

# TEXAS REGISTER



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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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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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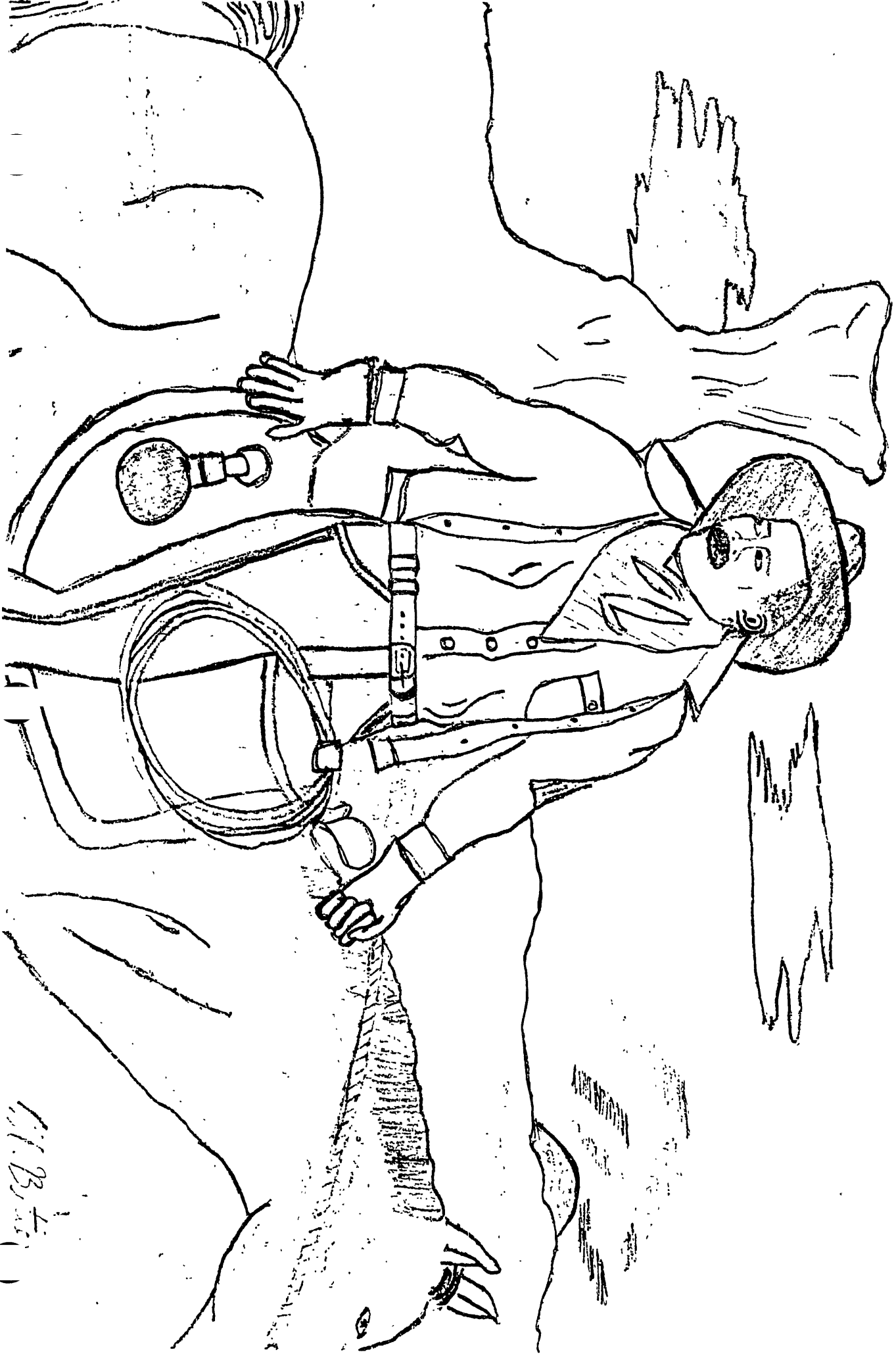
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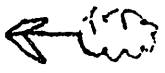
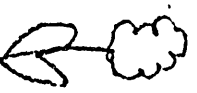
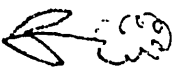
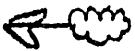
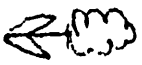
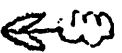
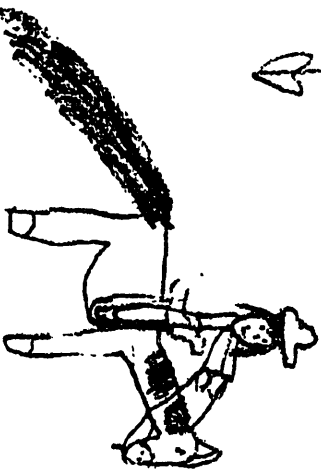
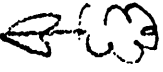
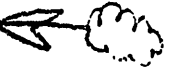
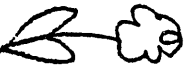
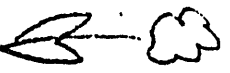
