activities provide the same or a similar level of benefits, the one which costs the least is cost-effective.

Damages—With respect to natural resources, includes the cost to assess, restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement, or mitigation.

Discharge of oil—An intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists.

Ecological services—The services provided by natural resources to each other and includes, but is not limited to, water purification, flood control, erosion control, shelter, food supply, and reproductive habitats.

Expedited damage assessment—A method selected by the state trustees that allows for prompt initiation of restoration, replacement, rehabilitation, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources and which may utilize limited, focused field and/or laboratory studies related to injured natural resources.

Exposure—When all or part of a natural resource is or may be in physical contact with oil or with media containing oil or its degradation products.

Federal fund—The Oil Spill Liability Trust Fund established by the Internal Revenue Code of 1986, 26 United States Code, §9509.

Federal trustee—Officials of the federal government designated, according to the Oil Pollution Act of 1990 (OPA), 33 United States Code Annotated, §2706(b)(2), as trustees and also includes, for the purposes of the rules, Indian tribes and foreign governments which may present a claim for and recover damages for injury to natural resources.

Field investigation—An evaluation of the area impacted by an unauthorized discharge of oil to determine the actual and potential exposure of natural resources and the impact on natural resources and the services they provide for the purpose of evaluating which damage assessment methods, if any, should be utilized by state trustees.

Harmful quantity—A quantity of oil that has created a sheen or film on coastal waters or that has been deposited as a sludge or emulsion in, on or under coastal waters.

Incident—Any unauthorized discharge of oil or series of unauthorized discharges of oil having the same origin, involving one or more vessels, facilities, or any combination thereof.

Injury—Any measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource or any loss of a service provided by that resource resulting either directly or indirectly from exposure to an unauthorized discharge of oil.

Lead administrative trustee—The state trustee responsible for compiling the assessment record and for coordinating activities of the state in the natural resource damage assessment process.

Limited observable mortality—A determination that, in the best professional judgment of the state trustees, the mortality of natural resources from exposure to oil is not extensive or severe.

Loss—A measurable adverse reduction in the chemical or physical quality or the viability of a natural resource or a reduction in a service provided by a natural resource resulting either directly or indirectly from exposure to an unauthorized discharge of oil.

Mediation—The process defined in the Texas Civil Practice and Remedies Code, §154.023.

National Contingency Plan—The federal regulations for response to oil spills and releases of hazardous substances, published at the Code of Federal Regulations, Title 40, Part 300.

Natural recovery—The process through which injured resources and their services recover, without additional human intervention.

Natural resources—All land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the State of Texas.

Negotiated assessment—Any assessment method agreed to by the state trustees and the responsible person.

Oil—Oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 United States Code Annotated, §9601(14)(A)-(F), and which is subject to the provisions of that Act.

OSPRA—The Oil Spill Prevention and Response Act, Texas Natural Resources Code, Chapter 40.

OPA—The Oil Pollution Act of 1990, 33 United States Code Annotated, §2701 et seq.

Passive use values—The values a person places on natural resources which are not derived from direct use of those resources. These values include the value derived from: the knowledge of the existence of the resource and its protection; the availability of the resource for the use of a person's family or other members of the public; and the knowledge that the resources will be available for future generations.

Pathway—Any physical, biological or chemical link that connects a natural resource to an unauthorized discharge of oil.

Pre-discharge condition—The condition or conditions of the natural resources and the level of services provided by those resources before the unauthorized discharge of oil. Pre-discharge condition may be measured by use of a reference area or a reference resource or by analysis of historical data.

Properties of oil—The persistence, degradability, dispersability, toxicity, bioaccumulative effects, and any other characteristics relevant to a particular unauthorized discharge of oil.

Public use—The services provided by natural resources for human activities; this

includes, but is not limited to, cultural, archaeological, transportation, public water supply, industrial water supply, swimming, fishing, harvesting of natural resources, nature viewing, hunting, diving, sailing, boating, hiking, camping, climbing, photographing, drawing, painting, and other human activities.

Recovery—The return of the injured natural resource and service to its pre-discharge or comparable condition within the constraints of natural or other variability.

Reference area or reference resource—An area or natural resource, unaffected by the relevant unauthorized discharge of oil, and comparable in physical, chemical and biological characteristics or in the level of services provided by the assessment area or natural resource.

Rehabilitation—Those actions which enhance the recovery of injured natural resources but do not return them to pre-discharge conditions.

Replacement—Substituting natural resources at or near the impacted area to compensate for the loss of natural resources due to an unauthorized discharge of oil.

Responsible person—

(A) the owner or operator of a vessel or facility from which an unauthorized discharge of oil emanates or threatens to emanate; and

(B) in the case of an abandoned vessel or facility, the person who would have been responsible immediately prior to the abandonment; and

(C) any other person who causes, allows or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

Restoration—Those actions that return injured natural resources and the services they provide to their pre-discharge or comparable condition.

Restoration plan—A plan selected after public review and comment which describes the required restoration, replacement, rehabilitation, and/or acquisition of equivalent natural resources.

Services or natural resource services—The physical, biological, chemical, aesthetic, cultural, and public uses provided by natural resources.

State Coastal Discharge Contingency Plan—The plan required by OSPRA, §40.053.

State On-Scene Coordinator (SOSC)—The person appointed by the commissioner of the Texas General Land Office to coordinate all state response actions for the abatement, containment, and removal of pollution resulting from an unauthorized discharge of oil.

State trustee or trustee—The Texas General Land Office, Texas Parks and Wildlife Department, and the Texas Natural Resource Conservation Commission.

Technically feasible—The technology and management skills necessary to implement an assessment plan or restoration plan are known such that each element of the plan has a reasonable chance of successful completion in the applicable time period as defined in §20.34(b) of this title (relating to Comprehensive Damage Assessment) and §20.33(a) of this title (relating to Expedited Damage Assessment).

Unauthorized discharge of oil—Any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

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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Garry Mauro
Commissioner
General Land Office

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For further information, please call (512) 305-9129

Chapter B. State Trustee Response, Organization, and Coordination

• 31 TAC §§20.20-20.23

The rules are proposed under Texas Natural Resources Code, §40.107, which provides the GLO with the authority to promulgate procedures and protocols for assessing damages to natural resources injured by an unauthorized discharge of oil

The Texas Natural Resources Code, Chapter 40, is affected by the proposed rules.

§20.20. Notification of an Unauthorized Discharge of Oil.

(a) The commissioner shall promptly notify all state trustees of all reported unauthorized discharges of oil into coastal waters.

(b) After observing the characteristics of the unauthorized discharge of oil and the location of the affected natural resources, if the SOSC determines that the quantity or properties of the oil discharged or the natural resources potentially impacted by the oil differ significantly from the initial report, the SOSC shall promptly provide the state trustees with an updated report.

§20.21. Response to an Unauthorized Discharge of Oil.

(a) The state trustees and the SOSC or his designated representative shall, through the incident unified command system:

(1) assist each other in prioritizing protection of natural resources during an unauthorized discharge of oil. The state trustees shall be available, throughout the response to the unauthorized discharge of oil, to advise the SOSC regarding the impact of response activities on natural resources;

(2) confer on a daily basis in accordance with the National Contingency Plan, Area Contingency Plans and the State Coastal Discharge Contingency Plan;

(3) integrate and coordinate response and assessment activities whenever such integration and coordination does not interfere with response activities; and

(4) exchange information related to the impact of response activities on natural resources. The SOSC shall provide the state trustees with an incident report detailing the quality of the responsible person's containment and removal actions and the protection and preservation of natural resources

(b) The SOSC shall advise the state trustees when the impacted area is safely accessible for damage assessment activities. The SOSC shall allow access to the impacted area in accordance with the site safety plan. The SOSC may limit the state trustee activities only if such activities would create an unreasonable interference with response actions.

§20.22. State Trustee Coordination.

(a) General. The state trustees shall conduct natural resource damage assessments by:

(1) providing opportunity for public review and comment on assessment plans, restoration plans, and settlement agreements;

(2) developing and utilizing contingency planning to enhance coordination among state trustees, emergency response agencies, and responsible persons to ensure a consistent and comprehensive response to unauthorized discharges of oil;

(3) coordinating and exchanging scientific, technical, economic and legal expertise among the state trustees and federal trustees,

(4) integrating all scientific, technical, economic and legal issues;

(5) executing, when necessary, contracts to procure the services of appropriate experts;

(6) providing the opportunity for early participation in the assessment process by the responsible persons; and

(7) informing the Texas attorney general, when appropriate, of state trustee actions during the assessment process.

(b) Coordination with federal trustees. The state trustees shall coordinate with the federal trustees in all phases of the damage assessment and restoration process. The state trustees may utilize the State Coastal Discharge Contingency Plan, the Area Contingency Plans, and the National Contingency Plan.

(c) Lead administrative trustee. The state trustees will designate a lead administrative trustee for each assessment. Additional duties may be assigned to the lead administrative trustee by agreement of all state trustees, but the lead administrative trustee shall:

(1) coordinate the natural resource damage assessment and organize communication among the state trustees and federal trustees and with the responsible person regarding the assessment. The lead administrative trustee shall perform all administrative tasks required to disseminate information to all participants in the assessment and to ensure that the assessment is completed within the time periods, including any extensions granted, provided by OSPRA;

(2) prepare and maintain the assessment record as required by §20.40 of this title (relating to Assessment Record); and

(3) ensure that disagreements among state trustees are expeditiously resolved pursuant to the Memorandum of Agreement executed by the state trustees required by OSPRA, §40.107(a)(4).

(d) If a state trustee takes action as a result of a discharge of oil prior to the designation of a lead administrative trustee, that state trustee shall document those actions and transmit that documentation to the lead administrative trustee

§20.23. Responsible Person Participation

(a) Pre-spill activities. Potentially responsible persons may contribute to the development of the natural resources inventory (OSPRA, §40.107(c)(1)-(3)) and in the identification of natural resources most at risk from an unauthorized discharge of oil. Potentially responsible persons may assist the state trustees in identifying protective measures to be utilized in responding to unauthorized discharges of oil, and in identifying personnel and organizations likely to participate in response and assessment activities.

(b) Participation by the responsible person in assessments conducted under these rules. The state trustees shall invite

the responsible person to participate in the assessment process, the preliminary field investigation, the selection of assessment methods, the restoration plan, and post-assessment activities. The state trustees may limit or terminate the participation of the responsible person when such participation is inconsistent with the responsibilities of the state trustees.

(c) Participation by the responsible person in assessments not conducted under these rules. When the state trustees conduct an assessment employing procedures and protocols other than those provided for in these rules, the responsible person shall be invited to participate as consistent with subsection (b) of this section.

(d) Assessment data. The state trustees shall provide, upon the written request of the responsible person, photographs, split samples, and final data utilized and discovered by the state trustees during the natural resource damage assessment and the implementation of any restoration plan. The responsible person shall provide, upon the written request of the state trustees, photographs, split samples, and final data utilized and discovered during the natural resource damage assessment and the implementation of any restoration plan.

(e) Stipulations. Any assessment conducted with the participation of the responsible person shall include any stipulations agreed to by the responsible person and the state trustees. Stipulations may be proposed by either the responsible person or the state trustees at any time during the assessment. The stipulations shall survive, and shall be binding on all parties, after termination of the responsible person's participation or after the termination of a negotiated assessment.

(f) Limitation on Participation by Responsible Person. Whenever the state trustees agree that the responsible person is interfering with their responsibilities or is causing unreasonable delay in the assessment process, the state trustees may proceed without the participation of the responsible person. The state trustees shall prepare a written statement, which they shall include in the assessment record, describing the factual basis for disallowing further participation by the responsible person.

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

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Subchapter C. Natural Resource Damage Assessments

• 31 TAC §§20.30-20.36

The rules are proposed under Texas Natural Resources Code, §40.107, which provides the GLO with the authority to promulgate procedures and protocols for assessing damages to natural resources injured by an unauthorized discharge of oil.

The Texas Natural Resources Code, Chapter 40, is affected by the proposed rules.

§20.30. Preliminary Field Investigation.

(a) The state trustees shall conduct a preliminary field investigation to determine whether a natural resource damage assessment is necessary and, if so, the scope of the natural resource damage assessment. The state trustees shall determine the appropriate methods to be used in conducting the preliminary field investigation.

(b) A preliminary field investigation may include, but is not limited to:

(1) sampling of surface waters for reference information, such as temperature, pH, total suspended solids, salinity, dispersion and other parameters relevant to the fate and effects of oil and its degradation constituents;

(2) sampling of sediments and shoreline materials for reference and for oil and its degradation constituents;

(3) identification of the properties of the discharged oil;

(4) identification of special protection or management areas, state and federal wildlife refuges, parks, habitats of threatened and endangered species, and other relevant natural areas;

(5) an evaluation of the observable mortality and the potential for acute and chronic effects;

(6) photography, ground truthing, and other appropriate methods to delineate the extent of exposure in the assessment area; and

(7) identification of potentially reduced services provided by natural resources.

§20.31. Notice of Intent to Perform an Assessment.

(a) The lead administrative trustee, upon consensus of the state trustees, shall provide the responsible person with written notice of intent to perform an assessment. The notice of intent to perform an assessment must be provided to the responsible person within 60 days of the on-scene coordinator's determination that the cleanup is complete.

(b) The state trustees shall not conduct any assessment activities, other than the preliminary field investigation, for at least ten calendar days after receipt by the responsible person of the notice of intent to perform an assessment, except when certain activities must be conducted in order to ensure a reasonable and rational assessment. Receipt may be determined by either United States Postal Service Domestic Return Receipt or other appropriate proof.

(c) The notice of intent to perform an assessment shall include:

(1) a summary of the activities conducted during the preliminary field investigation;

(2) a description of the unauthorized discharge of oil, including: the facts of the incident; the estimated quantity of oil discharged into coastal waters or onto coastal shorelines; the length of time that the oil remained on, in, or under coastal waters; and the estimated quantity recovered through response activities;

(3) an evaluation of the impact of response activities on natural resources; and

(4) if available, information from the SOSOC's incident report related to the quality of the responsible person's containment and removal actions and the protection and preservation of natural resources.

§20.32. Assessment Procedures and Protocols for Determining, Quantifying and Valuing Natural Resource Injury and Loss of Services.

(a) The state trustees may utilize reliable procedures including, but not limited to, those listed in subsection (d) of this section to determine and quantify injury to and loss of services of natural resources. The state trustees may use any other reliable incident-specific method. In selecting the appropriate assessment procedures and protocols, the state trustees shall consider the unique characteristics and the location of the natural resources affected by the unauthorized discharge of oil, including adverse impacts caused by response activities, if any. The methods identified in this section shall be designed to ensure that the cost of any restoration, rehabilitation, replacement or acquisition project shall not be disproportionate to the value of the natural resource before the injury. Any assessment generated by the state trustees shall be reasonable and the costs of conducting the assessment shall have a rational connection to the value of the injured resources.

(b) The state trustees may find injury to a natural resource when:

(1) the natural resource was exposed to oil from an unauthorized discharge; and

(2) there was a pathway between the natural resource and the discharged oil; and

(3) reliable methodologies indicate adverse effects on natural resources resulting from exposure to discharged oil; or

(4) the natural resource was adversely impacted by response activities.

(c) The state trustees may find a loss of services when:

(1) the ability of the natural resource to provide ecological services has been reduced as the result of an unauthorized discharge of oil; or

(2) the ability of the natural resource to provide public uses has been reduced as the result of an unauthorized discharge of oil.

(d) The procedures and protocols to determine and quantify injury and loss of services of natural resources may include:

(1) sampling of surface waters for temperature, pH, total suspended solids, salinity, dispersion and other parameters relevant to the fate and effects of oil and its degradation constituents;

(2) sampling of sediments and shoreline materials for reference and for oil and its degradation constituents;

(3) sampling of biota to determine bioaccumulation, acute toxicity, chronic toxicity, reproductive effects, community structure, and other relevant parameters;

(4) analysis of the properties of the discharged oil;

(5) an evaluation of the observable mortality and the potential for acute and chronic effects;

(6) surveys of special protection or management areas, state and federal wildlife refuges, parks, habitats of threatened and endangered species, and other relevant natural areas;

(7) photography, ground truthing, and other appropriate methods to delineate the assessment area;

(8) reviews of relevant and reliable prior studies in scientific and economic literature and appropriate extrapolations therefrom;

(9) studies to determine the actual and potential mortality, and biological and behavioral impacts of the unauthorized discharge of oil on biota;

(10) collection of data and surveys to measure the loss of ecological and public uses;

(11) toxicity testing of the discharged oil to measure impacts on biota actually located in the assessment area;

(12) studies to determine the natural rate of recovery of injured resources considering seasonality, cumulative impacts and natural variations;

(13) techniques to identify functions and values of injured natural resources and their public uses and ecological services;

(14) reliable cost estimates of alternative restoration plans; and

(15) any other reliable techniques to determine injury and damages to natural resources and appropriate assessment methods.

(e) The state trustees shall value the injury to natural resources and any loss of services as a result of an unauthorized discharge of oil utilizing the following valuation methods and criteria:

(1) state trustees shall ensure that no double counting of damages for injuries or loss of services results from the valuation methodology or methodologies employed;

(2) where more than one valuation method is used, the state trustees shall document each natural resource injury and loss of services that each valuation methodology measures;

(3) valuation shall be conducted on an incident-specific basis for the unauthorized discharge of oil. The state trustees shall utilize methods that provide appropriate, valid and reliable resource values for the injuries associated with the unauthorized discharge of oil.

(f) The incident-specific valuation methods utilized by the state trustees may include, but are not limited to, the following:

(1) Fish and wildlife. The Texas Parks and Wildlife Department's guidelines for measuring the monetary value of fish and wildlife resources (as defined in §§69.20-69.31 of this title (relating to Fish and Wildlife Values) may be used to value the loss of fish and wildlife resources.

(2) Recreational services. The travel cost method may be used to estimate the value of recreational services provided by natural resources affected by the unauthorized discharge of oil. The valuation shall be based on information on the number and costs of recreational visits to or near the site.

(3) Factor income method. When a lost or injured resource and/or service is an input to a production process, the factor income methodology may be used. This methodology may be used to estimate the change in economic rent attributable to the injured natural resource or lost service as the result of the unauthorized discharge of oil. When the price of the good being produced is not affected by the injuries to natural resources or the loss of their services, then the change in economic rent is simply the sum of the changes in factor costs for each affected input.

(4) Hedonic price method. The hedonic method relates the price of a marketed commodity, such as real property, to its attributes, such as the quality of the surrounding environment or access to environmental amenities. Where services provided by natural resources, such as water quality or air quality, function as attributes of real property or other market goods, the hedonic price method may be used to determine the value of the change in services for the public.

(5) Market price.

(A) For natural resources traded in markets, the state trustees may utilize the changes in market supply and demand for the natural resource. The measure of damages to consumers of the natural resource is the difference between the price of the marketed resource with and without the injury.

(B) Where the supply of the natural resources is fixed, then the observed change in market price may be used as a proxy for damages per unit of affected natural resource. The measure of damages is the difference between the market with and without the injury.

(C) Appraisal prices may be utilized when market price is not readily determinable. When this method is used, the damages should be measured, to the extent possible, by uniform generally acceptable appraisal standards, and any appropriate federal and state appraisal manuals.

(6) Habitat or species replacement cost method. The habitat or species replacement cost method involves estimating the damages in terms of the cost of obtaining from alternative sources the equivalent of the injured resources. As appropriate, damages may be calculated as the cost of replacing entire habitats that support multiple species and provide a variety of resource services. The quality and the quantity of the resources replaced can be measured by the loss of services occasioned from the onset of the unauthorized discharge of oil through the full recovery of

the injured resources and the restoration of the services. In applying this method, the state trustees should:

(A) quantify a total discounted measure of the lost services over the full duration of the injury, taking into account the extent to which the resource and/or service will recover over time;

(B) determine the total discounted measure of services provided by the restoration or replacement project over the full life of the relevant species or habitat;

(C) calculate the appropriate scale of the restoration or replacement project, such that the total discounted services provided is equivalent to the total discounted value of interim lost services; and

(D) estimate the cost of implementing the restoration or replacement project.

(7) Benefit transfer method. The benefit transfer method involves the application of existing valuation point estimates or valuation function estimates and data that were developed in one context to value a similar resource and/or service affected by the unauthorized discharge of oil. When using benefits transfer, the state trustees should consider:

(A) the comparability of the users and of the resource and/or services being valued in the initial studies and the changes resulting from the discharge of concern;

(B) the comparability of the change in quality or quantity of resources and/or services in the initial studies and the ones affected by the unauthorized discharge of oil of concern, and

(C) the quality of the studies being used for the transfer.

(8) Contingent valuation method. The state trustees may use the contingent valuation method to estimate loss in passive use values that result from an unauthorized discharge of oil. The state trustees shall ensure that contingent valuation instruments are designed and administered in accordance with the recommendations and guidance provided in the *Report of the NOAA Panel on Contingent Valuation*, as published in the *Federal Register* (58 FR 4601), January 15, 1993.

(g) When discounting or compounding, the state trustees shall use the following methods:

(1) For costs of assessment and restoration costs already incurred, the state trustees shall use the realized nominal United States Treasury rates for the past periods over which the costs were incurred to calculate the present value of these costs at the time the claim is presented to the responsible person.

(2) For diminution in value of injured or lost resources or lost resource function, the state trustees shall use a discount rate equal to the real United States Treasury rate of comparable maturity to the duration of the natural resource injury. These rates are published in regular updates to Appendix C of the Office of Management and Budget Circular A-94. The trustees shall use the most recent update to this circular published prior to the date at which the claim is presented.

(3) For estimated restoration costs, the state trustees shall use a discount rate equal to the United States Treasury rate of comparable maturity to the period over which the restoration will be carried out.

(h) The state trustees are entitled to pre-judgment interest and post-judgment interest on natural resource damage claims at a rate equal to the nominal United States Treasury rate, compounded forward from 30 calendar days from the date a damage claim is presented until the time of payment. The specific rate to be used is the one of comparable maturity to the duration of the delay in payment.

§20.33. Expedited Damage Assessment.

(a) An expedited damage assessment may be utilized when:

(1) the following circumstances exist:

(A) the discharge of oil has caused limited observable mortality; and

(B) the extent of injury can be determined within 12 months following the completion of response actions; and

(C) a restoration plan can be initiated within 12 months of the completion of response actions;

(2) the quantity of oil discharged is less than 1,000 gallons; or

(3) the state trustees, using their best professional judgement, determine that the expedited damage assessment method is the most cost-effective, technically feasible method for achieving timely restoration of injured natural resources.

(b) State trustees may utilize appropriate simplified procedures and protocols in an expedited assessment.

(c) The state trustees, in consultation with the responsible person, may decide to use a restoration project from the equivalent resource plan described in §20.36(e) of this title (relating to Equivalent Resource Plans) for the purpose of compensating for injuries to natural resources which are identified as the result of an expedited damage assessment conducted under this section.

§20.34. Comprehensive Damage Assessment.

(a) Comprehensive damage assessment. A comprehensive damage assessment is a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil.

(b) Time limit. The state trustees shall complete the comprehensive damage assessment within 20 months of the completion of response and cleanup activities. The state trustees may petition the commissioner for an extension of the time period for conducting an assessment.

(c) Study design and objectives. When the state trustees determine that incident-specific studies or surveys are required to determine injury, the extent of injury, and the valuation of injury, they shall include a statement of the objectives in the study design. The individual studies may focus on injury determination, injury quantification, and injury valuation including services and passive use values. The objectives shall specify the expected utility of the findings resulting from the study. The state trustees shall exercise their best professional judgment in determining which studies are cost-effective and technically feasible.

(d) The state trustees, in consultation with the responsible person, may decide to use a restoration project from the equivalent resource plan described in §20.36(e) of this title (relating to Equivalent Resource Plans) for the purpose of compensating for injuries to natural resources which are identified as the result of a comprehensive damage assessment conducted under this section.

§20.35. Negotiated Assessment.

(a) State trustee authority. The state trustees may enter into agreements with responsible persons for the assessment of damages and for the restoration, rehabilitation, replacement and/or acquisition of the equivalent of injured natural resources. State trustees may invite federal trustees to join in a negotiated assessment.

(b) Responsible person request. After receiving a notice of intent to perform an

assessment, a responsible person may submit to the lead administrative trustee a request to participate in a negotiated assessment/restoration. The responsible person shall make the request in writing within 15 days of their receipt of the notice of intent to perform an assessment.

(c) State trustee response. The state trustees must respond to the responsible person's request for negotiated assessment within 15 days after receipt. If they reject the request, the state trustees must specify the reason(s) for rejection unless the request has not been made in accordance with subsection (b) of this section.

(d) Termination of negotiated assessment/restoration. At any time during a negotiated assessment, either the responsible person or the state trustees may decide to terminate the agreement. The state trustees and the responsible person shall each prepare a written statement of the factual basis for terminating the agreement and this statement will be included in the assessment record.

§20.36. Plans for Restoration, Rehabilitation, Replacement and/or Acquisition of the Equivalent of Injured Natural Resources.

(a) General. The state trustees shall develop and implement a plan for the restoration, replacement, rehabilitation and/or acquisition of the equivalent natural resources.

(b) Requirements. Each restoration plan developed by state trustees shall:

(1) include an analysis of a natural recovery alternative and other appropriate alternative restoration plans;

(2) be cost-effective and technically feasible;

(3) not have costs disproportionate to the value of the natural resources and the services provided by the resources prior to the unauthorized discharge of oil;

(4) allow for corrective revisions in the execution of the restoration plan;

(5) provide for a period of monitoring sufficient to determine the effectiveness of the plan; and

(6) be available for public review and comment for at least 30 days prior to initiation of the plan.

(c) Procedure. The restoration plan may be developed simultaneously with other portions of the damage assessment.

(1) When the state trustees conduct an expedited damage assessment, restoration plans should be developed as early in the process as practicable.

(2) When the state trustees conduct a comprehensive damage assessment, restoration plans may be developed in phases. Phased restoration plans may be utilized when:

(A) state trustees determine that pilot projects are necessary to establish the feasibility of the restoration plan;

(B) natural recovery is the chosen alternative for some, but not all, of the injured natural resources; or

(C) there is a potential for continuing injury resulting from the unauthorized discharge of oil.

(3) The restoration plan may include any combination of restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources to ensure full compensation for injured natural resources.

(d) Certification of completion. The state trustees, exercising their best professional judgment, shall establish criteria for determining when a restoration plan is completed

(1) The state trustees, when determining whether restoration is complete, shall consider:

(A) performance standards and appropriate measures for their achievement;

(B) natural changes occurring in reference areas; and

(C) ability of the natural resources to maintain their viability without further human intervention.

(2) The state trustees shall issue a certificate of completion to the responsible person when no further actions are necessary to achieve the goals of the restoration plan.

(e) Equivalent resource plans. If an equivalent resource plan has been developed for the ecosystem encompassing the injured natural resources, the state trustees may utilize the projects identified in that plan for purposes of compensating for the injuries resulting from a particular unauthorized discharge of oil.

(1) Public participation. The state trustees, when selecting a restoration project from the equivalent resource plans developed pursuant to this section, shall submit the project for public review and comment according to §20.44 (c) of this title (relating to Public Review and Comment).

(2) Criteria for use of equivalent resource plan project. The state trustees may select a project from the equivalent resource plan when the state trustees, in consultation with the responsible person, determine that:

(A) there is an ecological relationship between the injured resources and the objectives of the particular project;

(B) the direct, on-site, in-kind restoration of the injured resources is not technically feasible or cost-effective; and

(C) utilization of an equivalent resource plan project will result in a level of services substantially similar to those lost as the result of the unauthorized discharge of oil.

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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Subchapter D. Administration

• 31 TAC §§20.40-20.44

The rules are proposed under Texas Natural Resources Code, §40.107, which provides the GLO with the authority to promulgate procedures and protocols for assessing damages to natural resources injured by an unauthorized discharge of oil.

The Texas Natural Resources Code, Chapter 40, is affected by the proposed rules.

§20.40. Assessment Record.

(a) Purpose. The assessment record shall contain documents relied upon by the state trustees in selecting appropriate assessment procedures and protocols and in developing restoration plans. The purpose of the assessment record is to ensure documentation of the state trustees' decisions.

(b) Maintenance and central repository. The assessment record shall be developed and maintained by the lead administrative trustee. All closed assessment records from unauthorized discharges of oil into coastal waters shall be maintained by the commissioner in the Archives and Records Division of the Texas General Land Office.

(c) Contents. Each assessment record shall contain, at a minimum:

(1) Documents. All final documents and references to documents utilized by state trustees in selecting assessment procedures and protocols, and in developing restoration plans;

(2) Data. All technical, scientific and economic information discovered and relied upon by the state trustees during the assessment;

(3) the Notice of Intent to Perform an Assessment;

(4) the preliminary field investigation report and all other information considered in the pre-assessment phase;

(5) a copy of the assessment and the restoration plan as presented to the responsible person,

(6) all correspondence, agreements and other documents related to the role of the responsible person in the assessment process; and

(7) comments received from the public and the state trustees response to those comments.

(d) Exceptions. Certain documents and data, described below, shall not be included in assessment record

(1) Documents. Drafts, pre-decisional, deliberative inter-agency and intra-agency documents shall not be included in the assessment record. Documents describing analysis of liability or any attorney-client privileged documents or attorney work product documents also shall not be included.

(2) Data. Any scientific, technical or economic data that fails to meet all criteria set forth in a quality assurance/quality control plan developed by the state trustees may be included only if there is a scientifically reliable basis for utilizing any of the data.

(e) Availability of the assessment record. The assessment record is a document subject to the Texas Open Records Act, Texas Government Code Annotated, Chapter 552.

§20.41 Recovery of Damages.

(a) In an action filed pursuant to OSPRA, §40 107, the state trustees may recover:

(1) the costs of the assessment, including, but not limited to

(A) salary, fringe benefits, overhead, release, and transportation, lodging and state per diem costs;

(B) the costs of sampling and analyses of oil and natural resources, including reference areas;

(C) the costs of laboratories, contractors, and other experts retained by the state trustees in assessing injury and determining damages,

(D) the cost of the mediation required by §20.43 of this title (relating to Mediation); and

(E) any other costs incurred in carrying out state trustee functions for assessing natural resource damages and for developing, implementing and monitoring plans for the restoration, rehabilitation, and/or acquisition of the equivalent of damaged resources;

(2) the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources in compensation for the injury to natural resources sustained as the result of an unauthorized discharge of oil;

(3) the costs to mitigate further injury to natural resources from the time of the initial discharge until the time of restoration of the injured natural resources and the services they provide;

(4) the diminution in value of the natural resources and the services they provide from the time of the unauthorized discharge of oil and during and after their restoration, replacement, rehabilitation, and/or acquisition of equivalent resources;

(5) fees, economic rent or any payments collectible by the state trustees for the use of the natural resource by a private party; and

(6) all costs that have a rational connection to the assessment and are incurred in the performance of the assessment, and the development, implementation, and monitoring of the restoration plan.

(b) Separate reimbursement. The responsible person shall reimburse assessment costs to each state trustee separately

(c) Limitation on liability. If a responsible person is entitled to a limitation of natural resource damages liability, then any recovery under OSPRA, §40 107 shall be limited as provided in OSPRA, §40 203

(d) Coastal Protection Fund liability. The Coastal Protection Fund (CPF) is absolutely liable for all natural resource damages assessed as the result of injuries caused by an unauthorized discharge of oil into coastal waters. State trustees shall be reimbursed from the CPF pursuant to this subsection.

(1) State trustee costs

(A) State trustees may recover from the CPF all costs incurred responding to an unauthorized discharge of oil and in assessing damages resulting from injuries to natural resources caused by an unauthorized discharge of oil into coastal waters.

(B) State trustees must submit satisfactory proof of costs incurred directly to the commissioner. Satisfactory proof of costs is compliance with the procedures prescribed by and according to the rules of the comptroller of public accounts of the state of Texas. The commissioner will recommend that the comptroller make payment to the state trustees for their assessment costs

(2) Damages for Injuries to Natural Resources. State trustees may make a claim to the CPF for the costs of actions to restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources and for the costs to mitigate injuries to natural resources resulting from an unauthorized discharge of oil pursuant to this subsection.

(3) CPF Liability and limitation

(A) CPF liability. Any damages for injuries to natural resources in excess of the liability limits of OSPRA, §40 203, are payable by the CPF pursuant to this subsection. The CPF is liable when

(i) the federal fund denies the claim, or

(ii) the amount of the claim paid by the federal fund is not sufficient to restore, rehabilitate, replace and/or acquire the equivalent of the injured natural resources

(B) Limitation on CPF liability. If subparagraph (A) of this paragraph applies, then the CPF shall be liable for further damages for restoration, rehabilitation, replacement and/or acquisition of the equivalent natural resources and for the mitigation of injuries to natural resources for a period of two years from the date the federal fund grants or denies the claim.

(4) Reimbursement to the CPF. The commissioner shall diligently seek reimbursement from the federal fund or from responsible persons or any other person who is liable under OSPRA for all expenditures from the CPF.

(e) Assessment claim. The state trustees shall present the assessment claim to the responsible person via hand-delivery or United States Postal Service Return Receipt Requested Certified Mail

(f) Payment of assessment claim. Within 60 days of the presentation of an assessment claim by the trustees, full payment shall be made by the responsible person unless the assessment is in dispute and referred to mediation pursuant to OSPRA, §40.107(c)(7)(F). In the case of successful mediation, full payment of the assessment claim shall be made within 60 days of the completion of the mediation unless otherwise agreed.

(g) Pooling of recovered compensation. When monetary compensation is received by the state trustees as the result of payment of an assessment claim, the state trustees may use funds recovered from more than one assessment claim to execute a project in the equivalent resource plan.

(h) Double recovery prohibited. The commissioner shall ensure that there is no double recovery for natural resource damages resulting from an unauthorized discharge of oil.

§20.42. Settlements.

(a) Negotiated settlement. A negotiated settlement is a binding agreement in which the responsible person agrees to pay the state trustees a certain amount or to perform certain restoration, rehabilitation, replacement and/or acquisition activities. The state trustees, in consideration of the responsible person's promise, will agree to release the responsible person from further liability for damages to natural resources resulting from an unauthorized discharge of oil. Such release shall not be executed until after the payment is received by the state trustees or until after the restoration, rehabilitation, replacement and/or acquisition project is certified complete by the state trustees.

(b) Settlement agreement. The final agreement between the state trustees and the responsible person shall be subject to public review and comment as set forth in §20.44 of this title (relating to Public Participation) and shall provide:

(1) that restoration, replacement and rehabilitation projects be planned and implemented only by persons approved by the state trustees;

(2) that title to real or personal property acquired as compensation for injured natural resources may vest in a public entity only where the terms and conditions for that entity's acceptance of title are met;

(3) that criteria for certification of project completion are specifically enumerated, and

(4) for all items necessary to ensure restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources

§20.43. Mediation.

(a) Prerequisite to judicial review. No state trustee or responsible person may invoke the jurisdiction of any court over a disputed natural resource damage assessment claim unless and until the assessment claim has been referred to mediation pursuant to this section.

(b) Referral to mediation and designation. The mediation process required by OSPRA, §40.107(c)(7)(F), shall be conducted pursuant to this subsection.

(1) Initiation of mediation. The responsible person shall advise the trustees, by giving written notice to the commissioner within 20 days of the receipt of the assessment claim, whether the responsible person is disputing the claim. If the responsible person is disputing the claim, then the claim is automatically referred for mediation pursuant to this section. The state trustees may initiate mediation by giving written notice to the commissioner within 20 days after presentation of the claim to the responsible person.

(2) Commissioner's responsibilities. The commissioner, within ten days of receipt of the written notice, shall notify all parties and the Center of the referral to mediation. If the Center ceases to exist or is unable to comply with the terms of this section for any reason, the American Arbitration Association shall be substituted for the Center. Within ten days from the receipt of the notice of the mediation referral, the Center shall supply the state trustees and the responsible persons with a list of at least five mediators.

(3) State trustee and responsible person responsibilities. Within five days from receipt of the list of mediators, the state trustees collectively shall designate one mediator and the responsible person or persons shall designate one mediator. Both mediator designations shall be made by giving written notice to the commissioner and the Center.

(4) Designation of mediator by the center. If five days have lapsed and either the state trustees collectively or the responsible persons collectively cannot agree among themselves on the designation of a mediator, or the state trustees or the responsible persons fail to timely designate the mediator, then the Center shall make the designation. If the state trustees and the responsible person agree on a single person to serve as mediator, then that person shall be the only mediator.

(5) Timely designation of the mediator. The mediator shall be designated within 45 days of the receipt by the responsible person of the natural resource damage assessment claim from the state trustees.

(6) Qualification of mediator. Any designated mediator must have completed a minimum of 40 classroom hours of mediation training in a course conducted by an alternative dispute resolution system or other dispute resolution organization, as required in Texas Civil Practice and Remedies Code, §154.052(a). This requirement may be waived as to any mediator only with the unanimous consent of all state trustees and all responsible persons. A mediator conducting a mediation under this section shall act as an impartial third party and be subject to the standards and duties set forth in Texas Civil Practice and Remedies Code, §154.053.

(7) Mediator's disclosure. Before appointment of the mediator is final, any prospective mediator shall submit complete disclosure statements for the approval of all parties, which statements shall include a resume of experience, together with a declaration describing all past, present and anticipated future relationships related to the subject matter of the dispute and with all parties and their agents or representatives involved in the dispute.

(9) Mediator. After appointment as a mediator and thereafter throughout the mediation process, the mediator shall not acquire any ownership or any other financial interest in, nor shall be employed by or act as a consultant to, any party to the dispute or the agent or representative of any party to the dispute, and during this period shall not engage in any discussion or make any agreement with any party to the dispute or the agent or representative of any party to the dispute, regarding the acquisition of any ownership or financial interest, employment, or consulting activity after the mediation process is completed. Provided, however, that the parties to the mediation, by unanimous consent, may waive these restrictions upon full disclosure of the facts by the mediator.

(c) Conduct of the mediation. All communications in the mediation shall be confidential and privileged as generally described in Texas Civil Practice and Remedies Code, §154.073. The mediation shall terminate at the conclusion of the period that the parties agree to mediate, including any agreed extensions, but not less than one full business day, or upon declaration by any mediator of an impasse. The mediation shall be scheduled so as to conclude within 135 days after the responsible person receives the natural resource damage assessment claim. Within three days following the termination or conclusion of a mediation, the mediator(s) shall provide the commissioner with notice of the completion of the mediation process.

(d) Location of mediation. The mediation shall take place in Austin, Texas, unless the state trustees and the responsible person agree otherwise.

(e) Authority to negotiate. All participants in the mediation process who represent either a state trustee or a responsible person must be vested with the authority to negotiate a mediated settlement agreement on behalf of their respective state trustee or responsible person and to recommend to the state trustee or responsible person approval of any mediated settlement agreement.

§20.44. Public Participation.

(a) Public notice, review and comment. Public notice means the state trustees are advising the public about proposed actions. Public review and comment means the public has an opportunity to review and comment on the proposed state trustee actions.

(b) Notice of state trustee action. The state trustees shall give public notice through the use of the Texas Register and at least one newspaper of general circulation serving the impacted area. The state trustees shall provide for a period of public review and comment of at least 30 days whenever public review and comment is required in this section. The state trustees shall not execute any documents which relieve a responsible person from liability for damages resulting from injury to natural resources until the public review and comment period has expired.

(c) Public review and comment. The state trustees shall provide the public with the opportunity for review and comment when they select assessment procedures and protocols for a negotiated, expedited or comprehensive assessment. The state trustees shall provide the public with the opportunity for review and comment when a restoration plan is proposed and prior to the certification of completion of a restoration plan.

(d) Public participation in equivalent resource plans. The state trustees shall invite members of the public from the area encompassed by an equivalent resource plan to participate in the development and design of the plan. When an equivalent resource plan is proposed for adoption by the state trustees, the commissioner, in conjunction with the trustees, shall conduct, upon the request of any member of the public, a public hearing on the proposed plan. The public hearing shall be convened in or near the area covered by the equivalent resource plan.

(e) Public participation in assessment decisions. The state trustees may invite a member of the public to participate in determining whether an assessment of any kind is necessary. The person invited to participate shall be a member of an environmental or conservation group which is organized for preservation or enhancement of

the natural resources in the area where the unauthorized discharge of oil occurred. The person may participate in the state trustee determination but shall not have any vote in any decision of the state trustees. After the state trustees have decided whether an assessment will be performed, the person's further role in the proceeding shall be at the discretion of the state trustees, who shall take into account the public's right to review and comment on state trustee actions.

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 August 15, 1994.

TRD-9446651 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 305-9129

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) proposes amendments to §§47.1901, 47.1903, 47.1904, 47.2901, 47.2903-47.2908, 47.2911, 47.2912, 47.2914, 47.3901, 47.3906, 47.3908, 47.4904, and 47.6901; proposes the repeal of §47.4903; and proposes new §47.4905, concerning general provisions and services, service requirements, claims payment, provider contracts, and sanctions, in its primary home care chapter. The purpose of the proposal is to allow primary home care provider agencies to apply to provide family care services as a second service under the primary home care program, add policy related to the provision of family care services; and make editorial changes to some rules. Also in this issue of the Texas Register, DHS is proposing the repeal of Chapter 53, Family Care Program.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be that family care clients will have a choice of provider agencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Gail Archibald at (512) 450-3140 in DHS's Long Term Care depart-

ment. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-203, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

General Provisions and Services

- 40 TAC §§47.1901, 47.1903, 47.1904

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and 32.001-32.041.

§47.1901. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Adult-A person 18 or older, or an emancipated minor.

Aged or elderly person-A person 65 or older.

Client-A person who is determined by the department to be eligible for [primary home care] services.

Emancipated minor-A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married.

Family care-A nonskilled, nontechnical in-home attendant service provided to eligible aged and disabled adults who are functionally limited in performing daily activities.

Income eligible-An adult who is neither a Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC) client, but who has income that is equal to or less than the eligibility level established by the department.

Institution-A nursing home, personal care home, intermediate care facility for the mentally retarded (ICF-MR), or state hospital.

Person with a disability-A person who, because of physical, mental, or developmental impairment, is limited in his capacity to adequately perform one or more essential activities of daily living. Activities of daily living include but are not limited to:

- (A) personal and health care;

(B) mobility;

(C) communication; and

(D) money management.

Physician's order—An order for primary home care services that is signed and dated by a **medical doctor (MD)** [physician] or **doctor of osteopathy (DO)** who is licensed to practice medicine and who does not have a prohibitive ownership or significant financial or contractual relationship (42 Code of Federal Regulations) §405.1633(d) with the agency that will deliver primary home care.

Prior approval—A decision made by the department regional nurse/caseworker [nurse], before services begin and before payment can be made, that the applicant or client meets the department [medical] criteria for the requested [Medicaid] service.

Special attendant—A provider agency employee who can substitute for another attendant.

Supervisor [RN supervisor]—A licensed nurse or individual who meets home and community support services personal assistance services licensing standards. For primary home care services, the supervisor must be a registered nurse. This description applies when the term "supervisor" is used as a stand-alone term. Other types of supervisors are clearly referenced in context. [A nurse who is currently licensed as a registered nurse by the Texas Board of Nurse Examiners and who supervises the primary home care attendants.]

Unit of service—One hour of authorized [primary home care] service delivered to a prior-approved client.

§47.1903. Staffing Requirements.

(a) A supervisor [registered nurse] must supervise [primary home care] attendants [in their delivery of primary home care]. The provider agency must not knowingly send attendants who have symptoms of communicable disease to a client's home.

(b) Attendants must:

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

(3) not be spouses of clients (not applicable to family care).

(c) The two types of attendants are as follows.

(1) (No change.)

(2) **Special attendants.** Special attendants may be used to initiate services, prevent a break in service, or provide ongoing services. Although special attendants are required to receive the general orientation specified in paragraph (1) of this subsection, they do not have to receive it in the client's home as long as they meet the following requirements

(A) (No change.)

(B) The special attendant must either:

(i) (No change.)

(ii) meet the following requirements:

(I) (No change.)

(II) have demonstrated competency in providing personal care tasks to the satisfaction of the [RN] supervisor; or

(iii) (No change.)

§47.1904. Training Requirements.

[(a)] Before assuming responsibilities, all [RN] supervisors must receive [at least seven hours of orientation that addresses all the following:

[(1) basic principles of supervision;

[(2) interpersonal skills in dealing with clients and families;

[(3) client characteristics and needs; and

[(4)] training in the policies and procedures of the Primary Home Care Program, and family care services, if the provider agency delivers this service.

[(b)] The provider agency must document, in the RN supervisor's personnel record, that he received orientation before assuming supervisory responsibilities.

[(c)] The RN supervisor must sign and date a statement that he received the required orientation before assuming supervisory responsibilities.

[(d)] RN supervisors must, on an ongoing basis, assess the training needs of each attendant and develop and give training to remedy areas of deficiency.]

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 August 12, 1994.

TRD-9446618

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

Proposed date of adoption. November 1, 1994

For further information, please call: (512) 450-3765

Service Requirements

• 40 TAC §§47.2901, 47.2903-47.2908, 47.2911, 47.2912, 47.2914

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and 32.001-32.041.

§47.2901. Referrals to Provider Agencies.

(a) (No change.)

(b) If the provider agency is delivering services according to the requirements in this chapter, a client may not change provider agencies until six months after the beginning of the current prior approval period, unless the client and the provider agency mutually agree. This restriction does not limit the client's or provider agency's choice of attendants unless:

(1) (No change.)

(2) the [RN] supervisor, caseworker, or regional nurse has determined that the attendant is not providing adequate care.

§47.2903. Provider Agency Requirements after Verbal Referral for Primary Home Care.

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

[(g)] The provider agency must begin service on the date verbally negotiated with the caseworker if the regional nurse gives prior approval, or on the date of the regional nurse verbal approval if that date is after the negotiated date.]

§47.2904. Critical Omissions/Errors for Primary Home Care.

(a) If the client health assessment/proposed service plan form or the physician's order for primary home care is missing, or if any of the following critical omissions or errors has occurred in the required documentation, the provider agency cannot obtain prior approval.

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

(7) The physician's order form does not include the MD or DO credential of the physician [or osteopath] who signed the order.

(8) The physician's order does not include the license number of the physician [or osteopath] who signed it.

(9)-(13) (No change.)

(b) (No change.)

§47.2905. *Initiation of Service.*

(a) The provider agency must initiate services within the following time frames:

(1) for primary home care, within seven days of the beginning date of coverage on the prior approval/confirmation of services form; and

(2) for family care, within 14 days of the date on the prior approval form.

(b)-(e) (No change.)

(f) For verbally negotiated referrals, the provider agency must begin services:

(1) on the date verbally negotiated with the caseworker, if the regional nurse gives prior approval;

(2) on the date of the regional nurse's verbal approval, if that date is after the negotiated date; or

(3) for family care, on the date verbally negotiated with the caseworker.

§47.2906. *Orientation of Attendants*

(a) Before or when services begin, the [RN] supervisor must meet with the attendant and the client in the client's home to give the attendant a general orientation about the client. The [RN] supervisor is not required to give this onsite orientation to the special attendant, but must give him verbal or written orientation before he goes to clients' homes.

(b) Orientation must include the following:

(1)-(2) (No change)

(3) symptoms or changes in the client's health status about which the attendant should notify either the [RN] supervisor or the attending physician; and

(4) situations that the attendant must report to the [RN] supervisor as soon as possible, including:

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

(c) The [RN] supervisor must:

(1) complete the attendant orientation/supervisory visit [primary home care attendant orientation/RN supervisory] form during the orientation,

(2)-(3) (No change)

(d) The [RN] supervisor must also explain to the client and give him a written copy of the provider agency's complaint procedures. The [RN] supervisor must give the client a tentative date, in writing, for the first supervisory visit.

§47.2907. *Sixty-day Supervisory Visits.*

(a) The [RN] supervisor must make an onsite home visit to the client at least every 60 days, beginning with the client's initial assessment.

(b) The [RN] supervisor must document that the attendant is present during alternating regularly scheduled supervisor visits (at least every 120 days).

(c) During each supervisory visit, the [RN] supervisor must:

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

(d) The [RN] supervisor must conduct supervisory visits for all clients unless services are suspended during the last week of the 60-day supervisory visit period or unless services are terminated before the end of the 60-day supervisory visit period. If services are suspended for a client and he does not receive the 60-day supervisory visit, the [RN] supervisor must conduct a supervisory visit within seven days after services resume.

§47.2908 *Monitoring Medicaid Eligibility for Primary Home Care.* Each month the provider agency must verify that a client has received a current medical care identification card. If the client becomes ineligible for Medicaid, the provider agency must suspend services and notify the caseworker or staff in the caseworker's office on the day of the suspension or the next Texas Department of Human Services [DHS] workday.

§47.2911. *Make-up Services.* The provider agency may provide make-up services if an attendant misses a scheduled visit and if all of the following conditions are met.

(1) (No change.)

(2) Documentation in the client's case folder indicates that the [RN] supervisor authorized the make-up services.

(3) The [RN] supervisor documented the client's agreement to receive make-up services on another day

(4)-(5) (No change)

§47.2912. *Service Plan Changes*

(a) No later than the first Texas Department of Human Services [DHS] workday after becoming aware of the change, the provider agency must verbally notify the caseworker or staff in the caseworker's office about any change that may require a service plan change or service termination. The provider agency must follow up this verbal notification with further notification in writing, to the caseworker, using the attendant orientation/supervi-

sory visit [primary home care attendant orientation/RN supervisory] form. Written notification must occur within seven days after verbal notification.

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

(d) If the caseworker notifies the [RN] supervisor that an immediate [service plan] change is needed, the [RN] supervisor and the caseworker [contacts the regional nurse to] discuss:

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

(e) The [RN] supervisor must send the attendant orientation/supervisory visit [primary home care attendant/RN supervisory] form to the caseworker [regional nurse] within 30 days of receiving verbal approval for a client needing an immediate service plan change. The form must include the following documentation:

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

§47.2914. *Suspension of Services.*

(a) The provider agency must suspend services before the end of the prior approval period if one or more of the following circumstances occurs.

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

(5) The physician requests that services end (not applicable to family care).

(6) The department denies the client's Medicaid eligibility (not applicable to family care).

(7)-(8) (No change)

(b) The provider agency may suspend services if one or more of the following circumstances occurs.

(1) The client or someone in the client's home racially discriminates against the attendant or the [RN] supervisor in the client's home.

(2) (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 August 12, 1994.

TRD-9446617 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption. November 1, 1994

For further information, please call: (512) 450-3765

Claims Payment

- 40 TAC §§47.3901, 47.3906, 47.3908

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and 32.001-32.041.

§47.3901. Claims Requirements.

- (a) (No change.)
- (b) The provider agency is not entitled to payment if:
 - (1)-(2) (No change.)
 - (3) the number of hours delivered and reimbursed [billed] exceeds the number of hours authorized on the prior approval for CCAD services form;
 - (4) (No change.)
 - (5) the provider agency fails to submit prior approval forms for verbally approved services or supporting documentation to the regional nurse within the required time frames specified in §47.2902 of this title (relating to Requesting Prior Approval for Primary Home Care);
 - (6)-(7) (No change.)
 - (8) the attendant was not supervised by a registered nurse (not applicable to family care);
 - (9) services are ordered by a physician who has been excluded from the Medicare or Medicaid program or both (not applicable to family care); or
 - (10) (No change.)
- (c)-(d) (No change.)

§47.3906 Claims Payment Reviews and Audits.

- (a) Service delivery records. The provider agency must use the Texas Department of Human Services' (DHS's) [TDHS] service delivery record form to document services delivered, unless it obtains written approval from the department's assistant commissioner for provider systems to use a different timesheet. The provider agency must not pre-print or pre-enter the time in, time out, total time, or monthly total of hours in the record of time portion of any timesheet.
 - (b)-(e) (No change.)

(f) Documentation errors. Documentation errors may cause claims for services to be disallowed.

(1) Two types of documentation errors may cause monetary exceptions.

(A) Administrative errors. Administrative errors result in exceptions applied to the administrative portion of the unit of service. An [For primary home care services, an] exception of 17% of the paid unit rate is the administrative portion applied to the unit of service.

(B) (No change.)

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

(g) (No change.)

(h) List of administrative errors. Administrative errors include, but are not limited to, the following

(1) The provider agency leaves the month and year of service blank at the top of the timesheet, but the month and year can be verified elsewhere on the timesheet. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(2) The attendant completes the time in and time out columns, but leaves the daily total time column blank, and the timekeeper fails to enter the daily total time based on the attendant's entry. The department applies the error to the total number of units reimbursed [claimed] for the days left blank

(3) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant worked. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(4) The timekeeper corrects the date of signature, but fails to initial the correction. The department applies the error to the number of units reimbursed [claimed] after the earliest signature date.

(5) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(6) The timekeeper enters a date of signature that is before the date of the last day services are delivered. The department applies the error to the total number of units reimbursed [claimed] after the signature date.

(7) The timekeeper fails to sign the timesheet. The department applies the error to the total number of units reimbursed [claimed] for the pay period

(8) The timekeeper uses a signature stamp, but fails to initial the stamped signature. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(9) The attendant and/or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the timesheet. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(10) The attendant and/or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. The department applies the error to the total number of units reimbursed [claimed] for the days in which entries are illegible.

(11) The attendant fails to initial an increase in the daily total time or the monthly total of hours for the pay period. The department applies the error to the number of units reimbursed [claimed] in excess of the original entry.

(12) The attendant fails to sign the timesheet. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(13) The provider agency uses a timesheet that has not been approved by the department. The department applies the error to the total number of units reimbursed [claimed] while using an unapproved timesheet.

(14) The department reimburses the provider agency [makes a claim] for services, but a valid prior approval/confirmation of services form is missing for the period reimbursed [claimed] by the agency. The department applies the error to the total number of units reimbursed [claimed] and not covered by a valid prior approval/confirmation of services form.

(15) The department reimburses the provider agency [makes a claim] for services, but a valid physician's order is missing for the period reimbursed [claimed] by the agency. The department applies the error to the total number of units reimbursed [claimed] and not covered by a valid order.

(i) List of financial errors. In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the following

(1) The department reimburses the provider agency [makes a claim] for services, but the timesheet is missing for the period for which services are reimbursed [claimed]. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(2) The attendant leaves the entire record of time column blank. The department applies the error to the total number of units reimbursed [claimed] for the pay period.

(3) The department reimburses the provider agency [bills the department] for hours that exceed the authorization given by the department. The department applies the error to the total number of units reimbursed [claimed] in excess of the units authorized by the department.

(4) The department reimburses the provider agency [bills the department] for hours that exceed the total number of hours recorded on the timesheet. The department applies the error to the total number of units reimbursed [claimed] in excess of the units recorded on the timesheet. If the sum of the time in and time out does not equal the total time or if the sum of the daily totals of time does not equal the monthly total of hours on the timesheet, then the lesser of the two totals is used to calculate the total number of hours recorded on the timesheet.

(5) The same provider agency bills the department for units of service under both the Primary Home Care Program and the Family Care Program for the same client during the same time period. The department applies the error to the total number of units claimed for the same time period, in the program with the highest unit rate.]

(5)[(6)] The department reimburses the provider agency [bills the department] for units of service for days on which the client did not receive services or was Medicaid ineligible (not applicable to family care). The department applies the error to the total number of units reimbursed [claimed] for the day on which the client did not receive services or was Medicaid ineligible (not applicable to family care).

(j) The department reimburses the provider agency for any underpayments reflected in the audit reports. The department may withhold the reimbursement of an underpayment if the provider agency has an outstanding audit exception.

§47.3908. Expedited Payment System.

(a) Eligibility for Participation.

(1) Provider agencies [Primary home care providers] must have billed for services for 12 consecutive months before application. Providers must have delivered and received payment, after line item rejections, for 80% of their authorization for claims processed for three service months preceding the month of application.

(2) (No change.)

(b)-(e) (No change.)

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

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

TRD-9446616

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

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

Provider Contracts

• 40 TAC §47.4904

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22 001-22 024 and 32 001-32.041.

§47.4904. Contract Assignments.

(a) (No change.)

(b) Before an assignment is made, the assignee must follow the requirements of this subsection.

(1) (No change.)

(2) Prepare a contract assignment agreement that includes the following statements: [.]

(A) the reasons for the contract assignment; [The contract assignment agreement must include the following statements.]

(B) that:

(i) both [Both] the assignee and assignor are liable for any audit exceptions incurred and for any adverse actions taken by the department based on actions occurring during the contract period before the contract assignment; [Both agencies must agree that]

(ii) the department reserves the right to receive restitution for any audit exceptions from either agency; [.]

(iii) any [Any] adverse action pending or in place when the contract is assigned is applied to both the assignee and the assignor; [.]

(iv)[(ii)] The the assignee and assignor [is] are each responsible for collecting and reporting financial and statistical [a full year's expense] data on [including the assignor's portion of] the department's cost report that corresponds to its respective contract periods; [.]

(v)[(iii)] the [The] assignee adheres to the primary home care contract, reimbursement method and amount, service delivery requirements, and standards established by the department; and [.]

(vi)[(iv)] the [The] assignee meets all criteria for being a provider agency of primary home care. Documentation of eligibility must be provided before the department will agree to a contract assignment

(C)[(B)] The contract assignment agreement must also:

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

[(iii)] be effective the first day of a month; and]

[(iii)[(iv)] be notarized and signed by the person authorized for each legal entity; and [.]

(iv) include a line for the Texas Department of Human Services representative to sign and approve.

[(3)] Complete the following documents.

[(A)] Title XIX primary home care provider agreement;

[(B)] application for participation in the Title XIX Primary Home Care Program,

[(C)] corporate board of directors resolution (for corporation only), and

[(D)] disclosure of ownership and control interest statement

[(4)] Submit the following documents

[(A)] a copy of the TDH letter that confirms the Class A number belonging to the assignee,

[(B)] a copy of the letter from the National Heritage Insurance Company (NHIC) that confirms the assignee's participation in the Title XIX Medicaid program, and

[(C) a copy of one of the following forms:

[(i) if the assignee is a corporation, the certificate of incorporation issued by the secretary of state, identifying the corporate charter number of the assignee;

[(ii) if the assignee is a limited partnership, the certificate of limited partnership;

[(iii) if the assignee is a general partnership, the general partnership agreement. If none exists, attach a statement to that effect;

[(iv) if the entity is an out-of-state corporation, the authorization that allows the entity to do business in Texas.]

(c) (No change.)

(d) If the assignee does not meet the conditions for contracting, or if the [Class A] home and community support services agency license(s) is/are [license is] assigned to another agency on or before the date the contract is assigned, the department immediately terminates the assignor's contract and transfers all clients to another provider agency.

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

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

TRD-9446615 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
• 40 TAC §47.4903

(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 provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements §§22.001-22.024 and 32.001-32.041 of the Human Resources Code.

◆ ◆ ◆
§47.4903. Subcontracting.

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 August 12, 1994.

TRD-9446613 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
• 40 TAC §47.4905

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.024 and 32.001-32.041

§47.4905. Option to Contract for Family Care Services. Primary home care provider agencies may apply to provide family care services as a second service under the primary home care program.

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

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

TRD-9446612 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
Sanctions

• 40 TAC §47.6901

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and 32.001-32.041.

◆ ◆ ◆
§47.6901. Performance-based Sanctions.

(a) (No change.)

(b) Courtesy reviews. Each provider agency is entitled to receive or decline one courtesy review before a formal review is conducted. This review is conducted according to the requirements specified in subsections (c)(3) -(5) [(c)(4)-(6)], (d)-(e), (g)-(h), and (j)(1)-(2)(A) of this section. The review is nonbinding and is intended to identify possible problem areas when formal agency reviews are conducted. The department reads from three to five cases for each registered nurse supervisor identified by the provider agency as currently supervising attendants [in the Primary Home Care Program]. The provider agency chooses the cases to be read and includes, for each supervisor [nurse], at least one case that received initial prior approval during the reading quarter.

(c) Formal agency reviews. All provider agencies are subject to a systematic review of client case records to determine if the provider agency's performance meets the minimum compliance level established for primary home care, and family care, if provided. If the provider agency fails to meet the minimum compliance level for two consecutive formal reviews, the department terminates the provider agency's contract. [All formal agency reviews are conducted according to the requirements specified in this section.]

(1) (No change.)

[(2) The department determines the order of agencies to be reviewed for the initial cycle of formal reviews in the following manner.

[(A) The department uses the agency review portion of utilization review findings from the four most recent quarters for which the provider agency's records have been read to place the provider agency into one of three performance categories.

[(B) Performance categories reflect the provider agency's past performance in meeting primary home care standards. The department determines a provider agency's performance category by using a statistical estimate produced from the provider agency's aggregated samples plus a margin of error.

[(C) The department computes the margin of error for each provider agency based on an 85% confidence level. The margin of error varies between provider agencies because of factors such as sample size.

[(i) The department uses a margin of error which is either the distance between the compliance percentage point estimate and:

[(I) the upper confidence limit; or

[(II) the lower confidence limit, whichever is appropriate.

[(ii) In all cases, two-sided limits are used.

[(D) The department reviews provider agencies in the following ascending order of performance category, unless department staff decide otherwise:

[(i) Below compliance. Provider agencies whose past performance is less than 90% after the upper margin of error has been added to their compliance percentage point estimate.

[(ii) Undecided. Provider agencies whose past performance is less than 90% after the lower margin of error has been subtracted from their compliance percentage point estimate, but is 90% or greater after the upper margin of error has been added to their compliance percentage point estimate.

[(iii) Above compliance. Provider agencies whose past performance is 90% or greater after the lower margin of error has been subtracted from their compliance percentage point estimate.

[(E) Provider agencies that have fewer than four quarters of data are scheduled for review at the convenience of the department.]

(2)[(3)] When all agencies in a region have been reviewed, the department conducts formal reviews at least annually. The department reserves the option to perform formal reviews at any time with at least 14 days written notice.

(3)[(4)] The department reviews a sample of the provider agency's cases to determine the provider agency's compliance with the contract document and the primary home care provider manual in the following areas:

- (A) nursing assessments;
- (B) response to referral;
- (C) service initiation;
- (D) delivery of service as authorized;

(E) orientation of attendants;

(F) attendant competency;

(G) supervisory visits;

(H) initial training requirements for [R.N.] supervisors; and

(I) service breaks.

(4)[(5)] During an agency review, the provider agency is entitled to receive ongoing feedback on missing documents.

(5)[(6)] Before department staff leave the review site, the provider agency is entitled to receive its tentative score and findings.

(6)[(7)] Missing documents identified by the department must be received by the department within three work-days after department staff leave the review site. The provider agency may, within the same time frame, request missing documents identified by the review team to be copied from Texas Department of Human Services (DHS) [TDHS] files. The request must be in writing and addressed to the regional director for aged and disabled services. The provider agency is solely responsible for maintaining all necessary service documentation; secondary documentation is not acceptable. Documents received according to the requirements in this paragraph are used to adjust scores in the following manner:

(A) First formal review. DHS [TDHS] staff adjust the score of the provider agency upon receipt of the missing documents. DHS-provided [TDHS-provided] documents, requested as stated in this paragraph, are used to adjust the agency's score even if the documents are received after the three-day period.

(B) Second formal review. The department does not accept missing documents from any source after the three-day period expires. DHS [TDHS] staff adjust the provider agency's score using only those documents received within the three-day period.

(C) Receipt of adjusted scores. The provider agency is entitled to receive its adjusted score within 14 days after the review team leaves the review site.

(d) Noncompliance with standards. The department determines the provider agency to be in noncompliance with a standard when the standard is not met or when the record that documents compliance is

illegible, missing, or not completed according to department rules and procedures. The provider agency must present to the department all missing records and documentation according to subsection (c)(6) [(c) (7)] of this section; the department does not accept records and documentation provided by the provider agency at a later date. The provider agency is responsible for identifying and correcting any deficiency(ies) in its organization which result in noncompliance with one or more standards. The department does not evaluate or measure corrective action plans implemented by the provider agency but limits agency reviews to determining whether the standards are met or unmet.

(e)-(i) (No change.)

(j) Exit conferences. The provider agency is entitled to an exit conference with department staff within 14 days after the review team leaves the review site.

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

(3) The provider agency receives the following from the department during the exit conference for the second formal agency review:

(A) (No change.)

(B) an intent to terminate letter, if the provider agency fails to meet the minimum compliance level for two consecutive reviews. The letter states:

(i) (No change.)

(ii) that the provider agency does not receive additional [primary home care] referrals beginning the date of the exit conference;

(iii)-(v) (No change.)

(vi) that the department places a vendor hold on the contract effective:

(I) 15 [20] days from the receipt of the intent to terminate letter if an appeal is not filed according to the requirements in subsection (n) of this section; or

(II) (No change.)

(k)-(m) (No change.)

(n) Appeals.

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

(3) If the department's appeal decision is in favor of the provider agency, the contract remains in effect with no adverse action and the department resumes [primary home care] referrals. If the department upholds the decision to terminate the contract, the department:

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

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

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

TRD-9446614 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption November 1, 1994

For further information, please call (512) 450-3765

Chapter 53. Family Care Program

The Texas Department of Human Services (DHS) proposes the repeal §§53. 101, 53.102, 53.201-53.204, 53.301, 53.302, 53.401-53.404, 53.501-53.504, and 53.601-53.603, in its family care program chapter. The purpose of the repeals is to delete the family care program as a separate program, but allow primary home care provider agencies to apply to provide family care services as a second service under the primary home care program. Also in this issue of the *Texas Register*, DHS is proposing related amendments in Chapter 47, Primary Home Care

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be that family care clients will benefit from having a choice of primary home care provider agencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Gail Archibald at (512) 450-3140 in DHS's Long Term Care department. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-203, 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 repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

Program Definitions

- 40 TAC §§53.101, §53.102

(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 implement the Human Resources Code, §§22.001-22.024.

§53.101. *Required Services.*

§53.102. *Definition of Program Terms.*

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 August 12, 1994.

TRD-9446611 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

Contracting for Family Care Services

- 40 TAC §§53.201-53.204

(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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement §§22.001-22.024 of the Human Resources Code.

§53.201. *General Contracting Requirements.*

§53.202. *Method of Contracting.*

§53.203. *Subcontracting.*

§53.204. *Contract Assignments.*

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 August 12, 1994.

TRD-9446610 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

Provider Agency Staff Requirements

- 40 TAC §§53.301, §53.302

(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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement §§22.001-22.024 of the Human Resources Code.

§53.301. *Staff Requirements.*

§53.302. *Training Requirements.*

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 August 12, 1994.

TRD-9446609 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

Service Delivery Requirements

- 40 TAC §§53.401-53.404

(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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement §§22.001-22.024 of the Human Resources Code.

§53.401. *Service Initiation.*

§53.402. *Supervision.*

§53.403. *Service Delivery Requirements.*

§53.404. *Suspension of Services.*

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

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

TRD-9446608

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

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
Claims

• 40 TAC §§53.501-53.504

(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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement §§22.001-22.024 of the Human Resources Code.

§53.501. Billing and Claims Payment.

§53.502. Reimbursement Methodology for Family Care Services.

§53.503. Claims Payment Reviews and Audits.

§53.504. Expedited Payment System.

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 August 12, 1994.

TRD-9446607

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

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
Reviews and Audits of Provider Agency Records

• 40 TAC §§53.601-53.603

(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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement §§22.001-22.024 of the Human Resources Code.

§53.601. Recordkeeping Requirements.

§53.602. Monitoring Service Delivery.

§53.603. Audits.

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 August 12, 1994.

TRD-9446606

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

Proposed date of adoption: November 1, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆
TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 9. Contract Management

Construction Division Practice and Regulations

• 43 TAC §§9.1-9.3

(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 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 §§9.1-9.3, concerning prequalification of contractors, transmittal of notice to contractors, and issuance and submission of proposals. Sections 9.1-9.3 are no longer necessary due to the simultaneous adoption of new §§9.10-9.19, governing bidder qualification, bidding, award, and execution of highway improvement contracts.

Texas Civil Statutes, Article 6674i, require the commission to prescribe rules on all bidders on bids for contracts awarded for the improvement of the state highways system. These new sections expand and update the provisions of existing §§9.1-9.3; ensure a fair and equitable bidding process for highway improvement contracts; inform potential bidders and the general public of department policy and procedures; and consolidate commission policy and procedures including those found in §§9.1-9.3.

Walter W. Chambers, P.E., Director of Construction and Maintenance Division, has determined that for each year of the first five-year period the repeals are in effect there will

be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Mr. Chambers has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeals.

Mr. Chambers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to ensure a fair and equitable bidding process and to inform the public of department policy and procedures. 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.

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 August 29, 1994, in Room 101 of Riverside Annex, 200 East Riverside, 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 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 repeals may be submitted to Wayne W. Chambers, Director of Construction and Maintenance, 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 September 19, 1994.

The repeals are proposed under Texas Civil Statutes, Article 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 Texas Civil Statutes, Article 6674i, which require the commission to

prescribe rules on all bidders on bids received for contracts awarded for the improvement of the state highway system.

Texas Civil Statutes, Article 6674i, is affected by these repeals.

§9.1. Prequalification of Contractors.

§9.2. Transmittal of Notice to Contractors.

§9.3. Issuance and Submission of Proposals.

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 August 12, 1994.

TRD-9446563

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8630

◆ ◆ ◆
Subchapter B. Highway Improvement Contracts

• 43 TAC §§9.10-9.19

The Texas Department of Transportation proposes new §§9.10-9.19, and new Subchapter B, concerning Highway Improvement Contracts. These new sections prescribe the policies and procedures governing bidder qualification, bidding, award, and execution of a contract entered under Texas Civil Statutes, Article 6674a, et seq, in one subchapter.

Texas Civil Statutes, Article 6674i, require the commission to prescribe rules on all bidders on bids for contracts awarded for the improvement of the state highway system; and Texas Civil Statutes, Article 6674h-2, authorize the department under certain conditions to award highway improvement contracts in cases of emergency. This new subchapter reenacts simultaneously repealed §§9.1-9.3, concerning prequalification of contractors, transmittal of notice to contractors, and issuance and submission of proposals, and §§9.20-9.22, concerning emergency contract procedures. These new sections expand and update the provisions of existing §§9.1-9.3; ensure a fair and equitable bidding process for highway improvement contracts; inform potential bidders and the general public of department policy and procedures, and consolidate commission policy and procedures.

Walter W. Chambers, P.E., Director of Construction and Maintenance Division, 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.

Mr. Chambers 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. Chambers 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 new sections will be to ensure a fair and equitable bidding process and to inform the public of department policy and procedures. There will be no effect on small businesses. There will be additional economic cost to persons who are required to comply with the sections as proposed. These costs cannot be estimated due to several factors such as the firm engaged to perform the service, size of the contractor's firm, and the possibility of competitive bidding to provide services.

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 sections. The public hearing will be held at 9:00 a.m. on August 29, 1994, in Room 101 of Riverside Annex, 200 East Riverside, 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 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 Wayne W. Chambers, Director of Construction and Maintenance, 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 September 19, 1994.

The new sections are proposed under Texas Civil Statutes, Article 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 Texas Civil Statutes, Article

6674a, et seq, which authorize the department to construct and maintain the state highway system; Article 6674h-2, which authorizes the department under certain conditions to award highway improvement contracts in cases of emergency; and Article 6674i which requires the commission to prescribe rules on all bidders on bids received for contracts awarded for the improvement of the state highway system.

Texas Civil Statutes, Articles 6674a, et seq, Article 6674h-2, and Article 6674i are affected by the proposed new sections.

§9.10. Purpose. The sections under this subchapter prescribe the policies and procedures governing bidder qualification, bidding, award, and execution of a contract entered under Texas Civil Statutes, Article 6674a, et seq.

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

Available bidding capacity—Bidding capacity less uncompleted work under contract.

Bidder—An individual, partnership, limited liability company, corporation or any combination submitting a proposal.

Bidding capacity—The maximum dollar value a contractor may have under contract at any given time.

Building contract—A contract entered under Texas Civil Statutes, Article 6674a et seq for the construction or maintenance of a department building or appurtenant facilities.

Commission—The Texas Transportation Commission.

Construction contract—A contract entered under Texas Civil Statutes, Article 6674a et seq for the construction or reconstruction of a segment of the state highway system.

Department—The Texas Department of Transportation.

Deputy executive director—Any one of six second tier managers appointed by the executive director to the position of deputy executive director or assistant executive director.

Disadvantaged business enterprise—As defined in 49 Code of Federal Regulations (CFR) §23.5, a small business concern, certified by the department, which is 51% owned by one or more minorities or women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more such individuals.

District engineer—The chief executive officer in each of the designated district offices of the department.

Electronic bid—The submission of bid information on a computer diskette as a

supplement to the proposal for use in the bid tabulation.

Emergency—Any situation or condition of a designated state highway, resulting from a natural or man-made cause, which poses an imminent threat to life or property of the travelling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce.

Executive director—The executive director of the Texas Department of Transportation.

Highway improvement contract—A construction, maintenance, or building contract.

Maintenance contract—A contract entered under Texas Civil Statutes, Article 6674a, et seq, for the maintenance of a segment of the state highway system.

Materially unbalanced bid—A bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the state.

Mathematically unbalanced bid—A bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Proposal—The offer of the bidder, made out on the prescribed form, giving bid prices for performing the work described in the plans and specifications.

Proposal guaranty—The security designated in the proposal and furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

§9.12. Qualification of Bidders and Registration of Subcontractors.

(a) Audited financial qualification of construction and maintenance bidders. Unless waived under paragraph (2) of this subsection, to be eligible to bid on a construction or maintenance contract a potential bidder must be prequalified in accordance with paragraph (1) of this subsection.

(1) Requirements.

(A) To be qualified to bid on a construction or maintenance contract, a potential bidder must:

(i) submit a confidential questionnaire in a form prescribed by the department, which shall include certain information concerning the bidder's equipment and experience as well as financial condition; and

(ii) have its certified public accountant or public accountant submit the audited and other financial information required by the current edition of the department's Bulletin Number 2, titled "Contractor's Financial Resources."

(B) The department will make its examination and determination based on the information submitted, and advise the bidder of its approved bidding capacity.

(2) Waiver.

(A) The department will waive the audited financial qualification requirements of paragraph (1) of this subsection if the engineer's estimate is \$250,000 or less, or the project pertains to specialty items not normal to the department's roadway projects program unless the department's director of Construction and Maintenance Division determines that audited financial qualification should be required due to:

- (i) safety considerations;
- (ii) the complexity of the work; or
- (iii) the potential impact of the work on adjacent property owners.

(B) To be eligible to bid on a contract for which the audited financial qualification requirements have been waived under subparagraph (A) of this paragraph, or on a contract to be awarded under §9.19 of this title (relating to Emergency Contract Procedures), a bidder must submit:

- (i) a bidder's questionnaire, in the form prescribed by the department, which includes certain information concerning a bidder's equipment and experience; and
- (ii) unaudited and other financial data as required in the instructions to the bidder's questionnaire.

(C) The department will make its examination and determination based on the information submitted, and advise the bidder of its approved bidding capacity.

(b) Registration of subcontractors. To be eligible as a subcontractor for a construction or maintenance contract entered by the commission under Texas Civil Statutes, Article 6674a, et seq, a subcontractor must submit a completed subcontractor's questionnaire.

(c) Building contracts. A bidder and a subcontractor do not have to comply with this section to be eligible to bid or be a subcontractor on a building contract.

§9.13. Notice of Letting and Issuance of Proposals.

(a) Notice to bidders and advertisements.

(1) Notice.

(A) Mailing list. The department will maintain a mailing list of all registered subcontractors and bidders approved to bid under §9.12 of this title (relating to Qualification of Bidders and Registration of Subcontractors). The department will also maintain a mailing list of parties who have purchased a notice subscription for \$25 per year to cover costs of mailing the notices.

(B) Fee. The following entities are not required to pay the notice subscription fee:

(i) qualified bidders and registered subcontractors approved under §9.12 of this title (relating to Qualification of Bidders and Registration of Subcontractors);

(ii) other state agencies;

(iii) other state departments of transportation;

(iv) disadvantaged business enterprises and historically underutilized businesses;

(v) offices of the federal government; and

(vi) organizations performing work under supportive service contracts awarded by the commission.

(C) Distribution. The department will send to prepaid subscribers and entities on the mailing list who are waived from paying the fee written notice of projects to be let.

(2) Advertising.

(A) Notice of the time, when, and place where contracts will be let and bids opened will be published in a newspaper in the county where the work is to be done once a week for at least two weeks prior to the time set for the letting of the contract and in two other newspapers designated by the department. If there is no newspaper in the county in which the work is to be done, the advertising shall be for publication in a newspaper in the county nearest the county seat of the county in which the work is to be done.

(B) Notice of the time, when, and place where contracts involving less than \$100,000 will be let and bids opened will be published in two successive issues of a newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done, the advertising shall be for publication in a newspaper in the county nearest the county seat of the county in which the work is to be done.

(b) Proposal form.

(1) Proposal form content. A proposal form will include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request.

(A) A request for a proposal form on a building contract or a state funded construction or maintenance contract may be made orally or in writing.

(B) A request for a proposal form on a federal aid construction or maintenance contract must be submitted in writing, and must include a statement in a form prescribed by the department certifying whether the bidder is currently disqualified by an agency of the federal government as a participant in programs and activities involving federal financial and nonfinancial assistance and benefits.

(c) Issuance of proposal form.

(1) Construction and maintenance contracts.

(A) Issuance. Except where prohibited under subparagraph (B) of this paragraph, the department will, upon receipt of a request, issue a proposal form for a construction or maintenance contract as follows:

(i) for a project on which audited financial prequalification is not waived, only to a prequalified bidder, and only if the estimated cost of the project is within that bidder's available bidding capacity; and

(ii) for a project on which audited financial qualification is waived under §9.3(a)(2) of this title (relating to Qualification of Bidders and Registration of Subcontractors), only if the estimated cost of the project is within that bidder's available bidding capacity.

(B) Non-issuance. Except as provided in subparagraph (C) of this paragraph, the department will not issue a proposal form requested by a bidder for a construction or maintenance contract:

(i) for a federal-aid project, if at the time of the request the bidder is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits;

(ii) for either a state funded or a federal-aid project, if at the time of the request the bidder is suspended or debarred by order of the commission, or is prohibited from rebidding a specific project because of default of the first awarded bid; or

(iii) for either a state funded or a federal-aid project, if at the time of the request the bidder has not fulfilled the requirements for qualification under §9.3 of this title (relating to Qualification of Bidders and Registration of Subcontractors).

(C) Exception. The department may issue a proposal to a bidder who is ineligible under subparagraph (B)(iii) of this paragraph if the bidder has substantially complied with the requirements of §9.3 of this title (relating to Qualification of Bidders and Registration of Subcontractors).

(2) Informational proposal. The department will issue an information proposal form upon request.

(3) Building contracts. Except as provided in paragraph (4) of this subsection, the department will, upon request, issue a proposal form to any bidder for a building contract.

(4) All contracts. The department will not issue a proposal form for a highway improvement contract to a bidder who has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.14. Submittal of Proposal.

(a) Delivery.

(1) The bidder shall place each completed proposal form in a sealed envelope marked to show its contents. When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received on or before the hour and date set for the opening of bids and must be in the hands of the department bid receipt official by that time.

(2) In addition to the proposal form submitted under paragraph (1) of this

subsection, and when authorized in the proposal, a bidder may submit an electronic bid in the same manner. A bidder delivering an electronic bid shall submit the proposal in accordance with paragraph (1) of this subsection, and must:

(A) include the computer diskette containing the electronic bid data in a separate sealed envelope;

(B) state the exact qualified name of the bidder on the envelope;

(C) state on the computer diskette the exact qualified name of the bidder and the job number as taken from the order of tabulation of projects, for which electronic bids are being submitted;

(D) submit a computer diskette containing bid data for those projects which are to be opened and read for that letting day only, as reflected in the notice; and

(E) provide the electronic bid information on a computer diskette, free of virus, which has been prepared through the electronic bidding system utilized by the department.

(3) Electronic bids are not accepted for building contracts.

(b) Proposal content. The bidder shall submit the proposal on the form furnished by the department and in compliance with the following requirements.

(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the blank spaces for each item as required in the proposal form shall be filled in by writing in words in ink.

(2) The bidder shall submit a unit price for each item for which a bid is requested (including a zero if appropriate), except in the case of a regular item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates.

(3) The proposal shall be executed with ink in the complete and correct name of the bidder making the proposal and be signed by the person or persons authorized to bind the bidder.

(4) Except in the case of regular bid item that has an alternate bid item, unit prices shall be stated in dollars and/or cents for each bid item listed in the proposal.

(c) Computer printouts.

(1) In lieu of writing in words in ink, a bidder may submit an original com-

puter printout sheet bearing the required certification by and signature for the bidder. The unit prices shown on acceptable printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded by the commission.

(2) Computer printouts are not acceptable on building contracts.

(d) Electronic bids. Electronic bid data must be in the form outlined under subsection (a)(2) of this section. The electronic bid information will be a supplement to the proposal for the purposes of tabulation only. Each proposal submitted must be accompanied by a computer printout meeting the requirements under subsection (c) of this section. The computer diskette will remain the property of the department.

(e) Proposal guaranty.

(1) A bidder must submit a proposal guaranty with the proposal form in the amount specified by the proposal form. The proposal guaranty shall be payable to the commission and shall be a cashier's check or money order on a state or national bank or savings and loan association, or a state or federally chartered credit union.

(2) A check or money order must be payable at or through the institution issuing the instrument, or must state that the issuing institution is both the drawer and drawee of the official obligation to pay the amount stated.

(3) The department will not accept as a proposal guaranty:

(A) a check labeled official check, officer's check, or teller's check;

(B) personal checks or certified checks,

(C) other types of money orders or bank drafts, or

(D) bid bonds.

(f) Certification.

(1) A bidding proposal on a federal-aid project shall include, in a form prescribed by the department, a certification of eligibility status. The certification shall describe any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, and any indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the bidder or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, and

shall cover the three year period immediately preceding the date of the proposal.

(2) Information adverse to the bidder as contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in rejection of the bid and disqualification of the bidder.

§9.15. Acceptance, Rejection, and Reading of Proposals.

(a) Public reading.

(1) Bids will be opened and read at a public hearing conducted by the director of the department's Construction and Maintenance Division, or his or her designee on behalf of the commission. Each hearing shall be in the City of Austin, at a time and location specified in the advertisement.

(2) Bids for contracts with an engineer's estimate of less than \$100,000 may be opened and read at a public hearing conducted by the district engineer, or his or her designee on behalf of the commission. Each such hearing shall be held at the district headquarters in the district in which the work is to occur.

(b) Proposals not read.

(1) The department will not accept and will not read a proposal if:

(A) the proposal is submitted by an unqualified bidder;

(B) the proposal is in a form other than the official proposal form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the proposal was received after the time or at some location other than that specified in the advertisement,

(E) the unit prices are written in the proposal in numerals,

(F) the proposal guaranty, when required, does not comply with §9.14(e) of this title (relating to Submittal of Proposal),

(G) the bidder did not attend a specified mandatory pre-bid conference;

(H) the proprietor, partner, majority shareholder, or substantial owner is 30 or more days delinquent in providing

child support under a court order or a written repayment agreement;

(I) a computer printout proposal, when used, does not have the unit bid prices entered in designated spaces, does not include the proper certification, is not signed in the name of the firm to whom the proposal was issued, or omits required bid items or includes items not shown in the proposal;

(J) the bidder was not authorized to be issued a proposal under §9.13(c) of this title (relating to Notice of Letting and Issuance of Proposals); or

(K) the proposal did not otherwise conform with the requirements of §9.14 of this title (relating to Submittal of Proposal).

(2) If more than one proposal involving a bidder under the same or different names is submitted, the department will not accept and will not read any of the proposals submitted by that bidder.

(c) Revision of bid by bidder.

(1) A bidder may change a bid price before it is submitted to the department by changing the price and initialing the revision in ink.

(2) A bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone or telegraph, but will accept a properly signed telefacsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(d) Withdrawal of bid. A bidder may withdraw a bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone or telegraph requests, but will accept a properly signed telefacsimile request.

§9.16 Tabulation of Bids.

(a) Official bid amount. Except for lump sum building contracts, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts.

(b) Department interpretations

(1) Proposal entries such as no dollars and no cents or zero dollars and zero cents will be interpreted to be one-tenth of a

cent (\$.001) and will be entered in the bid tabulation as \$.001. Any entry less than \$.001 will be interpreted and entered as \$.001.

(2) If a bidder submits both a completed proposal form and a properly completed computer printout, the department will use the computer printout to determine the total bid amount of the proposal. If the computer printout is incomplete, the department will use the completed proposal form to determine the total bid amount of the proposal.

(3) If a bidder submits two computer printouts reflecting different totals, both printouts will be tabulated, and the department will use the lowest tabulation.

(4) If a unit bid price is illegible, the department will make a documented determination of the unit bid price for tabulation purposes.

(5) If a unit bid price has been entered for both the regular bid and a corresponding alternative bid, programmatically, the department will determine the lowest item amount for the regular bid or the alternative bid and tabulate as such. If both the regular and alternate bids have been bid at the same unit price, the department will select the regular bid item or items.

(6) If a bidder submits an electronic bid and the diskette furnished is unusable by the department, then the required computer printout will be used to determine the total bid amount of the proposal.

(7) If the unit bid prices or the total bid amount reflected by the electronic bid differs from the amounts reflected on the required computer printout, then the amounts reflected on the printout will be used to determine the total bid amount.

§9.17. Award of Contract

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this title (relating to Acceptance, Rejection, and Reading of Proposals, and Tabulation of Bids) It will reject all bids if

(1) there is reason to believe collusion may have existed among the bidders;

(2) the low bid is determined to be both mathematically and materially unbalanced,

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid, or

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces

(b) Except as provided in subsection (c) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with the Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

§9.18 After Contract Award.

(a) Contract execution.

(1) Construction and maintenance contracts. Within 15 days after written notification of award of a construction or maintenance contract, the successful bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by the Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law; and

(B) a certificate of insurance showing coverages in accordance with contract requirements.

(2) Building contracts. A successful bidder on a building contract must execute the contract and comply with paragraph (1)(A) and (B) of this subsection within 27 days after written notification of award of the contract.

(3) Construction contracts. Within 15 days after written notification of award of the contract the successful bidder on a construction contract who is not a disadvantaged business enterprise must submit all the information required by the department relating to the subcontracting to be used to achieve the contract's disadvantaged business enterprise goal.

(b) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred. A low bid that is found to be mathematically unbalanced, but not materially unbalanced, and that is awarded a contract will be sub-

ject to withholding of payment on the mathematically unbalanced bid items for the portion of the unbalanced unit bid price that exceeds the department's current 12-month average for the same item number or a similar item number.

(c) Proposal guaranty.

(1) Apparent low bidder. The department will retain the proposal guaranty of the successful bidder until after the contract has been awarded, executed, and bonded. If the successful bidder does not comply with subsection (a) of this section within 15 days of notification of the award of the contract (27 days for building contracts), the proposal guaranty will become the property of the state, not as a penalty but as liquidated damages; provided, however, the department may, based on documentation submitted by the contractor, grant a 15-day extension to comply with the requirements under subsection (a)(3) of this section. A bidder who forfeits a proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the proposal guaranty.

(2) Other bidders. Not later than 72 hours after bids are opened, the department will mail the proposal guaranty of all bidders except the apparent low bidder to the address specified on each bidder's return bidder's check form included in the proposal.

§9.19. Emergency Contract Procedures.

(a) Purpose. In accordance with Texas Civil Statutes, Article 6674h-2, the department is authorized under certain conditions to award highway improvement contracts in cases of emergency. This section provides for an alternate procedure for the expedited award of highway improvement contracts to meet emergency conditions in which essential corrective or preventive action would be unreasonably hampered or delayed by compliance with other laws, this subchapter, or other sections of Part I of this title (relating to Texas Department of Transportation).

(b) Certification of emergency.

(1) A district engineer who identifies an emergency situation in the geographic area under his jurisdiction and determines that expedited action is required shall immediately notify the executive director or his designee to describe the fact and nature of the emergency. Upon receiving authorization to proceed, the district engineer may initiate procedures for the award of an emergency contract. All such notification will be documented in writing.

(2) Examples of types of work which may qualify for emergency contracts

include but are not limited to emergency repair or reconstruction of streets, roads, highways, and bridges; clearing debris or deposits from the roadway or in drainage courses within the right of way; removal of hazardous materials; restoration of stream channels outside the right of way in certain conditions; temporary traffic operations; and mowing to eliminate safety hazards; provided, however, that in each instance, the proposed work must satisfy the requisites of emergency as defined in this subchapter

(3) Before the contract is awarded, the executive director or his designee not below the level of deputy executive director must certify in writing the fact and nature of the emergency giving rise to the award.

(c) Contractor eligibility. To be eligible to bid on an emergency project, a contractor must be included in the department's list of prequalified bidders pursuant to §9.12 of this title (relating to Qualification of Bidders and Registration of Subcontractors) or must complete a bidder's questionnaire in a form prescribed by the department

(d) Notification of prospective bidders

(1) After an emergency is certified, the district engineer will review the department's file of eligible bidders and, if there is a sufficient number of firms, notify at least three of the proposed emergency contractors

(2) Consistent with and contingent upon the nature of the emergency, the district engineer may contact prospective bidders by telephone, letter, telefacsimile, or other appropriate form of communication

(3) The district engineer will inform each prospective bidder of the nature of the emergency and furnish specifications for the remedy, including time constraints, bonding and insurance requirements, and any additional information needed for the prospective bidder to prepare a work plan and calculate the cost

(4) If no eligible contractor is able to provide the required type of service, the district engineer may take any measure necessary to identify and locate an available contractor who is able to provide the required service. If selected, the prospective contractor thus identified must complete the bidder's questionnaire prior to final approval of the award

(e) Bidding requirements.

(1) A prospective bidder's response must be in writing and must include.

(A) a price for performing the work; and

(B) a response to each item in the district engineer's specifications if the price is based on other than unit price.

(2) If the district engineer so authorizes, the prospective bidder may submit an oral bid which must be confirmed in writing within 24 hours.

(f) Letting procedures.

(1) The district engineer will review the bids and, if awarded, shall award the contract to the best bidder and document the basis for the award. As used in this subsection, the best bidder is that firm best able to respond to the emergency in a timely manner and fulfill the state's priority needs as determined by the district engineer.

(2) Each bidder will be notified as soon as possible after the award is made, with written confirmation to follow.

(g) Contract

(1) The department shall prescribe the form of the emergency contract and may include therein such matters and specifications as it deems advantageous to the state, including, but not limited to, provisions which address the specifications for completion of work, cost to perform the work, the basis for payment, time period needed to complete the work, control of work, insurance and bonding requirements, and any general or special conditions mutually agreed upon by the department and the contractor.

(2) Each such contract shall be made in the name of the State of Texas, signed by the executive director or his designee not below the level of district engineer on behalf of the department, and signed by the contracting party.

(3) The contractor must furnish satisfactory proof of insurance and bonds before any work is performed.

(4) The contract must be fully executed before any work is begun.

(5) The certification required in subsection (a) of this section must be attached to the contract.

(h) Exceptions. If the district engineer determines that the magnitude and extremity of the emergency require instantaneous action by the contractor in order to alleviate an immediate detrimental impact on public health and safety, and the executive director has so noted in the certification of the emergency, the following exceptions are permitted.

(1) The district engineer may authorize the contractor to begin work.

(A) without a signed contract, provided the contract is signed within 24 hours after work begins; and

(B) without bonds and proof of insurance, provided they are furnished not more than three days after work begins.

(2) The executive director or deputy executive director may authorize the waiving of bonds or insurance requirements if it is determined that such requirements cannot be met prior to completion of the work or would prevent the timely performance of work to the detriment of public health, safety, or welfare.

(i) Reports to the commission. Not later than 24 hours after the contract is awarded, the district engineer shall notify the executive director of the award of the emergency contract. Not later than the fifth working day following the date on which the contract is awarded, the executive director shall furnish each member of the commission written notification of the details of the emergency conditions and the award.

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 August 12, 1994.

TRD-9446565

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8630

Emergency Contract Procedures • 43 TAC §§9.20-9.22

(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 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 §§9.20-9.22, concerning emergency contract procedures. Sections 9.20-9.22 are no longer necessary due to the simultaneous adoption of new §§9.10-9.19, governing bidder qualification, bidding, award, and execution of highway improvement contracts.

Texas Civil Statutes, Article 6674h-2, authorize the department under certain conditions to award highway improvement contracts in cases of emergency. These new sections ensure a fair and equitable bidding process for highway improvement contracts; inform potential bidders and the general public of department policy and procedures; and consolidate commission policy and procedures including those found in §§9.20-9.22.

Walter W. Chambers, P.E., Director of Construction and Maintenance Division, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Mr. Chambers has certified that there will be no significant impact on local economies or overall employment as a result of repealing the sections.

Mr. Chambers 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 is to ensure a fair and equitable bidding process and to inform the public of department policy and procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals.

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 repeals. The public hearing will be held at 9:00 a.m. on August 29, 1994, in Room 101 of Riverside Annex, 200 East Riverside, 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 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 repeals may be submitted to Wayne W. Chambers, Director of Construction and Maintenance, 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 September 19, 1994.

The repeals are proposed under Texas Civil Statutes, Article 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 Texas Civil Statutes, Article 6674h-2, which authorize the department under certain conditions to award highway improvement contracts in cases of emergency.

Texas Civil Statutes, Article 6674h-2, is affected by these repeals.

§9.20. Purpose.

§9.21. Definitions.

§9.22. Contract Procedures.

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 August 12, 1994.

TRD-9446564

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Earliest possible date of adoption: September 19, 1994

For further information, please call: (512) 463-8630

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WITHDRAWN RULES

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

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

• 7 TAC §25.25

The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed §25.25 which appeared in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3213). The effective date of this withdrawal is August 19, 1994

Issued in Austin, Texas, on August 10, 1994

TRD-9446413

Everette D Jobe
General Counsel
Banking Department of
Texas

Effective date August 19, 1994

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure Standards

Subchapter A. Licensure Infor- mation

General Provisions

• 40 TAC §§148.1-148.4

The Texas Commission on Drug and Alcohol Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.1-148.4 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1944). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446448

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

Licensure Procedures

• 40 TAC §§148.21-148.27

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.21-148.27 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1945). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446449

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

Licensure Sanctions

• 40 TAC §§148.41-148.46

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.41-148.46 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1946). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446450

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

Definitions

• 40 TAC §148.61

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §148.61 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1947). The effective date of this withdrawal is August 11, 1994

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

TRD 9446451

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call: (512)
867-8720

Subchapter B. Facility Man- agement

Administration

• 40 TAC §§148.71-148.75

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.71-148.75 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1949). The effective date of this withdrawal is August 11, 1994.

Issued in Austin, Texas, on August 11, 1994

TRD-9446452

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

Referral

• 40 TAC §§148.91-148.94

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.91-148.94 which appeared in the

March 18, 1994, issue of the *Texas Register* (19 TexReg 1951). The effective date of this withdrawal is August 11, 1994.

Issued in Austin, Texas, on August 11, 1994

TRD-9446453 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Personnel and Staff Develop-
ment**

◆ ◆ ◆
• 40 TAC §§148.111-148.117

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.111-148.117 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1953). The effective date of this withdrawal is August 11, 1994

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

TRD-9446454 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512)
867-8720

◆ ◆ ◆
Safety

◆ ◆ ◆
• 40 TAC §148.131, §148.132

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §148.131 and §148.132 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1955). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446455 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

◆ ◆ ◆
**Subchapter C. Client Manage-
ment**

Client Rights

◆ ◆ ◆
• 40 TAC §§148.141-148.146

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.141-148.146 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1956). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446456 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Abuse, Neglect, and Exploita-
tion**

◆ ◆ ◆
• 40 TAC §§148.161-148.164

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.161-148.164 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1958). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446457 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

◆ ◆ ◆
Client Information

◆ ◆ ◆
• 40 TAC §§148.171-148.173

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.171-148.173 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1960). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446458 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call (512)
867-8720

Crisis Management

◆ ◆ ◆
• 40 TAC §§148.181-148.185

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.181-148.185 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1961). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446459 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Subchapter D. Program Ser-
vices**

**General Program Services Pro-
visions**

◆ ◆ ◆
• 40 TAC §148.201, §148.202

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §148.201 and §148.202 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1963). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446460 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call. (512)
867-8720

◆ ◆ ◆
Treatment Categories

◆ ◆ ◆
• 40 TAC §§148.211-148.213

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.211-148.213 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1963). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446461 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date August 11, 1994

For further information, please call: (512) 867-8720

Treatment Settings

• 40 TAC §§148.221-148.224

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.221-148.224 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1964). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446462 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512) 867-8720

Special Provisions

• 40 TAC §§148.231-148.234

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.231-148.234 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1966). The effective date of this withdrawal is August 11, 1994.

Issued in Austin, Texas, on August 11, 1994

TRD-9446463 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512) 867-8720

Food and Nutrition

• 40 TAC §§148.251-148.254

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.251-148.254 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1968). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446464 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 867-8720

Medication

• 40 TAC §§148.261-148.268

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.261-148.268 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1968). The effective date of this withdrawal is August 11, 1994

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TRD-9446465 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 867-8720

Subchapter E. Treatment Process

Admission

• 40 TAC §§148.281-148.284

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.281-148.284 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1970). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446466 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 867-8720

Detoxification Process

• 40 TAC §§148.291-148.293

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.291-148.293 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1972). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446467 Otis Williams
Deputy Executive Director
for Finance and
Administration

Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 867-8720

Primary and Transitional Treatment Process

• 40 TAC §§148.301-148.304

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.301-148.304 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1973). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446468 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 467-8720

Discharge

• 40 TAC §§148.321-148.325

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.321-148.325 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1974). The effective date of this withdrawal is August 11, 1994

Issued in Austin, Texas, on August 11, 1994

TRD-9446469 Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call (512) 867-8720

Subchapter F. Physical Plant General Physical Plant Provi- sions

• 40 TAC §148.341

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §148.341 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1975). The effective date of this withdrawal is August 11, 1994

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

TRD-9446470

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Residential Physical Plant Re-
quirements**

◆ ◆ ◆
• 40 TAC §§148.351-148.359

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§148.351-148.359 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1975). The effective date of this withdrawal is August 11, 1994.

Issued in Austin, Texas, on August 11, 1994

TRD-9446471

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Special Physical Plant Require-
ments**

◆ ◆ ◆
• 40 TAC §148.371, §148.372

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new

§148.371 and §148.372 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1977). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446472

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
Chapter 151. Licensure

General Provisions

◆ ◆ ◆
• 40 TAC §§151.11-151.19

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed §§151.11-151.19 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1978). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446445

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

Licensure Procedures

◆ ◆ ◆
• 40 TAC §§151.31-151.38

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed §§151.31-151.38 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1978). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446446

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
867-8720

◆ ◆ ◆
Licensure Standards

◆ ◆ ◆
• 40 TAC §§151.61, 151.63-151.73,
151.80-151.86, 151.101, 151.
103-151.111

The Texas Commission on Alcohol and Drug Abuse has withdrawn from consideration for permanent adoption a proposed new §§151.61, 151.63-151.73, 151.80-151.86, 151.101, and 151.103-151.111 which appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1979). The effective date of this withdrawal is August 11, 1994.

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

TRD-9446447

Otis Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: August 11, 1994

For further information, please call: (512)
487-8720

ADOPTED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 9. Plant Quality

Citrus Fruit Maturity Standards • 4 TAC §9.30

The Texas Department of Agriculture (the department) adopts new §9.30, concerning citrus fruit maturity standards, without changes to the proposed text as published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5141).

The Texas Agriculture Code (the Code), §94.025, prohibits the sale of citrus fruit that is immature, unripe, overripe, frozen, or otherwise unfit for consumption. The marketing of unfit citrus fruit cheats the consumer and adversely affects demand for, and the orderly distribution of, citrus fruit. The new section is adopted in order to establish minimum juice content requirements for citrus fruit offered for sale in the state, and is intended to establish such minimum standards of fitness and quality for citrus fruit as will be in the public interest.

The new section provides minimum juice content requirements to establish the fitness for consumption of citrus fruit that is to be prepared, received or delivered for sale or transportation, transported, sold or offered for sale in Texas.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Texas Agriculture Code, §94.003, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of Texas Agriculture Code, Chapter 94, concerning the seasonal requirements of citrus fruit for fitness for human consumption.

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 August 11, 1994

TRD-9446508

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: September 1, 1994

Proposal publication date: July 5, 1994

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Direction of Affairs

• 7 TAC §91.507

The Credit Union Commission adopts an amendment to §91.507, without changes to the proposed text as published in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4615). The rule is amended to clarify the length of time between audits. The rule will continue to require an audit each year, but the audit period will be limited to 18 months. It will provide flexibility to credit unions in scheduling an audit each year. One comment was received. The commenter stated that the percentage of accounts for a negative verification was greater than necessary and placed a financial burden on credit unions. The commission disagreed that the verification percentages were excessive, stating that most credit unions conducted verifications with a controlled mailing of quarterly statements of a members' accounts.

The amendment is adopted under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on August 11, 1994

TRD-9446436

Robert W Rogers
Commissioner
Texas Credit Union
Department

Effective date: September 1, 1994

Proposal publication date: June 14, 1994

For further information, please call: (512)
837-9236

Chapter 97. Commission Policies and Administrative Rules

• 7 TAC §97.114

The Credit Union Commission adopts new §97.114, without changes to the proposed text as published in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4616).

The rule is adopted to comply with House Bill 1009 of the 73rd Legislature, requiring that changes for copying and reproducing public records be established in a rule.

The rule specifies that fees will be changed in accordance with rules of the General Services Commission.

There were no comments received concerning adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on August 11, 1994

TRD-9446437

Robert W Rogers
Commissioner
Texas Credit Union
Department

Effective date: September 1, 1994

Proposal publication date: June 14, 1994

For further information, please call: (512)
837-9236

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

Chapter 49. Low-Income Housing Tax Credit Rules

• 10 TAC §§49.1-49.14

The Texas Department of Housing and Community Affairs adopts new §§49.1-49.14, concerning low-income housing tax credit. Sections 49.1, 49.2, 49.4-49.11, 49.13, and 49.14 are adopted with changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3859). Section 49.3 and §49.12 are adopted without changes and will not be republished.

The adoption of the sections will provide procedures for the allocation by the Texas Department of Housing and Community Affairs of certain low-income housing tax credits available under federal income tax law.

The new sections provide procedures and guidelines by which the Department of Housing and Community Affairs will prioritize and process application received for allocations of low-income housing tax credits

The Department did not receive any public comment in opposition to the adoption of the low-income housing tax credit rules during either the 30-day comment period or at the public hearing held on June 8, 1994. However, the Department did receive public comment on specific sections of the low-income housing tax credit rule, which are summarized as follows

Two commenters requested that the Department clarify the level of participation which the Historically Underutilized Business (HUB) would have in the development process. Further, the respondents asked whether the Department would be giving priority in the application process for HUB participation or would only require that the project owners undertake a good faith effort approach to meeting the Department's goal

The Department also received comments in favor of promoting the utilization of HUBs in the development of affordable housing under the tax credit program

Another commenter opposed the process of establishing set-asides as a method of selecting projects. The commenter instead would prefer the Department increase the level of selection criteria points so as to make it possible for high-priority developments to compete more favorably within a larger pool of tax credits. Specifically, the commenter disagreed with the Department's establishment of a set-aside for both real estate owned (OREOs) and First Time Participants

The Department also received favorable comments with regards to the continuation of the practice of establishing set-asides

Two commenters raised concerns about limitations to developer and contractor fees in

instances where there is an identity of interest between the two parties. The commenters stated that each individual component of the development process contained its own risk and return and as such, a developer performing two separate functions should not be penalized.

One commenter requested that the Department expand its selection criteria for management experience to include management agents which can supply evidence of previous experience along with professional certifications from appropriate trade organizations

Two commenters requested that the Department adopt either a statewide average or national average median income to assist very-low median income communities with creating projects under this program. The basis for the respondents' comments was that the low median income in certain Texas counties precluded the development of affordable housing due to the low level of rents which may be charged under the tax credit program

One commenter requested that the Department automatically allocate tax credits to developments which received an award of HOME funds from either a state or local source

Two commenters requested that the Department increase the set-aside for qualified non-profit organizations

Commenters opposed the Department's proposal to issue additional selection criteria points for those developments located outside of the Dallas, Fort Worth and Houston metropolitan areas

The Department also received favorable public comments on the issue of diversifying the allocation of tax credits to other communities within the state

Two commenters requested that the Department prioritize those developments which agree to offer mixed-income housing

One commenter requested that the Department exempt those developments which received Community Development Block Grant or Rental Rehabilitation financing in the position of either a second or third lien from providing an environmental assessment.

One commenter questioned the need to prioritize projects located within communities which have recently been awarded state prisons

One commenter requested that the Department allow for the transfer of a tax credit development to the tenants upon the completion of the compliance period as opposed to the extended use period

With regards to types of HUB participation, it is the intention of the Department to clearly specify the level of activity which would constitute HUB participation. This information will be contained within the Application Submissions Procedures Manual as well as the Cost Certification Procedures Manual. With regards to any priority issued as a result of HUB participation, it is the Department's intent that the project owners institute a good-

faith effort to utilize HUBs in the development process

In response to the issues raised about set-aside categories, it is the Department's belief that there is still a large quantity of REO properties held by various institutions. The REO set-aside specifically identifies projects held by failed financial institutions, a receiver or conservator of such an institution, Fannie Mae, Freddie Mac, federally chartered banks, or by a federally-approved mortgage company or savings and loan corporation as qualifying under this set-aside criteria. Consequently, there are a number of alternative projects which would qualify under this set-aside criteria, and the Department has historically received a sizable amount of prospective developments under the REO set-aside. With regards to the set-aside for First-Time Participants, it is the Department's belief that the adoption of this set-aside criteria will increase the likelihood of new developer participation in the tax credit program

With regards to the allowance of fees for those parties which have an identity of interest between the project owner and general contractor, the Department has adopted the National Council of State Housing Agencies standards for developer and contractor fees, which are 15% of eligible basis and 14% of construction costs respectively. It is not the Department's intention to reduce the level of fees below this limit if an identity of interest exists between the developer and general contractor. However, in the instance where these fees exceed the aforementioned limits, then the Department will consider the reduction in the overall fees.

The Department concurs with the public comment concerning the elimination of the requirement that management experience include affordable rental housing and as such incorporated this change in the adopted rule

With regards to the request by the commenters regarding the Department's adoption of either a statewide or national average median income, it is beyond the ability of the Department to change the manner in which it determines median income within a community. Such an amendment to the tax credit program would require statutory revisions from the Federal government.

With regards to the commenters' request that the Department give priority to those developments which are utilizing either local, state or federal funds, the Department is currently giving increased priority to those developments which will utilize local, state or federal funds. The automatic approving of those developments which have HOME funds would circumvent the policies and priorities set down by this Department for the tax credit program.

Currently, the Department is proposing for adoption a required set-aside of 10% of the available tax credit authority for specific non-profit utilization. Should the Department determine in the future that this level of set-aside is insufficient, then the prospects of increasing the set-aside beyond the current 10% level will be considered

With regards to the opposition to the Department's prioritization away from developments

outside of the Dallas, Fort Worth or Houston area, the Department has historically received a large number of tax credit applications from the metropolitan areas of Dallas, Fort Worth and Houston. In turn, the Department has allocated a large share of its tax credits to these areas. By incorporating this provision within the selection criteria, the Department is not precluding the development of a tax credit project in one of these areas, but instead, is giving priority to those developments which are located in areas that have historically been under served.

The Department concurs with the request that mixed-income developments be given additional priority and incorporated this change into the adopted rules.

In consideration of the commenters request that the Department expand upon the exceptions to those developments which must file an environmental assessment, the Department feels that the current exemptions of The Farmers Home Administration financed developments and those projects less than four units in size, are the only allowable exemptions to the requirement to submit an environmental assessment. Further, the Department is allowing those properties which have first lien financing from HUD to submit HUD's environmental assessment.

Currently, a majority of those communities which have been awarded a state prison are experiencing severe housing shortages. Further, it is only through permanent housing for the new prison employees that these communities will be able to fully benefit from the economic activity generated by these prison facilities.

The Internal Revenue Code disallows project owners from disposing of the property, and in doing so, cease the low-income nature of the development prior to the termination of the extended use period. Consequently, this issue is a statutory requirement and not subject to the Departments modification.

The new section is adopted pursuant to the authority at Texas Government Code, Chapter 2306; Acts of the 73rd Legislature; Acts of the 73rd Legislature Chapter 725, which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR 91-4, which provides this Department with the authority to make housing credit allocations in the State of Texas.

§49.1. Scope. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs of certain low-income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4, the Texas Department of Housing and Community Af-

airs was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan which is set forth in §49.6 and §49.7 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; and Compliance Monitoring). Such Qualified Allocation Plan has, at this time, not been signed by the governor. Sections in this chapter establish procedures for applying for and obtaining an allocation of the low-income housing tax credit, along with insuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations. It is a goal of this Department, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount, consistent with ensuring that the tax credits are allocated to owners of projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very-low and low income. It is the policy of the Department to encourage the use of historically underutilized businesses in all of the Department's programs. In response to this policy, the Department has established a minimum goal of 30% participation of historically underutilized businesses in the low-income housing tax credit program. Project owners are encouraged to achieve these minimum goals.

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

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

Agreement and Election Statement—A document in which the project owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the project owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings, which such Agreement and Election Statement shall be executed by the project owner no later than five days after the end of the month of execution of the agreement as to housing credit dollar amount.

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

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

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

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

Board—The governing body of the Texas Department of Housing and Community Affairs.

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

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

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

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

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

Commitment notice—A commitment notice issued by the Department to a project owner pursuant to §49.4(h) of this title.

Compliance period—With respect to a building, the period of 15 taxable years beginning with the first taxable year of the credit period with respect to the building, during which the project owner is required by the Code, §42, to maintain building as a

qualified low-income building pursuant to the Code, §42(c)(2).

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

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

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

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

Development team—Any individual, joint venture, partnership, corporation, cooperative, trust, or other person or entity involved in the development, construction, rehabilitation, management and/or continuing operation of the subject property, which may include any consultant(s) hired by the applicant for the purpose of the filing of an application for low income housing tax credits with the Department.

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

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

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

FmHA—The Farmers Home Administration.

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

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

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

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

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

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

Native Americans—persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(D) **Women**—includes all women of any ethnicity.

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

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

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

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

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

Identity of interest—An identity of interests exists if:

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

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

IRS—The Internal Revenue Service, or its successor.

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

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

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

tax credits. May also be referred to as the subject property.

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

Qualified Allocation Plan—An allocation plan which sets forth the threshold criteria, selection criteria, priorities, and preferences as provided in the Code, §42(m)(1) and as further provided in §49.6

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

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

Qualified nonprofit organization—An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or controlled by a for-profit organization, and includes as one of its exempt purposes the fostering of low-income housing, as more fully defined in the Code, §42(h)(5)(C), and Temporary Treasury Regulation, §1.42-1T(c)(5)(ii)

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

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

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

Rehabilitation expenditure—Amounts incurred in connection with the rehabilitation of a project the owner of which repre-

sents it to be "rehabilitation expenditures" within the meaning of the Code, §42(e).

Reservation notice—A reservation notice issued by the Department to a project owner pursuant to §49.4(f) of this title.

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

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

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

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

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

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

Sustaining occupancy—The figure at which occupancy income is equal to all operating expenses and debt service requirements for a project.

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

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

Unit—Any residential rental unit in a project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation; including single room occupancy housing used on a non-transient basis.

§49.4. Applications; Environmental Assessments, Market Study; Reservations; Notifi-

cation; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.

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

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

be conducted by an individual who has been properly certified to perform this analysis and be prepared at the expense of the project owner. For projects which have had a Phase II Environmental Assessment performed and hazards identified, the project owner is required to maintain a copy of said assessment on-site, available for review by all persons which either occupy the property or are applying for tenancy. Properties financed through the FmHA, or properties with four units or less will not be required to supply this information; however, the project owners are hereby notified that it is their responsibility to ensure that the property is maintained in compliance with all state and federal environmental hazard requirements. Those projects which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection. In order for an environmental assessment to be considered as acceptable under this subsection, it must be complete at the time of submission and not submitted to the Department in a fragmented form

(c) The Market Study required by the application shall comply with paragraphs (1)-(6) of this subsection.

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

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

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

(C) an evaluation of the current physical condition of existing low-income rental housing units in the market area;

(D) an evaluation of the need for affordable housing within the project market area, which includes an analysis of any existing federal, state and/or locally subsidized rental housing units in the market area;

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

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

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

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

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

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

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

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

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

(3) A written certification is required, from the qualified market analyst who prepared the Market Study required

under paragraph (1) of this subsection, stating that:

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

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

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

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

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

(F) project reserves are/are not adequate to cover operating shortfalls until the project achieves sustaining occupancy. The qualified market analyst must

provide the Department with sufficient documentation to support his/her conclusions with regards to the adequacy of the project reserves.

(4) If a project owner requests a waiver of the required Market Study, the project owner shall provide the Department a separate written document, with any support information attached thereto, setting forth the exact reasons why such waiver is justified. Such information should include at a minimum, a copy of the local Comprehensive Housing Affordability Strategy ("CHAS") report, if available, which clearly addresses the need for additional affordable rental housing as well as letters of support from local community officials such as the mayor, county judge, city manager or city planner, which also clearly express the need for additional affordable rental housing in the projects market area. Only upon the delivery of the documentation specified within this subsection will the Department consider the merits of the project owners request for a waiver of the market study requirements. The Department in its own discretion will accept or reject project owners request for a waiver of the market study requirements, and will inform the project owners in writing of such acceptance or rejection.

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

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

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

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

(f) Within a reasonable amount of time after evaluation, ranking, and under-

writing of an application, as provided in §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the Department shall respond to the project owner in accordance with paragraph (1) or (2) of this subsection, as applicable.

(1) Unless the entire state housing credit ceiling for the applicable calendar year has previously been reserved, committed or allocated in accordance with this chapter, applications which receive the highest number of points, in each set-aside category, as applicable, during any published application acceptance cycle, will be eligible for an evaluation by an Underwriter as provided in §49.6(b), if the required Threshold Criteria have been achieved and all necessary application documents have been received in accordance with the Application Submission Procedures Manual, as amended. If credits are available based upon the ranking of the project in accordance with §49.6. If such evaluation warrants, a reservation notice will be issued. The reservation notice

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

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

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

paragraph (1) of this subsection. In the event that the Department makes a reservation or offers a commitment within the last month of the calendar year, it will require immediate action by the applicant to assure that an allocation or carryover allocation can be issued before the end of that same calendar year.

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

(h) As soon as may be practicable following issuance of a reservation notice the Department shall place the application on the agenda for review by the Board at the next meeting of the Board at which applications will be considered. Within 10 calendar days after the Board reviews the application, the Department shall act upon the application in accordance with either paragraph (1) or (2) of this subsection, as applicable. The Board's review shall be based upon its evaluation of the projects consistency with the criteria and requirements set forth at §49.6 and its compliance with the terms and conditions of the reservation notice.

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

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

(B) shall state the Department's commitment to make a housing credit allocation to the project owner in a specified amount, subject to the feasibility determination described at §49.8(a), compliance by the project owner with the remaining requirements of this title, and any other conditions set forth therein by the Department. This commitment notice shall expire on the date specified therein, unless the commitment has been accepted and the conditions to receipt of an allocation set forth therein shall be met.

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

(2) If the Board disapproves or fails to act upon the application, the Department shall issue to the project owner a written notice so stating the reasons for the Board's disapproval or failure to act

(i) A project owner may request the Department to extend the expiration date of a commitment notice which has not expired, by submitting a written request for such action, accompanied by the extension fee specified in §49.11 of this title (relating to Program Fees) The request shall specify the term of the extension requested and the reason or reasons why the project owner has been unable to satisfy the requirements of this title prior to the original expiration date. The Department may consider and grant such extension requests in its discretion, provided, however, that in no event shall the expiration date of a commitment notice be extended beyond the last business day of the applicable calendar year.

(j) A project owner must indicate acceptance of the Department's offer of a commitment of tax credit authority by executing the commitment notice and paying the commitment fee specified in §49.11 prior to the expiration date set forth in the notice. Together with or following the project owner's acceptance of the commitment, the owner may request the Department to execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the project as that for the month in which the commitment was accepted, as provided in the Code, §42(b)(2). Upon receipt of a duly dated and executed Agreement and Election Statement and the accepted commitment notice, if the project owner is in compliance with the rules of this title, the Department shall execute the Agreement and Election Statement and return a copy to the project owner. The Agreement and Election Statement may be executed by the project owner no later than five days after the end of the month in which the offer of commitment was accepted.

(k) Prior to the expiration of the commitment notice a project owner who has been issued a commitment notice may re-

quest the Department to execute a carryover allocation document. The carryover allocation must be properly completed, signed, dated and notarized by the project owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended. The commitment fee as specified in §49.11 must be received by the Department prior to the processing of any carryover allocation documentation.

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

§49.5. Set-Asides, Reservations and Preferences.

(a) 10.0% of the state housing credit ceiling for each calendar year shall be set-aside exclusively for qualified nonprofit projects, which meet the requirements of the Code, §42(h)(5)

(b) 90.0% of the state housing credit ceiling for each calendar year shall be available for all projects (including qualified nonprofit projects), subject to the set asides provided below, or as otherwise determined by the Department:

- (1) rural projects-10%;
 - (2) first-time participant-15%;
 - (3) REO projects-10%;
 - (4) small development-4%;
 - (5) special housing projects-1%;
- and
- (6) other projects-50%.

(c) The Department may reduce or eliminate any and all set-aside requirements, as provided for in this section during an application cycle. Further, the Department may redistribute the set-aside requirements in the case where an over demand occurs in any particular set-aside while an under demand occurs in another set-aside category, during a published application cycle. At the end of an application cycle, the Department may group all other projects which have not received a reservation, commitment or allocation into a general pool, without regard to specific project set aside categories, from which the Department will

select the highest-prioritized development, pursuant to §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects). The provisions of this subsection do not pertain to the Department's mandatory set-aside of 10% for qualified non-profit project. The Department will provide information concerning the appropriate set-aside for each application cycle in the Texas Register.

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

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

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

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

(1) a description of the existing or proposed physical amenities to be provided at the project, as more specifically

provided for in the Application Submissions Procedures Manual;

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

(3) readiness to proceed as documented by:

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

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

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

(D) evidence of project financing;

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

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

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

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

(B) lienholder agrees to subordinate its interest to the appropriate provisions of the Declaration of Land Use Restrictive Covenants;

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

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

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

(C) a current listing of all directors and officers of the nonprofit organization, along with information pertaining to their primary profession;

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

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

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

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

(12) Market Study prepared in accordance with the provisions of §49.4(c); and

(13) environmental assessment prepared in accordance with the provisions of §49.4(b)

(b) Evaluation factors. The Department will consider applications for a housing credit allocation using the evaluation and point system described herein and in the Application Submission Procedures Manual;

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

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

(3) Applications receiving the highest number of points, in each set-aside category, during any published application acceptance cycle, if a sufficient amount of state housing tax credits are available, will be eligible for an evaluation by an Underwriter. If such evaluation warrants, a reservation notice will be issued as provided in §49.4(f) of this title, and the application will be scheduled for review by Ad Hoc Tax Credit Committee and a recommendation by such Committee to the Board concerning the issuance of a commitment notice at the next scheduled Board meeting. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the applicant prior to the commencement of the aforementioned evaluation.

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

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

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

(1) project location:

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

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

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

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

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

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

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

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

(2) Housing needs characteristics

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

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

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

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

(E) project is located in a county in which a substantial percentage of the rental units are overcrowded as defined in the Department's County Data Elements Guide located within the Reference Manual.

(3) Project characteristics:

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

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

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

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

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

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

(G) project provides low-density housing,

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

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

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

(K) the project owner will set aside less than 100% of the available units for low- and very-low income tenants

(4) Sponsor ("Project Owner") characteristics

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

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

(C) the project owner has entered into a management agreement that specifies management requirements and procedures, the term of the agreement, the parties involved, and compensation for management services. This agreement must also outline the steps to be taken by the management agent in order to assure com-

pliance with the income and rent restrictions pursuant to the Code, §42, or

(D) the project owner offers a right of first refusal to the tenants of the project to purchase the project after the termination of the extended low income housing commitment period as more fully provided for in the Code, §42(h)(6) and §42(i)(7).

(5) Participation of local tax-exempt organizations

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

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

(6) Tenant populations with special housing needs

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

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

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

(7) Public housing waiting lists

(A) project owner has committed in writing to the local public housing authority of the availability of units and agrees it will consider those households on the public housing authority's waiting list for the occupancy of such units. If there is no public housing authority in the locality, the project owner must utilize the nearest authority or the office responsible for ad-

ministering the HUD §8 certificate/voucher program. Project owner has prepared a marketing plan to attract qualified tenants and has provided a copy to the local public housing authority and the Department. A fair-housing marketing plan will not satisfy this requirement on its own; or

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

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

(1) which serve the lowest-income tenants,

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

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

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

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

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

(e) In reaching the final ranking of an application, the Department will take into consideration the project owner's history of placing into service projects which have been awarded tax credits. The Department may deduct points from the final score where it determines that the project owner has a history of failing to place-into-service projects which tax credit carryover allocations have been issued. The Department

may disqualify applicants, whom it has reason to believe are involved in using the tax credit program not as a means of providing affordable housing, but as a vehicle for enhancing the value of land that is intended for disposal as evidenced by a pattern of selling tax credit projects prior to placement in service or within 1 year after placement in service.

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

(g) Tax-exempt bond-financed projects Tax-exempt bond-financed projects which will not receive tax credits through the state allocation authority are also subject to evaluation as to their compliance with the requirements for the allocation of a housing credit dollar amount under the Qualified Allocation Plan

§497 Compliance Monitoring

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

(b) The Department will also monitor compliance with any additional covenants made by the project owner in the extended low-income housing commitment agreement

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

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

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

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

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

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

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

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

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

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

(10) additional information as required by the Department

(d) Record retention provision The owner of a low-income housing project is required to retain the records described in subsection (c) of this section for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year, however, the records for the first year of the tax credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building

(e) Certification and review

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

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

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

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

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

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

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

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

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

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

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

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

(2) Review

(A) At least annually, at the time designated by the Department, the owner of a low-income housing project must send to the Department for its review

for compliance with the requirements of the Code, §42, the certification described in paragraph (1) of this subsection.

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

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

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

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

(g) Notification of noncompliance.

(1) Notice to owner.

(A) The Department will provide prompt written notice to the owner of a low-income housing project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, re-

view or any other manner, that the project is not in compliance with the provisions of the Code, §42.

(B) Unless the Department determines that noncompliance was of a nature that may not be corrected, the notice will direct the owner to correct any non-compliance as quickly as is practicable. The correction period shall not exceed 90 days from the date of the notice to owner. During the correction period, an owner must supply any missing certifications and bring the project into compliance with the provisions of the Code, §42. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension

(2) Notice to the Internal Revenue Service

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

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

(h) Notices to the department.

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

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

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

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

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

§49.8. Housing Credit Allocations

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

(b) When the project owner is in full compliance with the rules in this chapter, the commitment notice, the Carryover Allocation Procedures Manual and all fees as specified within §49.11 of this title (relating to Program Fees) have been received by the Department, the Department, if requested, shall execute a carryover allocation document which has been properly completed, executed and notarized by the project owner. The Department shall return one executed copy to the project owner.

(c) The Department shall make a housing credit allocation to any project owner who holds a commitment notice which has not expired, and for which all fees as specified in §49.11 have been received by the Department. Satisfactory evidence must be received by the Department that one or more buildings within the project is completed and been placed in service in accordance with the provisions of the

Department's Cost Certification Procedures Manual. The Department shall make each such housing credit allocation by mailing or delivering IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the project owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will only occur after the project owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. A separate housing credit allocation shall be made with respect to each building within a project which is eligible for a housing credit.

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

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

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

§49.9. Department Records; Certain Required Filings.

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

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

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

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

(4) the cumulative amount of housing credit allocations made during such calendar year, and

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

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

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

§49.10. Department Responsibilities. In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the project owner's application to determine whether a

building is eligible for the credit under the Code, §42. The project owner shall bear full responsibility for claiming the credit and assuring that the project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a project owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department will reject, and consider barring the project owner from future participation in the Department's tax credit program as a consequence thereof, any application in which fraudulent information, knowingly false documentation or other misrepresentation has been provided. The aforementioned policy will apply at any stage of the evaluation or approval process.

§49.11. Program Fees.

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

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

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

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

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

(f) Public information requests are processed by the Department in accordance with the provisions of Government Code, Chapter 552, and as may be amended from time to time. The General Services Commission and the Department determine the cost of copying, and other costs of production.

(g) The amounts of the application fee, commitment fee, compliance monitoring fee, administrative fees, extension fee, and other applicable fees as specified in the Application Submission Procedures Manual will be revised by Board resolution from time to time as necessary to ensure that such fees cover the Department's administrative expenses.

§49.13 Withdrawals, Amendments, Cancellations.

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

(b) An amendment of an application that results in an increase in the requested housing credit allocation amount or increase in points, unless as provided for during the grace period, shall cause the application to be removed from consideration during the current cycle. The application will be eligible for consideration in the next cycle and will be subject to any amendments made during the intervening period as well as be subject to a new filing fee. In the event of other amendments to an application, the Department will determine whether such amendment is of a nature that requires the application be removed from the current cycle or that would permit the application to be considered within such cycle.

§49.14 Waiver and Amendment of Rules.

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

(b) For purposes of §49.8(b) of this title (relating to Housing Credit Allocations), the requirements for making a hous-

ing credit allocation, as set forth in the Cost Certification Procedures Manual, shall apply to all project owners which received an executed carryover allocation document from the Department on, before or after January 1, 1993.

(c) The Department may amend this chapter at any time in accordance with the provisions of Government Code, Chapter 2001, and as may be amended from time to time.

(d) The Department will waive the requirement for an application fee, as set forth in §49.11(a) of this title (relating to Program Fees), in the event of a resubmission of a project which received a conditional commitment of tax credits, but due to the lack of available tax credit authority was unable to issue a commitment notice.

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 August 10, 1994

TRD-9446440

Henry Flores
Executive Director
Texas Department of
Housing and
Community Affairs

Effective date: September 1, 1994

Proposal publication date: May 20, 1994

For further information, please call: (512) 475-3902

Part V. Texas Department of Commerce

Chapter 187. Job-Training Partnership Act

Subchapter A. General Provisions and Definitions

The Texas Department of Commerce adopts new §§187.101-187.298, concerning rules to implement the federal and state Job Training Partnership Acts (29 United States Code §1501 et seq, as amended; Texas Labor Code, §301.001 et seq) Section 187.131 is adopted with changes to the proposed text as published in the March 25, 1994, issue of the *Texas Register* (19 TexReg 2118). Sections 187.240, 187.242 and 187.243 are adopted with changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 3993). Sections 187.101-187.105 are adopted without changes to the proposed text as published in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4858). Sections 187.120-187.130 and §§187.132-187.134 are adopted without changes to the proposed text as published in the March 25, 1994, issue of the *Texas Register* (19 TexReg 2118). Sections 187.140-187.154 are adopted without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register*.

ter (19 TexReg 3614) Section 187.155 is adopted without changes to the proposed text as published in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4859). Sections 187.160-187.165 are adopted without changes to the proposed text as published in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4859). Sections 187.170-187.196 are adopted without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3616). Sections 187.200-187.237 are adopted without changes to the proposed text as published in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4860). Sections 187.241 and 187.244-187.249 are adopted without changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 3993). Sections 187.260-187.269 are adopted without changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 3996). Sections 187.280-187.298 are adopted without changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 3998).

The Texas Department of Commerce adopts these sections to define the requirements of and establish procedures for a statewide delivery system for the Job Training Partnership Act (JTPA) programs.

Section 187.131 has been amended to clarify that the address provided in the rule for administrative submissions or notices may also be used to request forms or information. Sections 187.240, 187.242 and 187.243 have been amended to include the Title IV-C Veteran's Program Documentation Log in the list of records and basic forms to verify eligibility.

Sections 187.101-187.105 provide the title and purpose of these rules, define terms commonly used in the JTPA programs, and designate the entities for state administration. Sections 187.120-187.134 prescribe procedures and requirements for designation of service delivery areas and certification of private industry councils. Sections 187.140-187.155 define and facilitate the establishment of job training plans prepared by the local service delivery areas and substate areas. Sections 187.160-187.165 define and prescribe the performance measures by which JTPA programs shall be evaluated by the department. Sections 187.170-187.196 define and facilitate the identification of subrecipients with compliance problems to timely address such problems through technical assistance or sanctions, and establish a comprehensive state and local monitoring system. Sections 187.200-187.237 establish uniform accounting and financial management rules for the administration of all JTPA programs funded through the Texas Department of Commerce. Sections 187.240-187.249 establish standard procedures to comply with the eligibility criteria and documentation requirements for Titles II and III of the federal JTPA. Sections 187.260-187.269 implement state and local methods of administration to ensure compliance with the nondiscrimination and equal opportunity provisions of the federal JTPA. Sections 187.280-187.298 define and establish state procedures for resolving

grievances regarding violations of the federal JTPA.

No comments were received regarding adoption of the new rules.

• 10 TAC §§187.101-187.105

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs, and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994

TRD-9446399

Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date September 1, 1994

Proposal publication date June 24, 1994

For further information, please call (512) 320-9630

Subchapter B Program Delivery System

• 10 TAC §§187.120-187.134

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs, and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

§187.131 Address for all Submissions, Notices and Requests for Information or Forms. All nominations, appointments, notices and other related or required documents for private industry councils, or any requests for information or forms, must be submitted to the following address: Texas Department of Commerce, Work Force Development Division, Division Director, P.

O Box 12728, Austin, Texas 78711-2728

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 August 3, 1994

TRD-9446400

Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date September 1, 1994

Proposal publication date March 25, 1994

For further information, please call: (512) 320-9630

Subchapter C. Job Training Plans

• 10 TAC §§187.140-187.154

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs, and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

This agency hereby certifies that the rules 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 August 3, 1994

TRD-9446401

Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date September 1, 1994

Proposal publication date May 13, 1994

For further information, please call (512) 320-9630

• 10 TAC §187.155

The new rule is adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs, and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Govern-

ment Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994.

TRD-9446402 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: June 24, 1994

For further information, please call: (512) 320-9630

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Subchapter D. Performance Standards

• 10 TAC §§187.160-187.165

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994

TRD-9446403 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: June 24, 1994

For further information, please call (512) 320-9630

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Subchapter E. State Monitoring and Sanctions Policies

• 10 TAC §§187.170-187.196

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas

Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994

TRD-9446404 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: May 13, 1994

For further information, please call (512) 320-9630

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Subchapter F. Financial Management Rules

• 10 TAC §§187.200-187.237

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994

TRD-9446405 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: June 24, 1994

For further information, please call: (512) 320-9630

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Subchapter G. Eligibility Policies and Procedures

• 10 TAC §§187.240-187.249

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules

necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

§187.240 Purpose and Authority. This subchapter provides the rules implementing Texas Department of Commerce policies and procedures developed to comply with eligibility criteria and documentation for Titles II, III and IV-C of the Federal Act.

§187.242 Record of Documentation to Verify Eligibility

(a) Prior to enrollment of an applicant in a JTPA program, the SDA or JTPA contractor must make a determination of the applicant's eligibility based on information in the applicant's statement and the documentation collected to verify eligibility. SDAs and JTPA contractors must maintain a listing of the documentation sources used to verify each applicant's eligibility. Such documentation listings must be maintained in each participant's file, along with copies of the documentation sources used for verification of eligibility.

(b) The Documentation Logs for the Title II Programs, Title III/EDWAA Eligibility Programs, and the Title IV-C Veteran's Program, identified in §187.243 of this title (relating to Basic Forms for Eligibility Documentation), contain comprehensive lists of the appropriate documentation sources to verify eligibility criteria, and may be used as a standard log in each participant's official file. Unless otherwise specified, SDAs and JTPA contractors will satisfy documentation requirements by obtaining a file copy of any one document per criterion.

§187.243 Basic Forms for Eligibility Documentation

(a) The following eligibility documentation forms have been developed by the department to facilitate and provide a standard format for client eligibility determination and to document the eligibility verification sources:

(1) The JTPA Income Worksheet provides a basic format for establishing eligibility and compiling information that must be retained in a participant's official file.

(2) The Telephone/Document Inspection Verification Form may be used

to record information obtained to verify eligibility.

(3) The Applicant Statement is available for use when eligibility information is not verifiable or may cause undue hardship for individuals to obtain.

(4) The Title II Programs Documentation Log, JTPA Title III/EDWAA Eligibility Documentation Log, and the Title IV-C Veteran's Program Documentation Log may be used to identify the document sources used in verifying an applicant's eligibility.

(5) The Defense Conversion Adjustment Eligibility Documentation Log may be used to identify the document sources used in verifying an applicant's eligibility for the Defense Conversion Adjustment Program described in Federal Act, §325.

(b) All six forms described in subsection (a) of this section may be reproduced as needed, and are available from the address shown in §187.131 of this title (relating to Address for all Submissions, Notices, and Requests for Information or Forms).

(c) SDAs may revise documents and forms required for eligibility verification without obtaining review and approval by the department, provided that such revisions do not restrict or expand the policies set forth in the Federal Act, the Federal JTPA Regulations or this title. The department retains the right to conduct audits and compliance reviews of such revised forms.

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 August 3, 1994.

TRD-9446408 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: May 24, 1994

For further information, please call: (512) 320-9630

Subchapter H. Nondiscrimination and Equal Opportunity

• 10 TAC §§187.260-187.269

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5a, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to

adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994.

TRD-9446407 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: May 24, 1994

For further information, please call: (512) 320-9630

Subchapter I. JTPA Grievance Procedures

• 10 TAC §§187.280-187.298

The new rules are adopted under the Texas Government Code, §481.0044(a), which authorizes the Policy Board of the Texas Department of Commerce to adopt rules necessary for the administration of department programs; and Texas Civil Statutes, Article 4413(52), §5A, (as amended by Senate Bill 405, §29, Acts 1993, 73rd Legislature), which gives the Policy Board of the Texas Department of Commerce the authority to adopt necessary rules for the implementation and management of the job-training program. The sections are also adopted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, which mandates the rulemaking procedures for state agencies.

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

Issued in Austin, Texas, on August 3, 1994.

TRD-9446408 Deborah C. Kastrin
Executive Director
Texas Department of
Commerce

Effective date: September 1, 1994

Proposal publication date: May 24, 1994

For further information, please call: (512) 320-1806

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter P. Testing and Remediation

• 19 TAC §5.314

The Texas Higher Education Coordinating Board adopts an amendment to §5.314, concerning Testing and Remediation (Administration), without changes to the proposed text as published in the June 3, 1994, issue of the *Texas Register* (19 TexReg 4305).

A number of institutions have concluded that they are unable to administer and score the campus form of the test for the \$3.00 maximum fee that was set by the Board. Higher administrative staffing costs make the increase necessary.

The amendment would allow institutions to charge students no more than \$4.00 for the administration and scoring of the campus form of the TASP test.

No comments were received regarding the adoption of the amendment.

The amendment is proposed under Texas Education Code, §51.306 and §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation.

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 August 9, 1994

TRD-9446324 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 2, 1994

Proposal publication date: June 3, 1994

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter S. Interstate Motor Carrier Sales and Use Tax

• 34 TAC §3.443

The Comptroller of Public Accounts adopts an amendment to §3.443, concerning imposi-

tion and tax after effective date for interstate motor carrier sales and use tax, without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3137).

The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

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 August 11, 1994.

TRD-9446496

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: September 1, 1994

Proposal publication date: April 26, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆
• 34 TAC §3.444

The Comptroller of Public Accounts adopts an amendment to §3.444, concerning computation of the proportioned tax-interstate motor vehicles, without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3138).

The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

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 August 11, 1994.

TRD-9446524

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: September 1, 1994

Proposal publication date: April 26, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆
• 34 TAC §3.445

The Comptroller of Public Accounts adopts an amendment to §3.445, concerning computation of the proportioned tax-trailers and semitrailers, without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3139).

The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

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 August 11, 1994.

TRD-9446523

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: September 1, 1994

Proposal publication date: April 26, 1994

For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS

Part V. Texas Board of
Pardons and Paroles

Chapter 145. Parole

Terms and Conditions of Pa-
role

◆ ◆ ◆
• 37 TAC §145.22

The Texas Board of Pardons and Paroles adopts new §145.22, concerning the terms and conditions of parole which are currently found at §195.61, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3431). This section lists both general conditions of parole which are applicable to all parolees and special conditions of parole which are ordered on an individual basis.

The new section is adopted to more logically reposition the text of this rule within the Texas Administrative Code.

One comment was received by the Committee on Corrections and Parole of the Texas Criminal Defense Lawyers Association regarding adoption of the new section.

The commenter opposed several terms and conditions of parole in the proposed section as being vague. The commenter seems concerned that the terms as proposed might lead parole officers to believe that they, and not the Board of Pardons and Paroles, have the discretion to set terms and conditions of parole.

The Board of Pardons and Paroles disagrees with the commenters, because statutory law found in Code of Criminal Procedure, Article 42.18, §1 and §7, specifies that the Board of Pardons and Paroles has exclusive authority to grant and set conditions of parole, which §2 specifies that a parolee contractually agrees to serve the remainder of his sentence under the supervision and control of parole officers.

The Board of Pardons and Paroles feels that the proposed new section fairly comports with the intent of the statutory law cited previously and that considerations of vagueness do not require the board to adopt terms and conditions of parole which would require the board to micromanage parolees, so as to eliminate the need for parole officers.

The Board is confident that the proposed new terms and conditions of parole are not vague in the context of parole based upon remarks made by the U.S. Supreme Court in *Morrissey v Brewer*, 408 U.S. 471 at page 479, (1972).

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

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

Issued in Austin, Texas, on August 8, 1994.

TRD-9446314

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

Effective date: August 30, 1994

Proposal publication date: May 6, 1994

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

◆ ◆ ◆
TITLE 40. SOCIAL SER-
VICES AND ASSIS-
TANCE

Part I. Texas Department
of Human Services

Chapter 15. Medicaid
Eligibility

The Texas Department of Human Services (DHS) adopts amendments to §15.441 and §15.501, concerning real property resources and vendor living arrangements, in its Medicaid Eligibility rule chapter, without changes to the proposed text as published in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4736).

The justification for the amendment to §15.441 is to allow the exemption of the value of home property placed for sale for clients in certain living arrangements. The amendment to §15.501 specifies that DHS will consider a client who has been discharged directly to any 1915(c) home and community-based waiver program before the client completes 30 consecutive days in a nursing facility to have met the 30-consecutive day requirement for Medicaid eligibility.

The amendment to §15.441 will function by allowing clients to remain eligible for Medicaid until the sale of home property is final and proceeds are available to the client. The amendment to §15.501 will function by allowing Medicaid to pay nursing facilities for short-term stays by nursing facility waiver clients.

The department received one comment regarding §15.501(b) from the Texas Health Care Association asking if the Health Care Financing Administration (HCFA) had approved the proposed policy. The department anticipates no comment from HCFA on this issue. Discharge from a nursing facility to a Medicaid 1915(c) home and community-based waiver program is similar to discharge to an acute care hospital, which does not affect the 30-consecutive day requirement for institutional eligibility. DHS is adopting §15.501(b) as proposed.

Subchapter D. Resources

• 40 TAC §15.441

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, §§22.001-22.024 and §§32.001-32.042.

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

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

TRD-9446519 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: September 1, 1994

Proposal publication date: June 17, 1994

For further information, please call: (512) 450-3765

Subchapter F. Budgets and Payment Plans

• 40 TAC §15.501

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 §§22.001-22.024 and §§32.001-32.042.

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

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

TRD-9446518 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: September 1, 1994

Proposal publication date: June 17, 1994

For further information, please call: (512) 450-3765

Chapter 90. Nursing Facilities and Related Institutions

Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

• 40 TAC §90.215

The Texas Department of Human Services (DHS) adopts an amendment to §90.215, concerning investigations of incidents and complaints, in its Nursing Facilities and Related Institutions rule chapter, without changes to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5347).

The justification for the amendment is to clarify that complaint investigations may include a visit to the resident's facility if DHS determines this is appropriate.

The amendment will function by making this rule consistent with DHS's Personal Care Facility rules and by eliminating a mandatory facility visit to investigate complaints.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, Chapter 242 which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413(502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

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 August 11, 1994.

TRD-9446517 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: September 15, 1994

Proposal publication date: July 8, 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 adopts amendments to §147.1 and §147.8, concerning Approved Drug Offender Education Programs, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5460).

The amendment to §147.1 changes the legal citation for the penalties for driving while intoxicated formerly located at the Texas Civil Statutes, Article 6701H 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.

These sections will enhance the quality programming in the Drug Offender-Education Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the 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.

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 August 15, 1994.

TRD-9446627 Otis E Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 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 adopts amendments to §147.33 and §147.42, concerning Approved Drug Offender Education Programs, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5460).

The amendment to §147.33 changes the legal citation for the penalties for driving while intoxicated formerly located at the Texas Civil Statutes, Article 6701H and now located in the Penal Code, Chapter 49, §§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 conducted by the instructors is reported.

These sections will enhance the quality programming in the Drug Offender-Education Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the 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.

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 August 15, 1994.

TRD-9446626

Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 867-8720

Chapter 152. Approved Alcohol Awareness Programs

General Provisions

• 40 TAC §152.1, §152.6

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §152.1 and §152.6, concerning Approved Alcohol Awareness Programs, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5461).

Section 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.

These sections will enhance the quality programming in the Alcohol Awareness Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Alcoholic Beverage Code, Chapter 106, §106.115, 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 Alcohol Awareness Programs.

The code affected by the amendments is Alcoholic Beverage Code, Chapter 106, §106.115.

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 August 15, 1994.

TRD-9446625

Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

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 adopts amendments to §152.26 and §152.31, concerning Approved Alcohol Awareness Programs, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5461).

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.

These sections will enhance the quality programming in the Alcohol Awareness Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Alcoholic Beverage Code, Chapter 106, §106.115, 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 Alcohol Awareness Programs.

The code affected by the amendments is Alcoholic Beverage Code, Chapter 106, §106.115.

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 August 15, 1994.

TRD-9446624

Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 867-8720

Chapter 153. DWI Education Program Standards and Procedures

General Provisions

• 40 TAC §§153.2, 153.3, 153.6, 153.18

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §153.2, 153.3, 153.6, and 153.18, concerning DWI Education Program Standards and Procedures, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5462).

The amendments to §153.2 and §153.3 provides 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.

These sections will enhance quality programming in the DWI Education Programs approved by the Texas Commission on Alcohol and Drug Abuse.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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.

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 August 15, 1994.

TRD-9446623 Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 867-8720



DWI Education Program Standards

- 40 TAC §§153.33, 153.36, 153.37, 153.41

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§153.33, 153.36, 153.37, and 153.41 concerning DWI Education Program Standards and Procedures, without changes to the proposed text as published in the July 15, 1994 issue of the *Texas Register* (19 TexReg 5463).

The 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, in the Texas Civil Statutes, Article 6701H is being replaced with the Texas Penal Code, §§49.04-49.08, effective September 1, 1994. The amendments to §153.36(10)(15) and §153.37(b) also replaces references to probation which is now referred to as community supervision. The amendment to §153.36(14) adds 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 to the annual report for more accurate reporting and §153.41(7) is added to require administrators to report the

number of courses each instructor taught during the annual reporting period.

These sections will enhance quality programming in the DWI Education Programs approved by the Texas Commission on Alcohol and Drug Abuse.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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 the Texas Code of Criminal Procedure, Article 42.12, §13h.

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 August 15, 1994.

TRD-9446622 Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 867-8720



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 adopts amendments to §154.1 and §154.6 concerning DWI Repeat Offender Program Standards and Procedures, without changes to the proposed text as published in the July 15, 1994 issue of the *Texas Register* (19 TexReg 5464). Section 154.1 is added because the legal citation for the penalties for driving while intoxicated is being repealed in the Texas Civil Statutes, Article 6701H and replaced with the 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.

These sections will enhance quality programming in the DWI Repeat Offender Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 42.12, §13(i), 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 the Texas Code of Criminal Procedure, Article 42.12, §13(i).

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 August 15, 1994.

TRD-9446621 Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 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 adopts amendments to §154.28 and §154.30 concerning DWI Repeat Offenders Program Standards and Procedures, without changes to the proposed text as published in the July 15, 1994 issue of the *Texas Register* (19 TexReg 5464). Section 154.28 requires 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. Section 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.

These sections will enhance quality programming in the DWI Repeat Offender Programs approved by the commission.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 42.12, §13(i), 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 these amendment is Texas Code of Criminal Procedure, Article 42.12, §13(i).

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 August 15, 1994.

Otis E. Williams
Deputy Executive Director
for Finance and
Administration
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 5, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512)
867-8720



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance will hold a public hearing on October 3, 1994, at 9:00 a.m., under Docket Number 2111, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe in Austin, Texas, to consider a staff petition proposing adoption of two new endorsements, Endorsement Number FRO-421 to be attached to the Texas Farm and Ranch Owners Policy and Endorsement Number TFR-080 to be attached to the Texas Farm and Ranch Policy, to provide coverage for greenhouses used for farm-

ing purposes for loss or damage caused by windstorm, hurricane, or hail. The petition also proposes new Texas Personal Lines Manual rules to govern the use of these endorsements and provide appropriate rates. The proposed endorsements and manual rules are necessary to restore windstorm, hurricane, and hail coverage for greenhouses located on a farm and ranch premises and used for farming purposes, which was inadvertently omitted when the Farm and Ranch Owners Policy and the Farm and Ranch Policy were revised into simplified easy-to-read language.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, 5.96, and 5.98.

Copies of the full text of the proposed endorsements and Texas Personal Lines Manual rules are available for review in the Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0894-17-I).

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the

Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for Property and Casualty Division, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Administrative Procedures and Texas Register Act (Administrative Procedure Act, 73rd Legislative, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Government Code, Title 10, Subtitle A, Chapter 2001).

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 August 15, 1994.

TRD-9446641

D. J. Powers
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: September 19, 1994

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



TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 30 TAC 321.133 (c) (2) (A)

Parameter	Limitation	Sample Type	Monitoring Frequency
Total Petroleum Hydrocarbons	15 mg/l	Grab	One/week (*1)
Total Lead	0.25 mg/l	Grab	One/week (*1)
Benzene	0.05 mg/l	Grab	One/week (*1)
Total BTEX (*2)	0.50 mg/l	Grab	One/week (*1)

(*1) The executive director may authorize a reduced monitoring frequency of twice/month upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months. If the responsible party fails to maintain compliance with discharge limits once a reduced monitoring frequency has been approved, the executive director may direct the responsible party to resume weekly monitoring.

(*2) Benzene, Toluene, Ethylbenzene, Total Xylene

Figure 2: 30 TAC §321.134 (c) (2) (A)

Parameter	Limitation	Sample Type	Monitoring Frequency
Total Petroleum Hydrocarbons	15 mg/l	Grab	One/week(*1)
Total Lead	0.25 mg/l	Grab	One/week(*1)
Benzene	0.05 mg/l	Grab	One/week(*1)
Total BTEX (*2)	0.50 mg/l	Grab	One/week(*1)
Polynuclear Aromatic Hydrocarbons (*3)	0.01 mg/l	Grab	One/month(*4)

(*1) The executive director may authorize a reduced monitoring frequency of twice/month upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months. If the responsible party fails to maintain compliance with discharge limits once a reduced monitoring frequency has been approved, the executive director may direct the responsible party to resume weekly monitoring.

(*2) Benzene, Toluene, Ethylbenzene, Total Xylene

(*3) Polynuclear Aromatic Hydrocarbons: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene), naphthalene, phenanthrene, pyrene.

(*4) The executive director may authorize a reduced monitoring frequency of once/three months upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months.

Figure 3: 30 TAC §321.156 (a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Chemical Oxygen Demand (*1)	300 mg/l	Grab	1/month
Total Organic Carbon (*1)	100 mg/l	Grab	1/month
Oil and Grease	15 mg/l	Grab	1/month
Total Suspended Solids	65 mg/l	Grab	1/month

(*1) Analyze and report either Chemical Oxygen Demand or Total Organic Carbon.

Figure 4: 30 TAC §321.156 (b)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Chemical Oxygen Demand (*1)	200 mg/l	Grab	1/3 months (*2)
Total Organic Carbon (*1)	75 mg/l	Grab	1/3 months (*2)
Oil and Grease	15 mg/l	Grab	1/3 months (*2)

(*1) Analyze and report either Chemical Oxygen Demand or Total Organic Carbon

(*2) When discharge occurs, sample shall be obtained within 60 minutes after discharge begins.

Figure 5: 30 TAC §321.176 (a)

<u>Parameter</u>	<u>Limitation</u> Daily Avg ^(*)	<u>Sample Type</u> Daily Max ^(*)	<u>Monitoring Frequency</u>
Total Suspended Solids (*3)	25 mg/l	45 mg/l	Grab 1/week (*4)
Total Fluoride (*5)	---	1.5 mg/l (*6)	Grab 1/week (*4)
Total Fluoride (*5)	---	0.5 mg/l (*7)	Grab 1/week (*4)

The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored 1/week (*4) by grab sample.

- (*1) Average of TSS daily values for one calendar month.
- (*2) Maximum value for any single day.
- (*3) Total Suspended Solids limitations do not apply to any untreated overflow from facilities designed, constructed and operated to treat the volume of storm water runoff which is associated with a 10-year, 24-hour rainfall event.
- (*4) When discharging.
- (*5) Total Fluoride limitations and monitoring requirements apply only to sand and gravel operations which use the hydrofluoric acid flotation process.
- (*6) When discharging to fresh water.
- (*7) When discharging 10 million gallons/day or more to salt water.

Figure 6: 30 TAC §321.176 (c)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Chemical Oxygen Demand (*1)	200 mg/l	Grab	1/3 months (*2)
Total Organic Carbon (*1)	75 mg/l	Grab	1/3 months (*2)
Oil and Grease	15 mg/l	Grab	1/3 months (*2)

- (*1) Analyze and report either Chemical Oxygen Demand or Total Organic Carbon.
- (*2) When discharge occurs, sample shall be obtained within 60 minutes after discharge begins.

Figure 7: 30 TAC §321.216 (a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Chemical Oxygen Demand (*1)	300 mg/l	Grab	1/month
Total Organic Carbon (*1)	100 mg/l	Grab	1/month
Oil and Grease	15 mg/l	Grab	1/month
Total Suspended Solids	65 mg/l	Grab	1/month

(*1) Analyze and report either Chemical Oxygen Demand or Total Organic Carbon.

Figure 8: 30 TAC §321.216 (b)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring</u>
Chemical Oxygen Demand (*1)	200 mg/l	Grab	1/3 month(*2)
Total Organic Carbon (*1)	75 mg/l	Grab	1/3 month(*2)
Oil and Grease	15 mg/l	Grab	1/3 month(*2)

(*1) Analyze and report either Chemical Oxygen Demand or Total Organic Carbon.

(*2) When discharge occurs, sample shall be obtained within 60 minutes after discharge begins.

Figure 9: 30 TAC §321.217 (b)

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

Figure 10: 30 TAC §321.236 (a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency(*1)</u>
Total Petroleum Hydrocarbons	15 mg/l	Grab	1/week
Benzene	0.05 mg/l	Grab	1/week
Total BTEX (*2)	0.5 mg/l	Grab	1/week
Total Lead	0.25 mg/l	Grab	1/week

(*1) If discharge occurs less frequently than the minimum monitoring frequency, then monitoring shall be conducted for each discharge event.

(*2) Benzene, toluene, ethyl benzene, xylene

The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per week (*1) by grab sample.

Figure 11: 30 TAC §321.236 (b)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency(*1)</u>
Total Petroleum Hydrocarbons	15 mg/l	Grab	1/week
Benzene	0.05 mg/l	Grab	1/week
Total BTEX (*2)	0.5 mg/l	Grab	1/week
Total Lead	0.25 mg/l	Grab	1/week

(*1) If discharge occurs less frequently than the minimum monitoring frequency, then monitoring shall be conducted for each discharge event. When discharge occurs, sample shall be obtained within 60 minutes after discharge begins.

(*2) Benzene, toluene, ethyl benzene, xylene

The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored 1/week (*1) by grab sample.

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, August 23-24, 1994, 1:00 p.m. and 8:00 a.m. respectively.

Harvey Hotel, 3100 I-40 West

Amarillo

Texas Wheat Producers Board

AGENDA:

Action: Call to order; minutes of May meeting; 1994 year end financial report; audit report; 1994-1995 year-to-date financial report; Collections and Refunds report

Discussion and action: Report from Texas Department of Agriculture

Report: Mini-summit meeting; Bushland Wheat Field Day; FCIC Forum; Forum on Environment and Water Quality; Agriculture 20/20; Perryton Economic Development Council; Sherman Area Wheat Straw Project; TDA Farm Bill Advisory Committee

Report and Action: Wheat Foods Council; report on NAWG Conference; U.S. Wheat Associates summer meeting; other board members reports; new business; past quarter and future activities

Contact: Bill Nelson, 2201 Civic Circle, Amarillo, Texas 79109-1853, (806) 352-2191.

Filed: August 15, 1994, 12:05 p.m.

TRD-9446659

Texas Certified Self-Insurer Guaranty Association

Tuesday, August 23, 1994, 11:00 a.m.

4000 South IH-35, Tippy Foster Meeting Room 910

Austin

Board

AGENDA:

1. Call to order
2. Approval of minutes for the public meeting of July 19, 1994
3. Discussion, consideration, and possible action on the initial application for PPG Industries, Inc.
4. Discussion, consideration, and possible action on the renewal application for Kiewit Construction Group, Inc. and subsidiaries
5. Other business
6. Discussion of future public meetings
7. Adjournment

Contact: Judy Roach, 1600 San Jacinto, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322-2514.

Filed: August 12, 1994, 11:51 a.m.

TRD-9446551

Texas Commission for the Deaf and Hearing Impaired

Sunday, August 28, 1994, 9:00 a.m.

Holiday Inn Emerald Beach, 1102 South Shoreline Boulevard

Corpus Christi

Board

AGENDA:

Call to order; discussion and decision on enabling statute changes; other business brought forth by Commissioners; discussion and decision on scheduling of next meeting; executive session pursuant to Chapter 551 of the Texas Government Code, §551.074, for deliberation on officers or employees; and adjournment.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: August 12, 1994, 2:00 p.m.

TRD-9446560

Sunday, August 28, 1994, 9:00 a.m.

Holiday Inn Emerald Beach, 1102 South Shoreline Boulevard

Corpus Christi

Board for Evaluation of Interpreters (BEI)

AGENDA:

Approval of June 25, 1994 minutes; public comments; enhancement of materials; evaluator training; calendar update; criteria for evaluators; executive session: a. Review of

applicant test materials, b. Interpreter complaints; certification, recertification, revocation; old business; and new business.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: August 15, 1994, 3:20 p.m.

TRD-9446666

Texas Employment Commission

Tuesday, August 23, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; adoption of legislative appropriations request; adoption of risk management policy; consideration and possible approval of bid for HVAC retrofit at the McAllen agency-owned building; consideration and possible approval of bid for interior and exterior renovations at the Denton agency-owned building; staff reports; internal procedures of Commission Appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 34; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 15, 1994, 4:12 p.m.

TRD-9446670

Funds Review Advisory Committee

Tuesday, August 23, 1994, 9:00 a.m.

111 East 17th Street, Room 114

Austin

Funds Review Advisory Committee

AGENDA:

- I. Call meeting to order
- II. Update on status of notice to state agencies
- III. Update on status of questionnaire
- IV. Discussion of loss of dedication and funds not previously consolidated
- V. Other items
- VI. Adjournment

Contact: George Tamayo, 111 East 17th Street, Room 902, Austin, Texas 78774, (512) 463-4595.

Filed: August 15, 1994, 3:46 p.m.

TRD-9446668

Office of the Governor, Criminal Justice Division

Saturday, August 20, 1994, 9:00 a.m.

111 East Cesar Chavez Street, Room Forum III

Austin

Texas Crime Stoppers Advisory Council

AGENDA:

I. Call to order. II. Approval of minutes for June 29, 1994 regular meeting. III. Goals and objectives for 1994/1995. IV. Defining roll of council members and staff (Adan Munoz). V. Establishing list of priorities for staff. VI. Define/establish need and direction of training. VII. Evaluation of regional training concept. VIII. 1994/1995 training schedule/curriculum. IX. Appointment of Education Committee and assignments. X. Status of certification and review of certification application. XI. 1995 State Conference planning update. XII. Site selection and review of site for future Crime Stoppers schools. XIII. Discussion and changes on 1995 Awards packet. XIV. Crime Stoppers Assistance funding guidelines. XV. Time/date of next meeting and agenda items. XVI. Adjournment.

Contact: Paula Alvarez-Crampton, P.O. Box 12428, Austin, Texas 78701, (512) 463-1784.

Filed: August 11, 1994, 10:35 a.m.

TRD-9446474

Texas High-Speed Rail Authority

Friday, August 19, 1994, 9:00 a.m.

Auditorium, State Capitol Extension, 1100 North Congress Avenue

Austin

Standing Budget Committee

AGENDA:

Call to order; consideration of fiscal year 1995 operating budget; receipt of public comment on fiscal year 1995 operating budget; consideration of adoption of recommended annual operating budget for action by Board of Directors, under provisions of §1.42 of the Budgeting and Funds Management chapter of the proposed operations manual.

Contact: Allan Rutter, 823 Congress Avenue, #1502, Austin, Texas 78701, (512) 478-5484.

Filed: August 11, 1994, 4:43 p.m.

TRD-9446510

Friday, August 19, 1994, 10:00 a.m.

Auditorium, State Capitol Extension, 1100 North Congress Avenue

Austin

AGENDA:

Call to order; consideration of minutes from April 27, 1994 Board meeting; executive session pursuant to the provisions of Texas Government Code, §551.071; consideration, deliberation and action on pending or contemplated litigation involving a former employee; consideration of Standing Budget Committee recommendation for fiscal year 1995 operating budget; report on fiscal year 1996-1997 Legislative Appropriations Request and Strategic Plan; consideration and action on HUB/DBE policy for the Authority; proposed administrative rules: §§81.181-81.185, relating to public records charges; consideration and action on Woodward-Clyde Consultants request for suspension of Agreement for Services; consideration of settlement of the pending proceeding before the State Office of Administrative Hearings relating to the termination of the franchise awarded to Texas TGV Corporation; consideration and action on proposed staff report on future of high-speed rail in Texas; and Citizen Communications.

Contact: Allan Rutter, 823 Congress Avenue, #1502, Austin, Texas 78701, (512) 478-5484.

Filed: August 11, 1994, 4:43 p.m.

TRD-9446511

Texas State Affordable Housing Corporation

Tuesday, August 23, 1994, 4:00 p.m.

1200 North Congress Avenue, Capitol Extension Building, Room E1016

Austin

Board of Directors Organizational Meeting

AGENDA:

The Board of Directors will consider and possibly act on the election of chairperson; approval of the articles of incorporation; adoption of bylaws; election of officers; chairman, vice chairman, secretary, treasurer, president and other officers; and general organization corporate matters. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA responsible employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Kelly Elizondo, 811 Barton Springs, Austin, Texas 78704, (512) 475-1247.

Filed: August 12, 1994, 2:47 p.m.

TRD-9446569

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Texas Department of Housing and Community Affairs

Monday, August 22, 1994, 5:00 p.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1.100

Austin

Program Committee Meeting

AGENDA:

The Program Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following: HOME funding recommendations for fiscal year 1993 for pre-development loans; HOME program rules for 1994-1995; change in ownership of Multi-Family Properties Galeshi G. E. Partnership; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711, (512) 475-3934.

Filed: August 12, 1994, 2:47 p.m.

TRD-9446572

Tuesday-Wednesday, August 23-24, 1994, Noon and 8:30 a.m. respectively.

Capitol Extension, 1200 North Congress Avenue, Room E1.016

Austin

Board Meeting

AGENDA:

The Governing Board of the Texas Department of Housing Community will meet to consider and possibly act upon the following: executive session on anticipated litigation (general counsel to give report on litigation under §551.071 and §551.103, Texas Government Code, litigation exception) and restructure of Residential Mortgage Revenue Bonds; recommendations and information provided during executive session; single family new money issue; taxable commercial paper issue; minutes of June 16, 1994 and July 7, 1994; 1995 operating budget; HOME funding recommendations for fiscal year 1993 for pre-development loans; HOME program rules for 1994-1995; change in ownership of Multi-Family Properties Galeshi G. E. Partnership and related matters; contract for Deed Marketing Plan;

charges for open records; El Camino offer to bankruptcy court; purchase of HUD Property of Bennett Plaza; purchase of RTC Properties of Shadow Brook, Sleepy Hollow, President's Corner; professional services contracts for due diligence on several apartment complexes; homeless census; executive director report items on City of Texarkana Homeownership Partnership; other report items as deemed necessary by executive director; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711, (512) 475-3934.

Filed: August 12, 1994, 2:47 p.m.

TRD-9446571

Tuesday, August 23, 1994, 8:30 a.m.

Capital Extension, 1200 North Congress Avenue, Room E1.016

Austin

Finance Committee Meeting

AGENDA:

The Finance Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following: single family new money issues; restructure of Residential Mortgage Revenue Bonds; taxable commercial paper issue; executive session on restructure of Residential Mortgage Revenue Bonds; recommendations and information provided during executive session; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711, (512) 475-3934.

Filed: August 12, 1994, 2:47 p.m.

TRD-9446570

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Texas Department of Human Services

Friday, August 19, 1994, 11:00 a.m.

701 West 51st, Public Hearing Room

Austin

Revised Agenda

Texas Board of Human Services

AGENDA:

The Texas Board of Human Services has deleted Item #4-Adoption of revisions to the Child Care Services Rule Base from the previous submitted agenda.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: August 11, 1994, 3:56 p.m.

TRD-9446498

Monday, August 22, 1994, 1:45 p.m.

701 West 51st, Sixth Floor, Room 650Q

Austin

Ethics Advisory Committee

AGENDA:

According to the agenda, the Ethics Advisory Committee will present ethics training materials; present certificates; and hear open discussion.

Contact: Steve Aragon, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3812.

Filed: August 12, 1994, 10:20 a.m.

TRD-9446533

Tuesday, August 23, 1994, 9:00 a.m.

8407 Wall Street, Room S-400

Austin

Advisory Committee for Personal Care Facilities Subcommittee

AGENDA:

According to the agenda, the Subcommittee Advisory Committee for Personal Care Facilities will review construction requirements; hear possible alternatives to the construction requirements; and announce the next subcommittee meeting.

Contact: Barbara Crenweige, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6697.

Filed: August 11, 1994, 1:05 p.m.

TRD-9446489

◆ ◆ ◆
Texas Department of Insurance

Wednesday, August 24, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

Request by Conreco for an appeal hearing from decision of Texas Department of Insurance staff regarding change in Classification Code applicable to workers' compensation insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: August 11, 1994, 11:19 a.m.

TRD-9446476

Thursday, August 25, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

To consider the application of David Michael Potete, San Antonio, Texas, for a solicitor's license to be issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: August 11, 1994, 11:19 a.m.

TRD-9446475

◆ ◆ ◆
Legislative Budget Board

Thursday, August 25, 1994, 10:00 a.m.

William P. Clements Building, Committee Room 1, Fifth Floor

Austin

Legislative Budget Board

AGENDA:

Approve minutes, consider the Governor's Budget Execution Proposal to allow transfer of appropriations to the Juvenile Probation Commission, consider Legislative Budget Board Budget Execution Proposal to allow transfer of appropriations to the Department of Criminal Justice for additional funding to operate authorized prison and jail beds and payments to counties, consider Legislative Budget Board Budget Execution Proposal to allow transfer of appropriations under the Employees Retirement System for the payment of deferred retirement costs, and other business as presented.

Contact: John Keel, Third Floor, John H. Reagan Building, 105 West 15th Street, Austin, Texas 78701, (512) 463-1200.

Filed: August 15, 1994, 2:45 p.m.

TRD-9446664

◆ ◆ ◆
Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Monday, August 15, 1994, Noon.

301 Congress Avenue, Suite 500, Board Room

Austin

Emergency Meeting

Executive Committee

AGENDA:

Consideration and possible action on: 1) Request by the National Organization of Life and Health Guaranty Associations to have the executive director of the Texas Life, Accident, Health and Hospital Service

Insurance Guaranty Association to serve as the chair of its task force, formed pursuant to the rules and procedures of the Members' Participation Council, in connection with the U.S. business issued by Confederation Life of Toronto, Canada, and its U.S. subsidiaries, placed under court ordered rehabilitation in Michigan and Georgia on August 11, 1994.

Some or all of the committee members may participate by telephone conference. This meeting is open to the public and those interested in attending should appear at the stated time, at the above location, which has teleconferencing facilities.

Reason for emergency: The need for an emergency meeting pursuant to §551.045 of the Open Meetings Act exists because the seizure of Confederation Life Insurance Company by the Michigan Department of Insurance was not known, nor was it reasonably foreseeable, to the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association until August 11, 1994, and in order to protect the interests of policyholders and member guaranty associations, it is necessary that a task force chair be chosen no later than August 15, 1994.

Contact: C. S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: August 15, 1994, 8:43 a.m.

TRD-9446628

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Texas State Board of Medical Examiners

Friday, August 19, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Ad Hoc Committee for Ethical Issues

AGENDA:

- I. Call to order
- II. Roll call
- III. Discussion and review of draft policy statement related to advertising guidelines
- IV. Discussion and review of draft policy statement related to informed consent/paternalism
- 5. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: August 11, 1994, 4:02 p.m.

TRD-9446503

Friday-Saturday, August 19-20, 1994, 9:30 a.m. and 8:30 a.m. respectively.

1812 Centre Creek Drive, Suite 300

Austin

AGENDA:

The agenda includes several requests for termination of suspension; proposals for decision on the licenses of Joseph Jordan Jackson, M.D., Kenneth Wayne Green, M.D., and Stanslaw R. Burzynski, M.D.; guest speaker, Senator John Whitmire; discussion, speakers, and recommendations regarding rules related to pair management; public hearings on rule changes; approval of orders and minutes; probation appearances; discussion, speakers, and possible action on issues related to nonprofit health organizations; and the executive director's report.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: August 11, 1994, 4:09 p.m.

TRD-9446504

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Texas Natural Resource Conservation Commission

Wednesday, August 24, 1994, 9:30 a.m.

12118 Park 35 Circle, Room 201S, Building E

Austin

40% Task Force

AGENDA:

The 40% Task Force, as required by Senate Bill 1051 of the 73rd Legislature, will meet to research and discuss the implications of a statewide phased-in yard trimmings disposal ban on the environment and economy of Texas, to consider other waste reduction initiatives that could help Texas reach the 40% waste reduction goal, and to make recommendations to the TNRCC and the state legislature based upon their findings. The final 40% Task Force meeting will be held on August 24, 9:30 a.m. to 4:00 p.m. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1927, Austin, Texas 78753. These files will be listed as "40% Task Force."

August 24-Discussion of the implications of a statewide phased-in yard trimmings disposal ban and consideration of other waste reduction initiatives.

Contact: Wendy Audette, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6757.

Filed: August 11, 1994, 4:42 p.m.

TRD-9446509

Thursday-Friday, August 25-26, 1994, 9:00 a.m.

12015 Park 35 Circle, Building E, Room 201S

Austin

Municipal Solid Waste Management and Resource Recovery Advisory Council

AGENDA:

The Municipal Solid Waste Management and Resource Recovery Advisory Council's Regulatory Oversight Committee will hold a public meeting to discuss: using waste as ballast in landfills; construction of landfills below the water table; Blue Ribbon Committee recommendations; technical presentations and public comment. The meeting is open to the general public and comments are encouraged. Technical presentations are to be pre-arranged in advance with Bob Gregory, Chairman, by calling (512) 243-4100/Fax (512) 243-4123 or Gary W. Trim, TNRCC, (512) 239-6708/Fax (512) 239-6717. A time limit will be set for all presentations.

The Regulatory Oversight Committee will meet to approve minutes of the June 23, 1994 meeting; listen to a presentation regarding the rewriting of special waste rules; and completion of old business.

The full Advisory Council will meet on August 26, 1994 to discuss: Conference Planning Committee meeting; Education Committee meeting; approval of the June 23 and 24, 1994 minutes; Municipal Solid Waste Division director report, Waste Policy Division director report, Office of Pollution Prevention and Recycling Division report; 40% Task Force report; Recycling Waste Minimizing Section report; public comments; and committee reports.

Contact: Gary W. Trim, P.O. Box 13087, Austin, Texas 78711, (512) 239-6708.

Filed: August 11, 1994, 3:58 p.m.

TRD-9446502

Friday, August 26, 1994, 9:00 a.m.

Building B, Room 201A, 12124 Park 35 Circle

Austin

AGENDA:

Discussion of the TNRCC FY 95 operating budget and FY 96-97 Legislative Appropriation Request.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: August 15, 1994, 2:45 p.m.

TRD-9446663

Friday, August 26, 1994, 10:00 a.m.

William B. Travis State Office Building, Room 1-111, 1701 North Congress Avenue
Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by the City of Georgetown for a Certificate of Convenience and Necessity (CCN) to provide sewer utility service in Williamson County, Texas. The City of Georgetown has also applied to amend its CCN Number 12639 for water utility service and proposes decertification of a portion of a Chisholm Trail Special Utility District's CCN Number 11590. Docket Number 30459-C for the water certificate; Docket Number 30460-C for the sewer certificate.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:26 p.m.

TRD-9446591

Monday, August 29, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 119, 1700 North Congress Avenue
Austin

AGENDA:

For a hearing before a hearings examiner on the following applications:

Travis County Water Control and Improvement District (WCID) Number 14 has applied to amend its Certificate of Convenience and Necessity (CCN) Number 11322 and to decertify a portion of CCN Number 12485 issued to Hill County Water Supply Corporation (WSC) to provide water utility service in Travis County, Texas. Docket Number 30426-C.

Hill Country WSC has filed a request for a cease and desist order against Travis County WCID Number 14 concerning utility service in the Southview Estates Subdivision in Travis County, Texas. Docket Number 30400-D.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:25 p.m.

TRD-9446590

Thursday, September 1, 1994, 10:00 a.m.

Building E, Room 254S, 12118 Interstate Highway 35

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on a water rate increase by Dogwood Estates

Water Company in Henderson County, Texas. Docket Number 30466-R.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:30 p.m.

TRD-9446605

Tuesday, September 6, 1994, 10:00 a.m.

Building D, Room 200-33, 12118 Interstate Highway 35

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by the City of Edinburg for a Certificate of Convenience and Necessity (CCN) for sewer utility service in Hidalgo County, Texas. The proposed service area is approximately 2.5 miles east of downtown Edinburg, Texas. Docket Number 30328-C. This matter is to be consolidated with Docket B case of North Alamo Water Supply Corporation's pending Docket Number 30011-C.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:29 p.m.

TRD-9446600

Tuesday, September 6, 1994, 10:00 a.m.

Building A, Room 310A, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on a water rate increase by WWSW Company in Grayson County, Texas. Docket Number 30457-G.

Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:30 p.m.

TRD-9446604

Thursday, September 8, 1994, 9:00 a.m.

Chamber of Commerce, 710 West Fifth Plainview

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Texzona Cattle Feeders General Partnership for an amendment to Permit Number 01551. The amendment will authorize an increase in the number of cattle at the feedlot from a maximum of 35,000 head to a maximum of 60,000 head. The feedlot is located approximately one mile

north of the intersection of FM Road 179 and FM Road 1914 in Hale County, Texas.

Contact: Pat Robards, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:27 p.m.

TRD-9446593

Thursday, September 8, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue
Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on a water rate increase by Day Water Company doing business as Hood County Water Company in Hood County, Texas. Docket Number 30477-R.

Filed: Nina Fantl, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:30 p.m.

TRD-9446603

Friday, September 9, 1994, 10:00 a.m.

Building F, Room 31034, 12015 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on Gene Sanders, et al's petition to decertify and cancel a portion of Waterco, Inc.'s Certificate of Convenience and Necessity Number 10130 for water utility service in Walker County, Texas. Docket Number 30430-Q.

Contact: Sylvia McClellan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:27 p.m.

TRD-9446595

Friday, September 9, 1994, 10:00 a.m.

Building C, Room 107W, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by John W. Wiley doing business as Fort Worth Land and Cattle Company for Certificates of Convenience and Necessity (CCN) for water and sewer utility service in Parker County, Texas. The applicant also proposes decertification of portions of CCN Number 11814 and 20773

issued to the City of Willow Creek. The proposed utility service area is located approximately one mile southwest of downtown Willow Park, Texas. Docket Number 30398-C for the water certificate and Docket Number 30399-C for the sewer certificate.

Contact: Elizabeth Todd, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:28 p.m.

TRD-9446598

Monday, September 12, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 119, 1700 North Congress Avenue

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Odie L. Nehring to amend its Certificate of Convenience and Necessity Number 11977 to expand the area to which it provides water utility service in Williamson County, Texas. The proposed utility service area is located approximately 1.5 miles west of downtown Walburg, Texas. Docket Number 30391-C.

Contact: Tommy Broyles, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:28 p.m.

TRD-9446596

Monday, September 12, 1994, 10:00 a.m.

Building B, Room 201A, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Steiner Utility Company, Inc. to amend its Certificates of Convenience and Necessity Numbers 12024 and 20665 by decertifying a portion of its water and sewer utility service area in Travis County, Texas. The area proposed for decertification is located approximately 13 miles northwest of downtown Austin, Texas. Docket Number 30427-Q for the amended water certificates and Docket Number 30428-Q for the amended sewer certificate.

Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:28 p.m.

TRD-9446599

Tuesday, September 13, 1994, 10:00 a.m.

Building A, Room 310A, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an water rate increase by Smith Management Services in Lubbock County, Texas. Docket Number 30422-R.

Contact: Pat Robards, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:29 p.m.

TRD-9446602

Thursday, September 15, 1994, 10:00 a.m.

Sam Houston State Office Building, Room 117, 201 East 14th Street

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on water and sewer rate increases by Evelyn Freeman Farhood doing business as Abraxas (Hilltop) Utility in Parker County, Texas. Docket Number 30431-G.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:29 p.m.

TRD-9446601

Monday, September 19, 1994, 10:00 a.m.

William B. Travis State Office Building, Room 1-100, 1701 North Congress Avenue

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an appeal filed by out-of-city single family class water ratepayers on a water rate increase effective April 1, 1994, for the City of Austin, in Travis County, Texas. Docket Number 30592-W.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:28 p.m.

TRD-9446597

Tuesday, September 20, 1994, 1:30 p.m.

Holiday Inn Brookhollow, Room 3, 7050 Stemmons Freeway

Dallas

AGENDA:

On an application by American Med Waste Authority, Inc., Proposed Permit Number

MSW2233, authorizing a Type V municipal solid waste facility to receive medical solid waste. The proposed site covers approximately 3.403 acres of land and is to be located at 11221 Goodnight Road in Dallas County, Dallas, Texas.

Contact: Sam Gavande, P.O. Box 13087, Austin, Texas 78711, (512) 239-6734.

Filed: August 12, 1994, 5:24 p.m.

TRD-9446589

Thursday, September 22, 1994, 1:00 p.m.

Erath County Courthouse, Second Floor Courtroom On The Square

Stephenville

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by John Vander Horst for an amendment to Permit Number 03322 to authorize an increase in the capacity of the dairy from 750 head to a maximum of 1,500 head. The dairy is located along U.S. Highway 281; approximately 3.2 miles southeast of the intersection of U.S. Highways 67 and 281; approximately two miles north of the intersection of U.S. Highway 281 and FM Road 913 in Erath County, Texas.

Contact: Sylvia McClellan and Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 12, 1994, 5:27 p.m.

TRD-9446594

Board of Nurse Examiners

Thursday, August 25, 1994, 9:00 a.m.

9101 Burnet Road, Suite 104

Austin

Eligibility and Disciplinary Committee

AGENDA:

Call to order-9:00 a.m.

Acceptance of agenda

Minutes of June 16, 1994 E&D Committee meeting

1. Declaratory orders
2. ALJ proposals for decision
3. Agreed orders
4. Scott Neil Nelson, applicant

Contact: Louise Waddill, Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: August 11, 1994, 5:38 p.m.

TRD-9446513

Texas Parks and Wildlife Department

Wednesday, August 24, 1994, 8:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Policy and Planning Committee, Texas Parks and Wildlife Commission

AGENDA:

Approval of committee minutes from the June 29, 1994 meeting; action-Texas Recreation and Parks Account grant guidelines; briefing-mineral recovery regulation and guidelines; briefing-sand, gravel, and marl regulations; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:46 a.m.

TRD-9446678

Wednesday, August 24, 1994, 9:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Policy and Planning Committee and Regulations Committee (Joint Meeting), Texas Parks and Wildlife Commission

AGENDA:

Action-land classification regulations.

Note: Policy and Planning Committee and Regulations Committee-joint meeting.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:46 a.m.

TRD-9446679

Wednesday, August 24, 1994, 9:30 a.m.

Parks and Wildlife Headquarters Complex, Commission Hearing Room, 4200 Smith School Road

Austin

Regulations Committee, Texas Parks and Wildlife Commission

AGENDA:

Approval of committee minutes for the June 29, 1994 meetings; action-proposed amendments to Late Season Migratory Game Birds Proclamation; briefing-create regulations prohibiting or restricting the take, possession and/or sale of certain nongame species; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:47 a.m.

TRD-9446680

Wednesday, August 24, 1994, 10:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Capital Projects Committee (Executive Session), Texas Parks and Wildlife Commission

AGENDA:

Notice of Closed Meeting

Briefing-land acquisition update; action-land acquisition-Harris County; action-land acquisition-Presidio County; action-land acquisition-Edwards County.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:47 a.m.

TRD-9446681

Wednesday, August 24, 1994, 10:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Capital Projects Committee, Texas Parks and Wildlife Commission

AGENDA:

Approval of the committee minutes for the June 29, 1994 meeting; briefing-San Jacinto Monument condition; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:47 a.m.

TRD-9446682

Wednesday, August 24, 1994, 11:00 a.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Capital Projects Committee and Finance Committee (Joint Meeting), Texas Parks and Wildlife Commission

AGENDA:

Approval of committee minutes from the June 29, 1994 meeting; action-consideration of the unified fiscal year 1995 operating and capital budget; briefing-fiscal year 1996-1997 legislative appropriations request; action-proposed mark, sand, and gravel price regulations; other business.

Note: Capital Projects Committee and Finance Committee-joint meeting.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:47 a.m.

TRD-9446683

Wednesday, August 24, 1994, 2:00 p.m.

Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road

Austin

Texas Parks and Wildlife Commission

AGENDA:

Annual public hearing concerning any issues relating to Parks and Wildlife matters.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:48 a.m.

TRD-9446684

Wednesday, August 24, 1994, 7:00 p.m.

Ruth's Chris Steakhouse, 3010 Guadalupe Austin

Texas Parks and Wildlife Commission

AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 7:00 p.m., Wednesday, August 24, 1994. Although this function is primarily a social event and no formal action is planned, the commission may discuss items on the public hearing agenda scheduled for 9:00 a.m., Thursday, August 25, 1994.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:48 a.m.

TRD-9446685

Thursday, August 25, 1994, 9:00 a.m.

Parks and Wildlife Headquarters Complex, Commission Hearing Room, 4200 Smith School Road

Austin

Texas Parks and Wildlife Commission

AGENDA:

Approval of commission minutes from June 29, 1994 meeting; presentation of retirement certificates and service awards; recognition of outstanding employees; recognition of Coors for Expo; action-local park funding; action-Texas Recreation and Parks Account grant guidelines; action-boat ramp funding; action-late season migratory game birds; briefing-hunting forecast for the 1994-1995 season; action-1995 operating and capital budget; action-proposed marl, sand, and gravel price regulations; ac-

tion-public lands classification system; action-nomination for Oil and Gas Lease-Matador Wildlife Management Area-Cottle County; action-nomination for Oil and Gas Lease Galveston Island State Park-Galveston County; action-land acquisition-Harris County; action-land acquisition-Presidio County; action-land acquisition-Edwards County.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:48 a.m.

TRD-9446686

Thursday, August 25, 1994, 9:00 a.m.

Parks and Wildlife Headquarters Complex, Executive Office Conference Room, 4200 Smith School Road

Austin

Texas Parks and Wildlife Commission

AGENDA:

Notice of Closed Meeting

Approval of minutes from the March 24, 1994 executive session; action-land acquisition-Harris County; action-land acquisition-Presidio County; action-land acquisition-Edwards County.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1994, 9:49 a.m.

TRD-9446687

Texas State Board of Podiatry Examiners

Thursday-Friday, August 25-26, 1994, 10:00 a.m. and 8:00 a.m. respectively.

Doubletree Hotel, 6505 IH-35 North

Austin

AGENDA:

Thursday, August 25, 1994-inspection of credentials; reading of the minutes; president's, vice-president's and executive director's reports; review of nitrous oxide rules for proposals; possible changes to §373.4 or §373.5 re: Professional Association; appearance from the American Podiatric Medical Specialties Board; review of license due for cancellation; discussion of registering Podiatric Medical Assistants; complaint status report; set time, place and date for next scheduled board meeting; Friday, August 26, 1994-complete agenda by grading and compiling the grades and signing of the licenses. NOTE: Agenda items may be taken out of order.

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: August 15, 1994, 10:24 p.m.

TRD-9446656

Public Utility Commission of Texas

Tuesday, August 23, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference is scheduled for the above date and time in Docket Number 13185: Application of Bailey County Electric Cooperative Association to revise line extension policy tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 12, 1994, 1:34 p.m.

TRD-9446557

Thursday, August 25, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference is scheduled for the above date and time in Docket Number 13313: Application of Texas Utilities Electric Company for authority to surcharge an undercollection of fuel cost revenues.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 15, 1994, 12:04 p.m.

TRD-9446657

Thursday, August 25, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 12763-Cherokee County Electric Cooperative, Inc.'s compliance report for switchover fees.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 15, 1994, 4:27 p.m.

TRD-9446672

Railroad Commission of Texas

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission 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: August 12, 1994, 10:39 a.m.

TRD-9446540

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on a contract with the Lower Colorado River Authority to co-sponsor an environmental conference. The Commission will also consider and act on the division director's report on budget, personnel, policy and program 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: August 12, 1994, 10:39 a.m.

TRD-9446539

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor,
Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Personnel Division director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, 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, 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: August 12, 1994, 10:38 a.m.

TRD-9446538

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission 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: August 12, 1994, 10:38 a.m.

TRD-9446537

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box
12967, Austin, Texas 78701, (512)
463-6710.

Filed: August 12, 1994, 10:38 p.m.

TRD-9446536

Monday, August 22, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, 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 attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967,
Austin, Texas 78711, (512) 463-6921.

Filed: August 12, 1994, 10:39 p.m.

TRD-9446541

Monday, August 22, 1994, 2:00 p.m.

1701 North Congress Avenue, 12th Floor
Conference Room 12-126

Austin

AGENDA:

The Commission 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: August 12, 1994, 10:38 p.m.

TRD-9446535

Texas Real Estate Commission

Monday, August 22, 1994, 9:30 a.m.

Conference Room 235, Second Floor,
TREC Headquarters Office, 1101 Camino
La Costa

Austin

AGENDA

The Commission will consider and possibly act on: staff reports; committee reports; discussion of internal audit study report; adoption of proposed new 22 TAC §539.101 concerning advertisements by residential service companies and §539.121 concerning examinations of residential service companies; adoption of amendments to 22 TAC §§535.205, 525.208, 525.212, 535.214, 535.216, 535.218, 535.226; new §535.213 and §535.215 concerning licensed inspectors; discussion of proposed new 22 TAC §534.1 concerning charges for copies of public records and §534.2 concerning processing fees for dishonored checks; discussion and possible action to propose amendment to 22 TAC §535.222 concerning inspection standards of practice; discussion and possible action to propose amendments to 22 TAC §535.164 concerning disclosure of agency; discussion and possible action to approve request for legislative appropriation for fiscal year 1996-1997; discussion of possible amendments to 22 TAC §§535.71-535.73 concerning mandatory continuing education or to 22 TAC §535.66 concerning proprietary schools; approval of MCE providers and MCE courses or other providers and courses; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; authorization of payments from recovery funds or other action on matters discussed in executive session; consideration of complaint information; entry of orders in contested cases; Motion for Rehearing, Hearing Number 94-24-930748; Motion for Reconsideration, Hearing Number A-9420

For ADA assistance, call Nancy Guevermont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: August 12, 1994, 10:13 a.m.

TRD-9446530

Texas Senate

Tuesday, August 16, 1994, 11:00 a.m.

300 West 15th Street, One Capitol Square, Committee Room One

Austin

Joint Interim Committee on the Family Code

AGENDA:

The committee will address the auditor's report on the Golden Triangle State School construction project by the Texas Youth Commission.

Contact: Becki Gregg, P.O. Box 12068, Austin, Texas 78711, (512) 463-0395.

Filed: August 11, 1994, 11:29 a.m.

TRD-9446481

Texas Sustainable Energy Development Council

Friday, August 26, 1994, 8:00 a.m.

3710 Lake Austin Boulevard, Lower Colorado River Authority, Hancock Building, Board of Director's Conference Room

Austin

AGENDA:

- I. Call to order
- II. Discuss administrative matters
- III. Discuss strategic planning
- IV. Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: August 12, 1994, 2:59 p.m.

TRD-9446573

Board of Tax Professional Examiners

Sunday, August 21, 1994, 2:00 p.m.

9721 Arboretum Boulevard, Stouffer Austin Hotel

Austin

AGENDA:

Call to order, determine presence of quorum, recognition of visitors, approval of minutes of July 11, 1994 meeting, discussion and appropriate action on the approval of persons for registration, reclassification and recertification, discussion and appropriate action to amend Board Rule 623.9(b) to require Course 235 to qualify as a Class III Assessor-Collector, discussion and appropriate action to amend Board Rule 623.9(b) to allow a Registered Texas Collector to become eligible for dual registration as a Class III Assessor-Collector, discussion and appropriate action on fees paid by dual registrants, discussion and appropriate action on adoption of new rule specifying Board charges for public records, discussion and appropriate action on the Board's Legislative Appropriation Request, executive director's report, public comments and adjournment.

Contact: Peter A. Stone, 333 Guadalupe Street, Tower Two, Suite 520, Austin, Texas 78701-3942, (512) 305-7300.

Filed: August 12, 1994, 9:29 a.m.

TRD-9446525

The Texas A&M University System, Board of Regents

Thursday, August 18, 1994, 11:00 a.m.

Texas A&M University, Board Meeting Room, Clark Street

College Station

Board of Regents (Special Telephonic Meeting)

AGENDA:

The purpose of the meeting is to consider and act on bids for the Riverside Campus Entrance Relocation at Texas A&M University. Additional items to be considered include the appointment of the chancellor of the Texas A&M University System, appointment of the president of Prairie View A&M University and the promotion of professor to the position of Distinguished Professor at Prairie View A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 12, 1994, 2:00 p.m.

TRD-9446558

The Texas State University System

Monday, August 15, 1994, 10:00 a.m.

First Floor Conference Room, Rassman Business-Computer Science Building, Angelo State University

San Angelo

Selection Advisory Committee

AGENDA:

Consideration of any and all subjects leading to selection of a president at Angelo State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: August 12, 1994, 11:53 a.m.

TRD-9446555

Regional Meetings

Meetings Filed August 11, 1994

The Austin Transportation Study Policy Advisory Committee Executive Committee met in the Second Floor Conference Room, City Municipal Annex, 301 West Second, Second and Lavaca, Austin, August 15, 1994, at 1:30 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-2275. TRD-9446480.

The Education Service Center, Region II Board of Directors met at Joe Cotten's Bar-B-Q, Highway 77, Robstown, August 17, 1994, at 5:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9446501.

The Education Service Center, Region II Board of Directors/Regional Advisory Committee met at Joe Cotten's Bar-B-Q, Highway 77, Robstown, August 17, 1994, at 7:00 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9446500.

The Education Service Center, Region XV Board of Directors met at 612 South Irene Street, San Angelo, August 18, 1994, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9446494.

The Fort Bend Parkway Association Board met at 11111 Brooklet Drive, Suite 100, Houston, August 18, 1994, at 6:00 p.m. Information may be obtained from

Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, 77002-6760, (713) 750-2300. TRD-9446512.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, August 16, 1994, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9446499.

The Guadalupe-Blanco River Authority Board of Directors met at 933 East Court Street, Seguin, August 17, 1994, at 10:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9446478.

The Johnson County Rural Water Supply Corporation Insurance Committee met at the Corporation Office, Highway 171 South, Cleburne, August 16, 1994, at 5:30 a.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9446492.

The Johnson County Rural Water Supply Corporation Regular Board Meeting met at the Corporation Office, Highway 171 South, Cleburne, August 16, 1994, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9446493.

The Nortex Regional Planning Commission (Revised Agenda.) Executive Committee met at the Galaxy Center Building, 4309 Jacksboro Highway, Suite 200, Wichita Falls, August 18, 1994, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9446479.

The Rusk County Appraisal District Board of Directors will meet at 107 North Van Buren, Henderson, August 25, 1994, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9446477.

The Tarrant Appraisal District Board of Directors will meet at 2301 Gravel Road, Fort Worth, August 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-9446491.

◆ ◆ ◆
Meetings Filed August 12,
1994

The Alamo Area Council of Governments Management Committee met at 118 Broadway, Suite 420, San Antonio, August 16, 1994, at 10:00 a.m. Information may be

obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5281. TRD-9446583.

The Archer County Appraisal District Board of Directors met at 101 South Center, Archer City, August 17, 1994, at 5:00 p.m. Information may be obtained from Edward H. Trigg III, P.O. Box 1141, Archer City, Texas 76531, (817) 574-2172. TRD-9446568.

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, August 18, 1994, at 6:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9446556.

The Atascosa County Appraisal District (Revised Agenda.) Board of Directors met at Fourth and Avenue J, Poteet, August 18, 1994, at 6:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9446562.

The Barton Springs/Edwards Aquifer Conservation District (Work Session) Board of Directors met at 1124A Regal Row, Austin, August 16, 1994, at 4:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax (512) 282-7016. TRD-9446522.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, August 18, 1994, at 7:00 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9446559.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, August 16, 1994, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9446521.

The Dallas Area Rapid Transit Special Board met in Conference Room C, 1401 Pacific Avenue, Dallas, August 16, 1994, at 5:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9446520.

The Deep East Texas Regional MHMR Services Board of Trustees will meet at 4101 South Medford Drive, Lufkin, August 23, 1994, at 11:30 a.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9446529.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, August 25, 1994, at 4:00 p.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton,

Texas 76202-2816, (817) 566-0904. TRD-9446578.

The Denton Central Appraisal District (Revised Agenda.) Board of Directors will meet at 3911 Morse Street, Denton, August 25, 1994, at 4:00 p.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9446582.

The Education Service Center, Region I Region I ESC Board met at 1900 West Schunior, Edinburg, August 17, 1994, at 1:00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611, Ext. 210. TRD-9446575.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, August 18, 1994, at 6:00 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9446579.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, August 18, 1994, at 7:00 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9446580.

The Hale County Appraisal District Board of Directors met at 302 West Eighth Street, Plainview, August 18, 1994, at 7:30 p.m. Information may be obtained from Linda Jaynes, P.O. Box 29, Plainview, Texas 79072, (806) 293-4226. TRD-9446532.

The Heart of Texas Council of Governments Private Industry Council met at 300 Franklin Avenue, Waco, August 18, 1994, at 5:30 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9446553.

The Heart of Texas Council of Governments Executive Committee will meet at Red Men Hall, 4521 Speight Avenue, Waco, August 25, 1994, at 4:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9446552.

The Hickory Underground Water Conservation District Number One Board and Advisors Budget Hearing met at 2005 South Bridge Street, Brady, August 18, 1994, at 6:45 p.m. Information may be obtained from Lorna Moore, P. O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9446576.

The Hickory Underground Water Conservation District Number One Board and Advisors met at 2005 South Bridge Street, Brady, August 18, 1994, at 7:00 p.m. Information may be obtained from Lorna Moore,

P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9446577.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, August 18, 1994, at 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9446531.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, August 24, 1994, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9446581

The Lower Colorado River Authority Community Resources and Development (Ad Hoc) Committee met in the Board Conference Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 16, 1994, at 2:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446542

The Lower Colorado River Authority Board of Directors met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446543.

The Lower Colorado River Authority Planning and Public Policy Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446544

The Lower Colorado River Authority Energy Operations Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446545.

The Lower Colorado River Authority Natural Resources Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446546.

The Lower Colorado River Authority Conservation and Environmental Protection Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446547.

The Lower Colorado River Authority Finance and Administration Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446548.

The Lower Colorado River Authority Audit Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446549.

The Lower Colorado River Authority Community Resources and Development (Ad Hoc) Committee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, August 17, 1994 (and reconvening, if necessary, August 18, 1994), at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9446550.

The Martin County Appraisal District Appraisal Review Board will meet at 308 North St. Peter Street, Stanton, August 23, 1994, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9446534.

The North Texas Municipal Water District Board of Directors will meet at 505 East Brown Street, Wylie, August 25, 1994, at 4:00 p.m. Information may be obtained from Carl Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9446561.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, August 24, 1994, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9446655.

The Harris County Appraisal District Appraisal Review Board will meet at 2800 North Loop West, Houston, August 19, 1994, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5275. TRD-9446660.

The Harris County Appraisal District (Revised Agenda.) Appraisal Review Board will meet at 2800 North Loop West, Houston, August 19, 1994, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5275. TRD-9446665.

The Heart of Texas Regional MHMR Center Board of Trustees will meet at 1105 Jefferson Street, Waco, August 19, 1994, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9446629

The Jasper County Appraisal District JCAD Board of Directors will meet at 137 North Main, Jasper, August 25, 1994, at 7:00 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9446667.

The Middle Rio Grande Service Delivery Area (Emergency Revised Agenda.) Private Industry Council met at 400 North Nueces Street, Rocksprings, August 17, 1994, at 1:00 p.m. (Reason for emergency: Additional items.) Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9446661.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, August 22, 1994, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538. TRD-9446654.

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Meetings Filed August 16,
1994

The Permian Basin Quality Work Force Full Planning Committee will meet at 2910 LaForce Boulevard, Midland, August 23, 1994, at 11:30 a.m. Information may be obtained from Allison F. Garvin, 2910 LaForce Boulevard, Midland, Texas 79711, (915) 563-1061. TRD-9446676.

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Meetings Filed August 15,
1994

The Coryell City Water Supply District Board of Directors met at FM 929, Coryell City, August 18, 1994, at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9446671.

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 Education Agency

Notice of Forum Regarding the Child Nutrition Programs Information Management System

The Texas Education Agency (TEA) has automated the process by which school districts participating in Texas child nutrition programs file reimbursement claims with the agency. Historically, districts have filed paper claims. After October 1, 1994, districts will file claims electronically. The system that will replace paper forms with electronic submissions is the Child Nutrition Programs-Information Management System (CNP-IMS).

The TEA will hold a forum regarding CNP-IMS on Friday, September 29, 1994, 9:00 a.m.-3:00 p.m., at the following location: Texas Education Agency, William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin, Texas.

The forum will include an overview of the system, a demonstration of how the system works, a discussion of the system requirements, a discussion of the feasibility of linking point-of-sale software and CNP-IMS, and a question and answer period.

For additional information regarding the forum, please contact: Steve Burger, Texas Education Agency, (512) 463-9800.

Issued at Austin, Texas, on August 15, 1994.

TRD-9446632

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: August 15, 1994

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 following times and places listed. 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 are received.

Individuals many 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 Evalua-

tion, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or at (512) 463-9701.

Issued in Austin, Texas, on August 9, 1994.

TRD-9446367

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: August 10, 1994

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**Request for Proposals Concerning
Alternative Transportation Fuels
Resource Materials-(RFP) #701-94-039.**

Eligible Proposers. The Texas Education Agency (TEA) in collaboration with the Railroad Commission of Texas and the Texas General Land Office is requesting proposals from individuals, non-profit corporations, for-profit business enterprises, institutions of higher education, or consortia of the foregoing for developing alternative transportation fuels instructional materials. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The selected contractor will develop alternative transportation fuels instructional materials for use in the 8th Grade level in Science II. These alternative transportation fuels materials must fit into the energy and environmental interactions themes of coordinated thematic science. The materials will include: a minimum of 20 original student activities (a minimum of 30 activities must be pilot tested); a correlation with coordinated thematic science illustrating how the curriculum meets the essential elements for Science II; an alternative transportation fuels video for use in the classroom; and a teacher's guide.

The selected contractor will establish and conduct a pilot test of the proposed activities and submit required pilot test data, including: instructions given to pilot teachers (i.e. the material must be tested as written, without modifications); the list of supplies or equipment given to teachers so they could adequately test the activities; teachers' written comments on the suitability of the activities for the age tested and the ease for teachers of executing the activities; teachers' evaluations of accuracy and the completeness of the instructions; and whether the activities met the stated objectives. Pilot test teachers should receive extra duty pay for time spent on evaluating materials.

The selected contractor will deliver five edited and corrected final copies of the instructional material, camera ready, and disks with the material formatted on Quark XPress 3.2 by March 31, 1995. The contractor will complete and submit a final report to TEA containing all documents used in the development of the material, including detailed pilot test results.

Dates of Project. Proposers should plan for a starting date of no earlier than October 14, 1994, and an ending date of no later than March 31, 1995.

Project Amount. Costs must be justified in terms of activities and objects of expenditure and must be reasonable and necessary to accomplish the objectives of the project. Services to be purchased from other agencies, subcontractors, consultants, and others must be specified. The total cost to be budgeted for this project shall not exceed \$70,000.

Selection Criteria. A single proposal will be selected based on the ability of the proposer to carry out all requirements

contained in the RFP. Special consideration will be given to proposers that are or that subcontract with HUBs. Special consideration also will be given to proposers that have demonstrated experience in editing, writing, video, and graphics production, and that have experience in the education of Grades K-12, particularly in teaching middle school students.

Requesting the Proposal. A copy of the complete RFP #701-94-039 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP # in your request.

Further Information. For clarifying information about this request, contact Irene Pickhardt, Division of Curriculum Development and Textbooks, Texas Education Agency, (512) 463-9566. A proposer's conference will be held Wednesday, August 24, 1994, 9:00 a.m.-12 noon, in the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin, Texas. Proposers may acquire information about the Alternative Transportation Fuels Resource Materials Project from the Railroad Commission of Texas and the Texas General Land Office.

Deadline for Receipt of Proposals. The deadline for submitting a proposal is 5:00 P.M., Friday, September 21, 1994.

Issued at Austin, Texas, on August 15, 1994.

TRD-9446633

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: August 15, 1994

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**Office of the Governor, Budget and
Planning Division
Legislative Budget Board Budget
Execution Proposal**

Pursuant to the Texas Government Code, §317.002, relating to budget execution authority, I make the following budget execution proposal.

The Texas Juvenile Probation Commission requires additional funds for Community Corrections. I propose funds appropriated to the Attorney General's Office for Workers' Compensation payments be transferred to meet this need.

I find that the increase in convictions of juvenile offenders causes an overflow within our juvenile system, creating an emergency. Additional funding for the Juvenile Probation Commission will allow them to provide the needed supervision over juvenile offenders to maintain the public's safety. I further find that the Attorney General's Office, by the application of cost containment measures will not require the full amount appropriated for Workers' Compensation payments.

I therefore propose that from the appropriations made to the Office of the Attorney General for Strategy A.1.1: Workers' Compensation Payments on page I-43 of the General Appropriations Act for the 1994-1995 biennium, \$5,000,000 from FY 1994 and \$5,000,000 from FY 1995, be transferred to the Juvenile Probation Commission Strategy A.2.1: Community Corrections for the biennium ending August 31, 1995, for the purposes necessary to meet

this emergency.

In addition, I propose that appropriations made to the Attorney General in Strategy E.1.1. Pay Workers' Compensation, and identified in part a(17) of rider 1. Capital Budget, in the amount of \$640,240 for FY 1994, be transferred to the Juvenile Probation Commission Strategy A.2.1: Community Corrections for the biennium ending August 31, 1995, for the purposes necessary to meet this emergency.

I hereby certify that this proposal has been reviewed by legal counsel and found to be within my authority.

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

TRD-8448567 Ann W. Richards
Governor
Office of the Governor

Filed: August 12, 1994

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Texas High-Speed Rail Authority Notice of Public Hearing on 1995 Proposed Operating Budget

The Texas High-Speed Rail Act (Texas Civil Statutes, Article 6674v.2) requires the adoption of an annual operating budget prior to the conduct of business in each new fiscal year (the state fiscal year begins September 1). Three members of the Texas High-Speed Rail Authority Board of Directors are elected to a Standing Budget Committee, which reviews proposed budgets prior to their adoption.

Under the terms of the franchise agreement with the Texas TGV Corporation, the franchisee is obligated to fund the Authority's annual operating budget with a full advance payment prior to the beginning of the fiscal year. The franchise agreement also specifies opportunities for the franchisee to review the proposed budget and forward its comments to the Budget Committee. However, the Authority's Board has the final decision on the Authority's budget amounts. (For further details on the budget adoption procedure, copies of the franchise agreement are available for public inspection at the Authority's offices.)

All funds from the franchisee for the Authority's operating budget are deposited in the State Treasury, and these funds are appropriated to the Authority in the General Appropriations Act enacted by the Texas Legislature every two years. All funds are expended according to the provisions of the General Appropriations Act, through standard state procedures governed by the Comptroller's Office and the Treasurer's Office.

The Authority is interested in the public's views on budget-related means to effectively serve the public interest in the consideration of implementation of high-speed rail in Texas. Therefore, the Authority has adopted a policy to receive public input on each year's proposed budget at a public hearing. Members of the public are invited to attend this year's public hearing at 9:00 a.m. on Friday, August 10, 1993, in the State Capitol Extension Auditorium at 1100 North Congress Avenue in Austin. Comments from the public will be accepted prior to the adoption of a recommended operating budget for the 1995 Fiscal Year by the Standing Budget Committee. The recommended budget will then be considered by the full Board later that day.

The proposed FY95 operating budget provides for \$254,969 in operating funds for the Authority. With the funds deposited by the franchisee, as well as available fund balances, this budget also provides for the complete repayment of the outstanding balance of the 1990-1991 general revenue appropriation to the Authority. Copies of the proposed budget for the 1995 Fiscal Year are available for public inspection at the Authority's offices at 823 Congress Avenue, Suite 1502, Austin, (512) 478-5484.

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

TRD-8446514 Allan Ruter
Deputy Executive Director
Texas High-Speed Rail Authority

Filed: August 11, 1994

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Texas Department of Housing and Community Affairs Notice of Public Hearing—HOME Partnership Investment Program

The Texas Department of Housing and Community Affairs (TDHCA) will conduct a public hearing for the FY 1994 HOME Investment Partnership Program (HOME) at 10:00 a.m., Monday, August 29, 1994, in Room 1-100, William B. Travis State Building, located at 1701 North Congress Avenue, Austin, Texas 78701. The hearing is structured for the receipt of oral and written comments by interested persons. Individuals may make oral presentations when called upon based in the order of registration. The purpose of the public hearing is to solicit comments on the proposed rules which describe the use and distribution of federal fiscal year (FFY) 1994 funds provided to the State of Texas for affordable housing activities eligible for funding under the HOME Program.

TDHCA will honor written requests for copies of the proposed HOME Program rules which will be available on or about August 16, 1994. Written requests may be submitted via facsimile transmission to (512) 475-3287 or by mail at the following address: Texas Department of Housing and Community Affairs, HOME Program, P.O. Box 13941, Austin, Texas 78711-3941. For clarification, contact the HOME Program at (512) 475-3109.

Representatives from TDHCA will be present at the hearing to explain the planning process and to receive comments from interested citizens and affected groups regarding the proposed rules. Written comments may be submitted to TDHCA at the time of the public hearing or must be received by the Department no later than 5:00 p.m., September 15, 1994.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

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

TRD-8448505 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: August 11, 1994

**Texas Department of Human Services
Public Hearing for Reimbursement Rates
for the Community Living Assistance
and Support (CLASS) Waiver**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Community Living Assistance and Support Services (CLASS) Waiver. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on September 6, 1994, at 2:00 p.m. in Room 560 West (5W) of the John H. Winters Center (701 West 51st Street, Austin, Texas, Fifth Floor, West Tower). If you are unable to attend the hearing, but wish to comment on the rates, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sherri Williams. Written comments may be mailed to the address noted below, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after August 22, 1994, by contacting Sherri Williams, M/C W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by August 24, 1994, so that appropriate arrangements can be made.

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

TRD-9446516 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: August 11, 1994



**Texas Department of Insurance
Name Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas for Cash, Sullivan & Cross, Inc., a foreign third party administrator. The home office is in Phoenix, Arizona.

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 Street, Austin, Texas 78714-9104.

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

TRD-9446554 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 12, 1994



Notices of Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2108, on September 6, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider adoption of new §§7.1601-7.1615 concerning Licensing and Examination of Third Party Administrators.

The proposed new section was published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3228). The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition to the proposed new section.

The statutory authority for the new section is cited in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3228).

Issued in Austin, Texas, on August 15, 1994.

TRD-9446640 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 15, 1994



The Commissioner of Insurance will hold a public hearing under Docket Number 2110, on September 6, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider adoption of repeal §§7.1601-7.1613 concerning Licensing and Examination of Third Party Administrators.

The proposed repeal section was published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3231). The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition to the proposed new section.

The statutory authority for the new section is cited in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3231).

Issued in Austin, Texas, on August 15, 1994.

TRD-9446638 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 15, 1994



The Commissioner of Insurance will hold a public hearing on October 3, 1994, at 9:00 a.m., under Docket Number 2111, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe in Austin, Texas, to consider a staff petition proposing adoption of two new endorsements, Endorsement Number FRO-421 to be attached to the Texas Farm and Ranch Owners Policy and Endorsement Number TFR-080 to be attached to the Texas Farm and Ranch Policy, to provide coverage for greenhouses used for farming purposes for loss or damage caused by windstorm, hurricane, or hail. The petition also proposes new Texas Personal Lines Manual rules to govern the use of these endorsements and provide appropriate rates. The proposed endorsements and manual rules are necessary to restore windstorm, hurricane, and hail coverage for greenhouses located on a farm and ranch premises and used for farming purposes, which was inadvertently omitted when

the Farm and Ranch Owners Policy and the Farm and Ranch Policy were revised into simplified easy-to-read language.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, 5.96, and 5.98.

Copies of the full text of the proposed endorsements and Texas Personal Lines Manual rules are available for review in the Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0894-17-I).

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for Property and Casualty Division, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Administrative Procedures and Texas Register Act (Administrative Procedure Act, 73rd Legislative, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Government Code, Title 10, Subtitle A, Chapter 2001)).

Issued in Austin, Texas, on August 15, 1994.

TRD-9446637 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 15, 1994

Legislative Budget Board

Executive and Legislative Budget Office Joint Budget Hearing Schedule Appropriations Requests for the 1996-1997 Biennium (For the period of August 22-26, 1994)

Agency Date/Time Place: Cosmetology Commission August 22, 1994, 9:00 a.m. Room 103, John H. Reagan Building, 105 West 15th Street, Austin Health and Human Services Commission August 22, 1994, 10:00 a.m. Room 106, John H. Reagan Building, 105 West 15th Street, Austin Council on Sex Offender Treatment, August 22, 1994, 10:00 a.m. Room 109, John H. Reagan Building, 105 West 15th Street, Austin Alcoholic Beverage Commission, August 23, 1994, 9:00 a.m. Alcoholic Beverage Commission, 5806 Mesa Drive, Board Room, First Floor, Austin, Board of Medical Examiners, August 23, 1994, 9:00 a.m. Capitol Extension, State Capitol Building, Room E1.026, Austin, Board of Professional Land Surveying, August 23, 1994, 9:00 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin, Texas Rehabilitation Commission, August 23, 1994, 9:00 a.m. Texas Rehabilitation Commission, Brown-Heatly Building, 4900 North Lamar Boulevard, Board Room, First Floor, Austin, Low-Level Radioactive Waste Disposal Authority, August 23, 1994, 1:30 p.m. Capitol Extension, State Capitol Building, Room E2.010, Austin.

Agency Date/Time Place: Department on Aging, August

23, 1994, 2:00 p.m. Room 103, John H. Reagan Building, 105 West 15th Street, Austin, Texas Incentive and Productivity Commission, August 23, 1994, 2:00 p.m. Capitol Extension, State Capitol Building, Room E1.026, Austin, University of North Texas, University of North Texas Health Science Center, August 24, 1994, 8:30 a.m. University of North Texas University Union, Diamond Eagle Suite, Denton Adjutant General's Department, August 24, 1994, 8:45 a.m. Adjutant General's Department, Camp Mabry, Building 1, Board Room, Austin Teacher Retirement System, August 24, 1994, 9:00 a.m. Room 109, John H. Reagan Building, 105 West 15th Street, Austin, Structural Pest Control Board, August 24, 1994, 9:00 a.m. Room 103, John H. Reagan Building, 105 West 15th Street, Austin, Texas Woman's University, Midwestern State University, East Texas State University, East Texas State University-Texas, Food and Fibers Commission, August 24, 1994, 1:00 p.m., Texas Woman's University, Administration Clock Tower, 16th Floor, Bell Avenue, Denton, Department of Health, August 24, 1994, 1:30 p.m. Department of Health, Board Room (M-739), 1100 West 49th Street, Austin.

Agency Date/Time Place: State Prosecuting Attorney, State Law Library Commission on Judicial Conduct, Court Reporters Certification Board, August 24, 1994, 2:00 p.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin, University of Texas Southwestern Medical Center, University of Texas Health Center at Tyler, University of Texas at Arlington, University of Texas at Dallas, University of Texas at Tyler, August 25, 1994, 8:30 a.m. UT Southwestern Medical Center, North Campus Simmons Building, 6000 Harry Hines Boulevard, Room NB2.402, Dallas, Board of Plumbing Examiners, August 25, 1994, 9:00 a.m., Board of Plumbing Examiners, 929 East 41st Street, Austin, Commission for the Blind, August 25, 1994, 9:00 a.m., Commission for the Blind, Administrative Building, 4800 North Lamar Boulevard, Room 250, Austin, Interagency Council of Early Childhood Intervention, August 25, 1994, 9:00 a.m., Capitol Extension, State Capitol Building, Room E1.026, Austin, Pension Review Board, August 25, 1994, 9:30 a.m. Room 101, John H. Reagan Building, 105 West 15th Street, Austin, Aircraft Pooling Board, August 25, 1994, 1:30 p.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin.

Agency Date/Time Place Board of Registration for Professional Engineers, August 25, 1994, 2:00 p.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin, Public Integrity Unit Judiciary Section, Comptroller's Office, August 25, 1994, 2:00 p.m., Capitol Extension, State Capitol Building, Room E2.010, Austin, Commission on Human Rights, August 25, 1994, 3:00 p.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin, Treasury Department, August 26, 1994, 9:00 a.m., Capitol Extension, State Capitol Building, Room E2.010, Austin, Juvenile Probation Commission, August 26, 1994, 9:00 a.m., Room 109, John H. Reagan Building, 105 West 15th Street, Austin, Board of Barber Examiners, August 26, 1994, 9:00 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin, Department of Human Services, August 26, 1994, 9:00 a.m. Department of Human Services, Winters Building, 701 West 51st Street, Board Room, First Floor, Austin, Animal Health Commission, August 26, 1994, 9:00 a.m. Room 101, John H. Reagan Building, 105 West 15th Street, Austin.

Agency Date/Time: Place Supreme Court, Court of Criminal Appeals 14 Courts of Appeals, Office of Court Admin-

istration, August 26, 1994, 10:00 a.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin, Texas Public Junior and Community Colleges, August 26, 1994, 1:30 p.m., Higher Education Coordinating Board, 7745 Chevy Chase Drive, Room 1.100, Austin.

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

TRD-9448574

Don Green
Special Assistant
Legislative Budget Board

Filed: August 12, 1994

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**Texas State Library and Archives
Commission**

Request for Proposal

The Texas State Library and Archives Commission, under authority of the Government Code, Chapter 441, §441.006, announces a request for proposals.

Description of Services. The Texas State Library and Archives Commission (Library) solicits proposals to provide internal audit services to the Library. Services will include a proposed internal audit work schedule based on the FY 1995 audit plan which is available upon request, a written risk assessment of all major systems and controls of the Library for FY 1996, a proposed internal audit plan for FY 1996, and a proposed procedure for compliance with peer review guidelines. In addition to written reports, periodic oral reports to the Texas State Library and Archives Commission will be required. The quantity of work is estimated at not more than 400 hours per year.

Contact. To receive a request for proposal or a copy of the FY 1995 audit plan, contact Catherine Lee, Manager, Administration Program, Texas State Library, Box 12927, Austin, Texas 78711, (512) 463-5474.

Professional Qualifications. For a proposal to be considered it must contain affirmations that the services will be provided by a Certified Public Accountant with at least three years of auditing experience or by a Certified Internal Auditor with at least three years of auditing experience and that the services will be provided in conformance with the Standards for the Professional Practice of Internal Auditing, the Certified Internal Auditor Code of Professional Ethics, and the Statement of Responsibilities of Internal Auditing, as promulgated and periodically revised by the Institute of Internal Auditors. The proposal must further contain affirmation that the auditor(s) does not have a record of substandard audit work.

Evaluation Process. Proposals meeting all Professional Qualifications will be evaluated on the merits of the proposed plan of work; qualifications of assigned staff, experience of the staff in internal auditing and state government operations; proposed time line and number of hours required to complete a written risk assessment, a proposed internal audit plan, a procedure for peer review, and conduct four internal audits. Proposals will be awarded up to 80 points for merit, and 20 points based on results of personal interviews. The total cost of the work and terms of engagement will be considered after the proposals have been evaluated for merit and interviews conducted. The Library reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute any contract on the basis of this notice.

Deadline for Submission of Proposals. For consideration two copies of the proposal must be received by the end of the business day (5:00 p.m.) on September 30, 1994, at Room G-3, the Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin. The mailing address is Box 12927, Austin, Texas 78711. The envelope containing the proposal must be clearly marked: "Proposal for Internal Audit Services."

Schedule of Events.

Release of Request for Proposals—August 10, 1994.

Response Date—September 30, 1994.

Interview of Highest Rated Proposals—October 30, 1994.

Selection of Auditor—November 30, 1994.

Contract Start Date—December 1, 1994.

Contract Ending Date—August 31, 1995.

Assistance to Internal Auditor. The Library will provide work space at any of its three facilities if requested; however, the Library will generally be unable to provide clerical or secretarial assistance. The internal auditor will be responsible for the preparation and reproduction of all written reports.

Format of the RFP Response. The proposer should organize the response to provide information on all the areas identified and in the following order:

1. The organization and size of the respondent.
2. The location of the office from which the work is to be done and the number of professional staff by staff level employed at that office.
3. A description of the range of activities performed by the local office such as auditing, accounting, tax service, or management services.
4. A statement on the respondent's staff capability to audit computerized systems, including the number and classifications of personnel skilled in computer sciences who will work on audits if required.
5. A positive statement that the following mandatory criteria are satisfied:
 - a) The services will be provided by a Certified Public Accountant with at least three years of auditing experience or by a Certified Internal Auditor with at least three years of auditing experience
 - b) The services will be provided in conformance with the Standards for the Professional Practice of Internal Auditing.
 - c) The services will be provided in conformance with the Certified Internal Auditor Code of Professional Ethics.
 - d) The services will be provided in conformance with the Statement of Responsibilities of Internal Auditing, as promulgated and periodically revised by the Institute of Internal Auditors.
 - e) The proposal must contain an affirmation that the respondent(s) does not have a record of substandard audit work.
 - f) The proposal must further contain an affirmation that the respondent(s) has an Affirmative Action Hiring Plan and is an Equal Opportunity Employer.
6. **Summary of the Proposer's Qualifications.**
 - a) Identify the audit managers, field supervisors, and other

staff who will work on the audit, including staff from other than local office. Resumes including relevant experience and continuing education for the auditor in charge up to the individual with final responsibility for the engagement should be included. (Resumes may be included in an appendix.)

b) Describe the recent local and regional office experience with internal auditing of government activities, especially state governments, and give names and telephone numbers of clients.

Approach to the Work. Submit a work plan to provide the following services: a schedule of proposed internal audit work based on the FY 1995 audit plan, a written risk assessment of all the major systems and controls of the Library for FY 1996, a proposed internal audit plan for FY 1996, and a proposed procedure for compliance with peer review guidelines. The work plan should include time estimates for each significant segment of the work and the staff level to be assigned. Where possible, individual staff members should be named and their titles provided. The planned use of specialists should be specified. A description of all reports and a proposed timeline for their delivery should be detailed.

Compensation. An estimate of the cost of the services requested should be submitted in a separate sealed envelope with the proposal. The cost bid should provide a not to exceed amount for conducting four internal audits per the FY 1995 Audit Plan, preparation of a risk assessment for FY 1996, preparation of the FY 1996 internal audit plan, and developing and implementing a procedure for compliance with peer review guidelines. The cost bid for conducting internal audits as called for under the internal audit plan should be quoted separately in terms of an hourly rate.

Issued in Austin, Texas, on August 10, 1994.

TRD-9446398
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: August 10, 1994

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**Texas Natural Resource Conservation
Commission**

Enforcement Orders

An agreed enforcement order was entered regarding Dowell Schlumberger, Inc. (SWR Number 33591) on August 5, 1994, assessing \$300,000 in administrative penalties with \$100,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Glen Grunberger, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3417.

An agreed enforcement order was entered regarding Associated Milk Producers (Permit Number 03074) on August 1, 1994, assessing \$200,540 in administrative penalties with \$150,540 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Victor Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Herman B. Taylor (Permit Number 12772-01) on August 1, 1994, assessing \$3,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4469.

An agreed enforcement order was entered regarding Saint Francis Village, Inc. (Permit Number 10612-01) on August 1, 1994, assessing \$3,440 in administrative penalties with \$1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting John Watson, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4469.

An agreed enforcement order was entered regarding the City of Aubrey (No Permit) on August 1, 1994, assessing \$3,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Southwestern Water Corporation (Permit Number 13337-01) on August 1, 1994, assessing \$2,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Yeh's Brothers, Inc. (Permit Number 12138-01) on August 1, 1994, assessing \$11,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Eugene Clayborn, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Lewis Harbison (Water Well Driller License Number 1675-W) on August 1, 1994, assessing \$2,500 in administrative penalties with the entire amount deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding the City of Port Arthur (Permit Number 10364-01) on August 1, 1994 assessing \$14,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gene Snelson, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An Agreed Enforcement Order was entered regarding Foothills Mobile Home Ranch, Inc. (Docket Number 30069-E) on August 5, 1994, assessing \$500 in adminis-

trative penalties. Information concerning any aspect of this Order may be obtained by contacting Lisa Roberts, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0606.

An Agreed Enforcement Order regarding Paul Brune doing business as Western Hills Water System and Rivercrest Water (Docket Numbers 30188-E and 30189-E) on August 5, 1994, assessing \$500 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Maria Sanchez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0462.

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

TRD-9446585 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 12, 1994

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**Notice of Application for Municipal
Solid Waste Facility—for the Week
Ending August 12, 1994**

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the Commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the Commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the Commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Application by Sanifill of Texas Inc., Proposed Permit Number MSW1540-A, authorizing an amendment to their existing permit authorizing a Type IV municipal solid waste facility. The site is located at 1100 Jana Lane, in Pasadena, Harris County, Texas.

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

TRD-9446588 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 12, 1994

**Notice of Opportunity to Comment on
Permitting Actions—for the Week
Ending August 12, 1994**

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the Commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the Commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the Commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Laidlaw Waste Systems, Inc. for the transfer of Permit Number MSW-1417B from Johnson County Sanitary Landfill. The permit was originally issued to Johnson County Sanitary Landfill, Inc. The site is located at approximately 2.5 miles south of Alvarado, Texas, adjacent to the west service road of Interstate 35 West, in Johnson County, Texas.

Application of Barton Creek Water Supply Corporation to transfer water CCN Number 12697 from the Estates Above Lost Creek Phase I Property Owners Association, Inc.; and amend water CCN Number 12697 to correct the service area boundary in Travis County, Texas. (Application Number 30408-S)

Application Number 23-5464B by Wilson Hardin "CY" Banner for an Amendment to Certificate of Adjudication Number 23-5464A, Pursuant to §11.122 TWC. Certificate of Adjudication Number 23-5464 was issued to Jewel Banner on March 28, 1988, and authorized the certificate owner to maintain an existing dam and 2-acre-foot-capacity reservoir on Richland Springs and to divert and use not to exceed 150 acre-feet of water per annum from the reservoir to irrigate 49.85 acres of land out of a 465.76-acre tract in Terrell County, Texas. Commission records show that Wilson Hardin "Cy" Banner acquired ownership of Certificate Number 23-5464. Certificate Number 23-5464 was amended by Certificate Number 23-5464A, issued on October 29, 1990, to: (1) add a second diversion point on an exempt, 43 acre-foot-capacity reservoir adjacent to Wolf Springs on an unnamed tributary of the Pecos River, about one mile east-southeast of the first diversion point; (2) add a tract of leased land for irrigation purposes; and (3) increase the number of acres to be irrigated. A Special Condition of Certificate Number 23-5464A stated that the right to irrigate the aforementioned leased land shall expire and become null and void upon termination of the lease agreement or any extensions thereof. Certificate owner, Wilson

Hardin "Cy" Banner, has notified the Commission that the lease agreement has been terminated, and has requested an amendment to Certificate Number 23-5464, as amended, to delete the additional authorizations of Certificate Number 23-5464A, and revert to the authorizations of the original certificate. No other changes are requested.

Application Number 23-246A by Sixto R. Salinas and Wife, Araceli T. Salinas for an Amendment to Certificate of Adjudication Number 23-246, Pursuant to §11.122 TWC. Certificate of Adjudication Number 23-246 was issued September 7, 1971, and authorized the diversion and use of up to 52.20 acre-feet of Class "A" water per annum from Rio Grande to irrigate 20.88 acres of land in TWC Tract Number C-16a (Court Number 73a), Cameron County, Texas. The lands and appurtenant water rights have been through many sales. The present applicants, Sixto R. Salinas and Araceli T. Salinas, have purchased the 11.487 acre-feet of water rights which were appurtenant to 4.595 acres of land most recently owned by James E. Evans, et ux., out of the original 20.88 acres. The applicants seek amendment to move the point of diversion and place of use to 39.27 acres of land owned by them in Porcion Number 76, Mier Jurisdiction, in Starr County, approximately two miles east of Roma, Texas. No other changes are requested.

E.I. Du Pont De Nemours and Company for a minor amendment to Permit Number 00476 to add ten internal outfalls to monitor stormwater runoff from process areas. The permit currently authorizes a discharge of industrial wastewaters, water treatment regenerant streams; previously monitored domestic wastewater and treated groundwater and stormwater at a volume not to exceed an average dry weather flow of 16,000,000 gallons per day via Outfall 001. The permit also currently authorizes intermittent, flow variable discharges of stormwater via Outfalls 002, 004, 005, and 006. Plus, an intermittent, flow variable discharge of stormwater and cooling water via Outfall 003, which will remain the same. The applicant operates a facility manufacturing chemicals and plastics where process wastewater is disposed by deep well injection. The plant site is one mile west of the intersection of FM Road 1686 and FM Road 404, approximately 8 miles south of the City of Victoria, Victoria County.

City of Garland for an amendment to Permit Number 10090-02 to authorize the City to accept biosolids from the City of Garland Duck Creek Water Recycling Center (Permit Number 10090-01). The proposed amendment will also authorize marketing and distribution of sludge, as well as land application of compost on City owned lands. Additionally, the proposed amendment will enforce more stringent requirements as needed, in order to meet existing applicable rules and regulations. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 24,000,000 gallons per day from the Rowlett Creek Water Recycling Wastewater Treatment Facilities. The plant site is on Centerville Road, approximately 1/4 mile south of the intersection of State Highway 66, on the southeast corner where Missouri, Kansas and Texas Railroad tracks cross Centerville Road in Dallas County, Texas.

City of Navasota for a minor amendment to Permit Number 10231-01 to modify the sludge disposal language to allow composting of sludge at the City of Bryan's Type V composting facility. The permit currently authorizes the discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 1,800,000 gallons per day in the final phase, which will remain the

same. The proposed amendment will enforce more stringent effluent limitations and requirements as needed, in order to meet existing applicable rules and regulations. The wastewater treatment plant is at the intersection of Chase Street and Peebles Street, on the southern Bank of Cedar Creek, one block north of State Highway 105 in the City of Navasota in Grimes County, Texas.

A minor amendment to Permit Number 02053, issued to Oiltanking Houston, Inc. in order to include effluent limitations for total suspended solids at Outfalls 002 and 003. The permit currently authorizes once-through heating water at a volume not to exceed 6,000,000 gallons per day via Outfall 001. The permit also currently authorizes an intermittent, flow variable discharge of stormwater runoff via Outfalls 002, 003, and 004, which will remain the same. The applicant operates a for-hire bulk liquid storage terminal which handles petroleum and other liquids. The plant site is on the north side of the Houston Ship Channel and southwest of the intersection of Jacintoport Boulevard and Sheldon Road, Harris County, Texas.

Tierra Blanca Properties for a minor amendment to Permit Number 03343 in order to change the disposal of the manure and separated solids from application as fertilizer on agricultural land to removal by a contract hauler. The permit authorizes the disposal of waste from a dairy which consists of a maximum of 1050 head with 800 milking head, 150 dry cows, and 100 calves. Washwater, flushwater and stormwater will be retained in two settling basins and one storage pond. Wastewater from the pond is disposed of by evaporation and/or irrigation on agricultural land. No discharge of pollutants into water in the State is authorized by this permit. The dairy is on the west side of FM Road 1057 approximately one mile south of the intersection of FM Roads 1057 and 1058 in Deaf Smith County, Texas.

Western Waste Industries, Inc. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor amendment to Permit Number SW-39001 which authorizes operation of a commercial industrial waste management facility. The amendment will authorize a design change to the leachate removal system of a non-hazardous landfill. The proposed design is environmentally more desirable because the leachate removal pipes will no longer penetrate the synthetic liner. Wastes managed at the facility include Class I, Class II, and Class III industrial solid wastes which are non-hazardous and which may take the form of liquids, sludge, or solids. Prior to landfilling, the waste will be treated to achieve minimum standards including pH, density, compressive strength, and reactivity potential. The authorized wastes are received from off-site on a commercial basis. The facility is located on a 237-acre tract of land at 1750 Loop 336 East, approximately 3.9 miles east of Interstate Highway 45 in Conroe, Montgomery County, Texas.

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

TRD-9446586

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 12, 1994

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Notice of Receipt of an Application and Declaration of Administrative Completeness--for the Week Ending July 22, 1994

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the Commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the Commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the Commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application--new permit, amendment, or renewal.

Application by Browning-Ferris, Inc., Proposed Permit Number MSW1663-B, authorizing an amendment to their existing permit authorizing a Type I municipal solid waste facility. The site is located one mile north of the City of Canyon, Texas and two miles west of I-27 off Buffalo Stadium Road, in Randall County, Texas.

Application by Browning-Ferris, Inc., Proposed Permit Number MSW241-B authorizing an amendment to their existing permit authorizing a Type I municipal solid waste facility. The site is located approximately 0.8 miles north of County Road 66, and approximately three miles north-east of the City of Itasca, in Hill County, Texas

Application by the University of Texas Medical Branch at Galveston, Proposed Permit Number MSW2232, authorizing a Type V municipal solid waste facility (incinerator). The site is located in the 700 block of Port Industrial Boulevard in Galveston County, Texas.

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

TRD-9446587 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 12, 1994

Notice of Receipt of Applications and Declaration for Administrative Completeness for Sludge Registrations--for the Week Ending August 12, 1994

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and

contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the Commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the Commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the Commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application--new permit, amendment, or renewal.

Resort Water Services, Inc.; located adjacent to the east side of State Highway 274, approximately 1.25 miles southeast of the Town of Tool, and 4.25 miles north of the Town of Trinidad, Henderson County, Texas; new beneficial sludge use site; 710701.

Charles Taylor; located approximately three miles south of Greenwood, 0.5 mile west of the Old Greenwood-Decatur Road, four miles east of FM 730 north, and ten miles north of Decatur, Wise County, Texas; new beneficial sludge use site; 710690.

Terry Wayne Fulgham; located approximately 0.5 mile northwest of the intersection of FM 980 and Cincinnati Road, eight miles north of the City of Huntsville, Walker County, Texas; new beneficial sludge use site; 710117.

Magna Flow International; located approximately one mile north of the intersection of County Road 809 and County Road 505, two miles southeast of Sweany, Brazoria County, Texas; new beneficial sludge use site; 710693.

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

TRD-9446584 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 12, 1994

**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 of an application on June 15, 1994, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number: Application of Texas Utilities Electric Company to Amend Certificate of Convenience and Necessity for Proposed Transmission Line within Hopkins County, Docket Number 13122 before the Public Utility Commission of Texas.

The Application: In Docket Number 13122, Texas Utilities Electric Company requests approval of its application to construct approximately 11.3 miles of 138-kV transmission line in Hopkins County.

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 Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

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

TRD-9446527 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 12, 1994

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 10, 1994, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Brazos Electric Power Cooperative, Inc. to Amend Certificate of Convenience and Necessity for Proposed Transmission Line in Johnson County, Docket Number 13330 before the Public Utility Commission of Texas.

The Application: In Docket Number 13330, Brazos Electric Power Cooperative, Inc. requests approval of its application to construct approximately 5.38 miles of 138-kV transmission line in Johnson County.

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 Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

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

TRD-9446636 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 15, 1994

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 10, 1994, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity Within Refugio County, Docket Number 13328, before the Public Utility Commission of Texas.

The Application. In Docket Number 13328, Southwestern Bell Telephone Company seeks approval of the application to amend the existing exchange area boundary between its Woodsboro and Refugio exchanges in order to provide

service to the area in a more efficient manner.

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 September 21, 1994.

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

TRD-9446635 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 15, 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 Santa Rosa Health Care, San Antonio, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a New Plexar-Custom Service for Santa Rosa Health Care pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13322.

The Application. Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for Santa Rosa Health Care. 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 August 12, 1994.

TRD-9446526 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 12, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the City of Abilene, Abilene, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a New Plexar-Custom Service for the City of Abilene pursuant to Public Utility Commission Substantive Rule 23.27, Docket Number 13327.

The Application. Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for the City of Abilene. The geographic service market for this specific service is the Abilene, 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 August 12, 1994.

TRD-9446528 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 12, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR Custom Service for Region IV Education Service Center, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a One-Station Addition to the Existing Plexar Custom Service for Region IV Education Service Center pursuant to Public Utility Commission Substantive Rule 23.27 Docket Number 13316.

The Application. Southwestern Bell Telephone Company is requesting approval of a one-station addition to the existing Plexar Custom Service for Region IV Education Service Center. The geographic service market for this specific service is the Houston, Texas, area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on August 10, 1994.

TRD-9446417 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 10, 1994

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Texas Rehabilitation Commission Intent to Award Grants

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning Council for Developmental Disabilities to the Texas Health and Human Services Commission, 4807 Spicewood Springs, Building Four, Austin, Texas to continue the activities of the Texas Information and Referral (I&R) Project. On September 1, 1991, the Office of the Governor, Ombudsman Division in Austin was awarded a grant to develop a statewide network of I&R services. That grant was transferred to the Texas Health and Human Services Commission on September 1, 1993. Authorization of that grant ends November 30, 1994.

Description of Project. The goal of the project continues to be to develop a statewide network of I&R services. To accomplish this goal, the I&R Project will identify hubs for all Texas counties, maintain and disseminate the I&R directory, provide technical assistance and support to I&R Hubs throughout Texas, develop a prototype for an infor-

mation clearinghouse, and increase awareness of I&R services to the public and policymakers.

Terms and Funding. The project will be funded for three years not to exceed \$300,000 per year. The initial budget period will begin December 1, 1994. Continuation of funding is reviewed annually and is contingent upon availability of funds.

For information on any aspect of this announcement, contact: Lester Sanders, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning Council for Developmental Disabilities to the Coalition of Texans with Disabilities, 316 West 12th Street, Suite 405, Austin, Texas to continue the activities of the Personal Attendant Services Task Force (PASTF). On December 1, 1991, the Coalition of Texans with Disabilities (CTD) was awarded a grant to provide support to the PASTF, to implement a study on personal care attendants, and to participate in policy development. That authorization ends November 30, 1994.

Description of Project. The goal of the grant project is to provide support to PASTF in developing a comprehensive cross-disability and statewide system of community-based personal attendant services (PAS). To accomplish this goal, PASTF will continue current activities, outreach to under-represented populations, increase knowledge of PAS as a cross-disability service/support option, and strengthen the PASTF working relationship with state agency representatives, legislators and providers. The PASTF will increase participation in national and state policy development.

Terms and Funding. The project will be funded for three years not to exceed \$135,000 per year. The initial budget period will begin December 1, 1994. Continuation of funding is reviewed annually and is contingent upon availability of funds.

For information on any aspect of this announcement, contact: Lester Sanders, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on August 9, 1994.

TRD-9446372 Charles Schaefer
Associate Commissioner for Legal Services
Texas Rehabilitation Commission

Filed: August 10, 1994

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Texas Department of Transportation Request for Proposals

Notice of Invitation. The Texas Department of Transportation (TxDOT) intends to engage an architectural/engineering consultant, pursuant to Chapter 2254, Subchapter A, of the Government Code, to provide the following services:

Project 1: The design and construction of the maintenance and engineering facilities at two sites, Jasper and Orange. Services include site master planning, design of all buildings, structures, site appurtenances and utilities, and construction administration. The maximum construction budget for Jasper is \$934,500. The maximum construction budget for Orange is \$1,025, 000.

Deadline for Proposals: Proposals will be accepted at the office of E. W. Wilson, Acting Director, Buildings and Real Estate Section, TxDOT General Services Division, 150 East Riverside, Austin, Texas 78704, for hand delivery, or 125 East 11th Street, Austin, Texas 78701-2483, for mail delivery. The deadline for proposals will be 5:00 p.m. on September 13, 1994. No proposals will be accepted after this date and time. Agency Contact: For further information contact Horner Villarreal at (512) 416-3062 or Randy Sakai, P.E., at (512) 416-3060, Fax number (512) 416-3072.

Project 2: Site planning, schematic design, detailed plans, specifications, estimates and construction administration for a 24-hour rest area, restoration of two historically significant structures and additions to the Roy Bean Visitor Center in Langtry, Val Verde County, Texas.

Deadline for Proposals: Proposals will be accepted at the office of E. W. Wilson, Acting Director, Buildings and Real Estate Section, TxDOT General Services Division, 150 East Riverside Drive, North Tower, Building 150, Suite 406, Austin, Texas 78704, for hand delivery, or 125 East 11th Street, Austin, Texas 78701-2483, for mail delivery. The deadline for proposals will be 5:00 p. m. on Wednesday, September 14, 1994. No proposals will be accepted after this date and time.

Agency Contact: For further information contact Andrew W. Keith, P. E. or Craig Russell at (512) 416-3048, fax number (512) 416-3072.

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

TRD-9446566 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: August 12, 1994

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University of Houston System Request for Proposals

(Editor's Note: The following Request for Proposals was originally filed with the Texas Register on August 2, 1994, for publication in the August 12, 1994, issue. Due to an error on the part of the Texas Register, the document was mistakenly rejected for publication. The Texas Register regrets the error.)

The University of Houston, Office of Facilities Planning and Construction (OFPC), is receiving proposals to conduct a system-wide facilities audit on the campuses of the University of Houston, University of Houston-Downtown and the University of Houston-Clear Lake. Companies interested in conducting the survey may receive a complete Request For Proposal by contacting: James R. Berry, A.I.A., Associate Vice Chancellor, (713) 743-8025 or by writing: Office of Facilities Planning and Construction, 4211 Elgin, Suite 200 Houston, Texas 77204-1852

QUALIFICATIONS: Proposers must have completed five or more projects of similar scope for other universities or colleges within the last three years. If the proposer plans a joint venture or an association with another firm, the extent of the relationship and the experience with the other firm must be included with the submittal. Client references are required as part of the submittal.

EVALUATION AND AWARD CRITERIA: Prior relevant and successful experience; the number of universities

surveyed; performance references; availability of a facilities audit software system; thoroughness of approach methods and forms utilized to complete the project; and cost.

AWARD PROCEDURE: A short list of firms recommended for consideration based on the evaluation of each proposal will be made by OFPC to the Facilities Planning and Building Committee of the Board of Regents. Interviews will be conducted and a recommendation made to the Board.

Submittals are restricted to 8-1/2 x 11 format. Four copies are required (ring binders).

GENERAL INFORMATION: The goal of this contract is to conduct a thorough facilities audit of these campuses, assess and identify the condition of the facilities, develop a detailed work plan for correcting condition deficiencies, and provide a basis for capital funding for the projects. The audit should include: a survey using industry standards adjusted to be sensitive to institutions for higher education; an overall assessment of the conditions of all systems for all buildings identified for audit; an estimate of probable project cost for needed repairs by category of work for each building; a series of recommended work packages drawn from the building by building audit that represent economical biddable contracts.

SCOPE OF WORK: The contract will require thorough professional inspections, non-destructive in nature, of the specified UH buildings and infrastructure. Contractor will record and report all needed repairs for the following areas: structural systems; primary architectural systems; secondary architectural systems; elevator systems; service and utility systems; infrastructure; and safety (environmental health and fire safety).

Each audit item will be classified as a project and each project must be identified within one of the seven previously referenced categories. All report summaries, totals, and software must be identified in the same manner. Within the following three categories, the following classifications must be used: adaptive reuse; deferred maintenance; and capital renewal.

Each building system will be rated as to the urgency of repair and an overall rating given to the building as a whole.

For each building prepare a descriptive narrative of each project describing the condition needed to be corrected, the corrected action required, and the affect the project will have on building occupancy and maintainability. Estimate the life expectancy, with recommended repairs, for each building.

Costs for each project will contain an R. S. Means format, multiple material, description unit type, multiple labor costs, professional fees, contractor mark-up, and inflation adjustment.

Provide a complete photo library of major item reports.

Provide a disk copy of the software and database proposed to generate all reports. The University will retain sole ownership of a software/database upon completion of the facilities audit.

The schedule will be developed with the consultant to not only expedite the audit, but to minimize disruption of University functions.

CAMPUS PROFILES: University of Houston Main Campus: enrollment (Fall 1993): 32,129; investment in plant:

\$488.4 million; buildings: 41; gross area: approx. 3,755,000 square feet.; acreage: 540. University of Houston Downtown: enrollment (Fall 1993): 8,053; investment in plant: \$42.6 million; buildings: 2; gross area: 610,200 square feet.; acreage: 15. University of Houston-Clear Lake: enrollment (Fall 1993): 7,194; investment in plant: \$70.6 million; buildings: 5; gross area: 466,100 square feet.; acreage: 530.

Proposals for a system-wide facilities audit will be received by the Office of Facilities Planning and Construction (OFPC), 4211 Elgin, Suite 200, no later than 5:00 p.m., September 12, 1994. Proposals cannot be withdrawn within 60 days after the date of opening.

All communications will be directed to: James R. Berry, A.I.A. Associate Vice Chancellor Office of Facilities Planning and Construction, (713) 743-8025.

Issued in Houston, Texas, on August 15, 1994.

TRD-9446619 James R. Berry
Associate Vice Chancellor
University of Houston System

Filed: August 15, 1994

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**The University of Texas Health
Science Center at Houston**
Request for Proposal-Consultant Services

The University of Texas Health Science Center at Houston (UTHSC-H) hereby provides notice of invitation of offers of consulting services. The UTHSC-H School of Nursing is currently looking at contracting with a private consultant to assist in the organization of a nurse practitioners group to serve as the delivery agents of preventative and primary care services, in both clinical and hospital settings. The nurse practitioners would work with primary care physicians, but would handle a significant amount of patient interaction as well as receive referrals from physician to manage chronic care after the acute episode has been stabilized.

The proposal for consultant services would involve three phases; Phase 1-Market Assessment: This phase would consist of face-to-face interviews between the consultant and the payor, managed care organizations, governmental agencies and family practice groups; Phase 2-Development of a Model: This phase would require the consultant to provide various models based on meeting the perceived needs and goals of the nurses; Phase 3-Implementation: The time period to organize a nurse practitioner organization would take approximately two to four months and would require substantial assistance not only from the administration, but also from the nurse practitioners. The awarded consultant would be required to identify the target primary care providers and assist in developing contractual relationships which would be necessary to maintain a viable network for nurse practitioners.

For further information, or to obtain a complete proposal package, contact Doug Bowerman, Procurement Officer, UTHSC-H, P.O. Box 20036, Houston, Texas 77225, (713) 792-4984.

An original and four copies of the original proposal must be submitted to UTHSC-H prior to 3:00 p.m., on September 19, 1994. Proposals received thereafter will not be considered and will be returned unopened. Proposals should be sent to Doug Bowerman at the address indicated

above. Selected respondents may be requested to conduct on-site presentations, at their expense, to clarify and expand upon items provided in their bid. The UTHSC-H will evaluate all offers of consulting services received prior to the closing date based on relevant experience related to this project, general experience and competence in managed care consulting, cost and timeliness. Therefore, experience in another state or states will be acceptable however, preference will be given to a consultant whose principal place of business is within the State of Texas.

Issued in Austin, Texas, on August 10, 1994.

TRD-9446444 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas Health Science
Center at Houston

Filed: August 11, 1994

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The University of Texas System
The University of Texas at Arlington
**Notice of Award for Consulting
Services**

In accordance with Government Code, Chapter 2254, The University of Texas at Arlington makes this notice of award to Robert Eckholt, President, Owner of American Business Investment. The Request for Proposals was filed July 1, 1994, with the Executive Secretary and published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5555)

The said consultant will provide administrative, logistical and research assistance including, but not limited to: the efficiency and overall operation of the University's Continuing Education Program; potential strategic alliances, partnerships and other business opportunities, i.e. royalty arrangements, joint ventures, product development, services, patents, copyrights and trademarks; analyze and advise the Office of the President at UTA as to the project potential and value added to UTA with respect to other business opportunities.

Contract awarded to Robert J. Eckholt, Inc., President, American Business Investment, 6700 Corporate Drive, Suite 100, Kansas City, Missouri 64120.

The total cost of the service contract will not exceed 60K, with the term of the Contract commencing August 1, 1994, and ending on July 31, 1995.

Any questions concerning the award can be directed to President Ryan C. Amacher, P.O. Box 19125, Arlington, Texas 76019, (817) 273-2102.

Issued in Austin, Texas, on August 10, 1994.

TRD-9446443 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: August 11, 1994

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**Texas Workers' Compensation
Commission**
Request for Information

(Editor's Note: This notice is a revision of the Request for Information published in the August 9, 1994, issue of the

Texas Register (19 TexReg 6306). The revision consists of the addition of language stating how long the comment period will last, and where comments should be sent. The questions were also organized into a format that is more legible. There are no substantive revisions to the notice published in the August 9 issue.)

The current Acute Care Inpatient Hospital Fee Guideline took effect on September 1, 1992. The Commission is aware that members of the public hold an array of views about the guideline and its implementation. As part of the its biannual review process, the existing guideline is being published and the Commission is encouraging the public to comment on it. Written comments may be submitted for 30 days from the date of publication of this notice to Elaine Crease, Office of the General Counsel, Mailstop 4-D, 4000 South IH-35, Austin, Texas 78704.

Comments received in response to this request will be used to evaluate what changes, if any, should be made to the current guideline. While all comments will be welcomed, those containing relevant data and documentation which allow the Commission to adequately research and verify the concerns and issues which are raised will be most helpful and accorded the most weight. In addition, an explanation of how any data was derived will assist in verifying the accuracy and relevance of the data. For example, a comment that a hospital is being paid a stated certain "x" percentage of costs will be of greater assistance in the review process if it is accompanied by data and documentation and an explanation of the items and amounts being counted toward costs and toward payment.

It is important to note that the current guideline covers only inpatient treatment in acute care facilities. It does not cover outpatient treatment or treatment in rehabilitation or psychiatric hospitals. The Commission is not considering broadening the existing rule to cover these types of services. Any efforts to address these types of services will be addressed in a separate rulemaking proceeding.

In conjunction with soliciting general input on the Acute Care Inpatient Hospital Fee Guideline, the Commission is requesting comments and supporting data from interested parties on the following questions:

1. Is a uniform statewide per diem a reasonable basis for compensation of hospitals for inpatient services to workers' compensation patients?
2. What alternative form of reimbursement schedule would be preferable to the current one and why?
3. Did the existing guideline have an impact on access to inpatient hospital services for injured workers, and what impact would it have had if hospitals acted in an economically rational fashion?
4. Did workers' compensation patients in any urban area encounter difficulty in accessing inpatient treatment and, if so, would they have had difficulty had all hospitals acted in an economically rational fashion?
5. Have any specific hospitals ceased providing care to workers' compensation patients?
6. Would any specific hospital have been economically better off by refusing to treat workers' compensation patients?
7. Did payment under the existing guidelines cover allocated hospital costs per case for the 1992-1994 period? Please identify what cost components have been allocated to workers' compensation cases?

8. Are inflation adjustments needed for the 1994-1996 period? Include in this answer all of the components used to calculate any adjustments.

9. For what percentage of patients in specific hospitals is an amount less than billed charges accepted as payment in full?

10. What have efficiency studies shown as areas in which hospitals could reduce costs? What has been done to implement any cost reduction recommendations?

11. What is the range of discounts from billed charges accepted by specific hospitals as payment in full from third party payors including payments made pursuant to negotiated contracts?

12. What discounts from billed charges or flat fees have been negotiated by insurance carriers for PPOs?

13. Is it necessary to set different per diem levels by geographic area, by size, or by hospital type to avoid inadequate or excessive compensation?

14. Is it necessary to maintain the separate reimbursement for CAT scans, MRI scans, and implantables?

15. Are there other services that should be included in the separate reimbursement system?

16. Should adjustments to the per diem amounts be instituted to cover costs generated by more than one separate surgical procedure on the same day?

17. At what point should a surgical outpatient be considered an inpatient and be subject to the guidelines?

18. What technical amendments to the existing rule are necessary in order to make administration of the rule more efficient?

19. What data should the Commission consider and how should it obtain that data?

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

TRD-9446473

Susan Cory
General Counsel
Texas Workers' Compensation Commission

Filed: August 11, 1994

Texas Workers' Compensation Research Center

Fiscal Year 1995 Research Agenda

The Board of Directors of the Texas Workers' Compensation Research Center (Research Center) proposes the following research agenda for fiscal year 1995. The Research Center shall conduct studies, in the context of the Texas workers' compensation system, to include the following: A comparison study of medical expenditures within the workers' compensation system and the general healthcare market. This study will attempt to identify differences and similarities between these two healthcare systems attributable to factors such as the unit price, utilization patterns, or medical provider mix

A geographic analysis of medical expenditures within the Texas workers' compensation system. This study will provide an in-depth analysis of medical expenditures within the state and complement the medical expenditures comparison study.

A study of the effects of negotiated insurance deductibles

on workplace injury rates. This study will examine the injury rates of employers with and without negotiated deductibles. Using a control group (employers without deductibles), this study will assess the relationship between negotiated deductibles and changes in injury rates.

A study of employer safety programs. This study will be modeled on the Michigan Disability Prevention Study and will add an employee component to the survey. This study will look at the relationship between employer safety policies/procedures and workers' compensation claims incidence, costs and outcomes.

Continued participation in the evaluation of the Safety and Health Achievement Recognition Program. This is a multi-year project initiated at the end of FY 1994. Staff is working with Texas, Oklahoma, and Missouri in the role of advisor and research monitor. FY 1995 activities will include development of data collection forms, data collection and data management related to injury and claim losses, and development of a consumer satisfaction survey and scale.

Publication of statistical bulletins that provide a broad base of key performance information enabling policymakers to effectively evaluate the workers' compensation system. The statistical bulletins will draw on information available in the research data base and the detailed claims information data base, as well as other data bases maintained by the various agencies with information relevant to the workers' compensation system.

A study of the employment patterns and related economic outcomes experienced by injured workers with impairment ratings. This study will examine the relationship between post-injury employment and varying levels of impairment, pre-injury employment and demographic variables.

Update of the Directory of Workers' Compensation Resources. Current Research. In addition to updating the directory, this project will include an assessment of the feasibility of making future updates of the directory electronically.

A study of drugs in the workplace from the employee's perspective. This study will survey employees as to the future needs and current efforts of employers to counteract drug abuse and its effects in the workplace. This study will be a follow-up to the current employer survey of workplace drug policies.

In previous years the board's research efforts have addressed the topics the legislature mandated for study in Texas Civil Statutes, Article 8308, §1706(a), including "the effectiveness of arbitration as a method of dispute resolution" and "the cost-effectiveness of providing mandatory workers' compensation through a state-administered, employer-financed workers' compensation self-insurance program modeled on the current Texas Unemployment Insurance Trust Fund and Act but taxed on 100% of payroll." These topics may be revisited in the forthcoming year.

Submit written comments on the proposed research agenda to Annette Grila, Executive Director, Texas Workers' Compensation Research Center, 105 West Riverside Drive, Suite 100, Austin, Texas 78704. The board will hold a public hearing to receive public comment if a hearing is requested. All written comments and requests for a public hearing must be received by the Research Center office on or before September 19, 1994. For further information, please call (512) 469-7811.

The publication of the research agenda is in compliance with the interim procedure adopted by the Board and the statutory requirement found in the Texas Labor Code, §404.009(b).

Issued in Austin, Texas, on August 15, 1994.

TRD-9446648

Lavon Guerrero
Administrative Assistant
Texas Workers' Compensation Research
Center

Filed: August 15, 1994

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1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6
68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29

75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 28	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 34
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, November 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 *Friday, December 30	Friday, December 23	Tuesday, December 27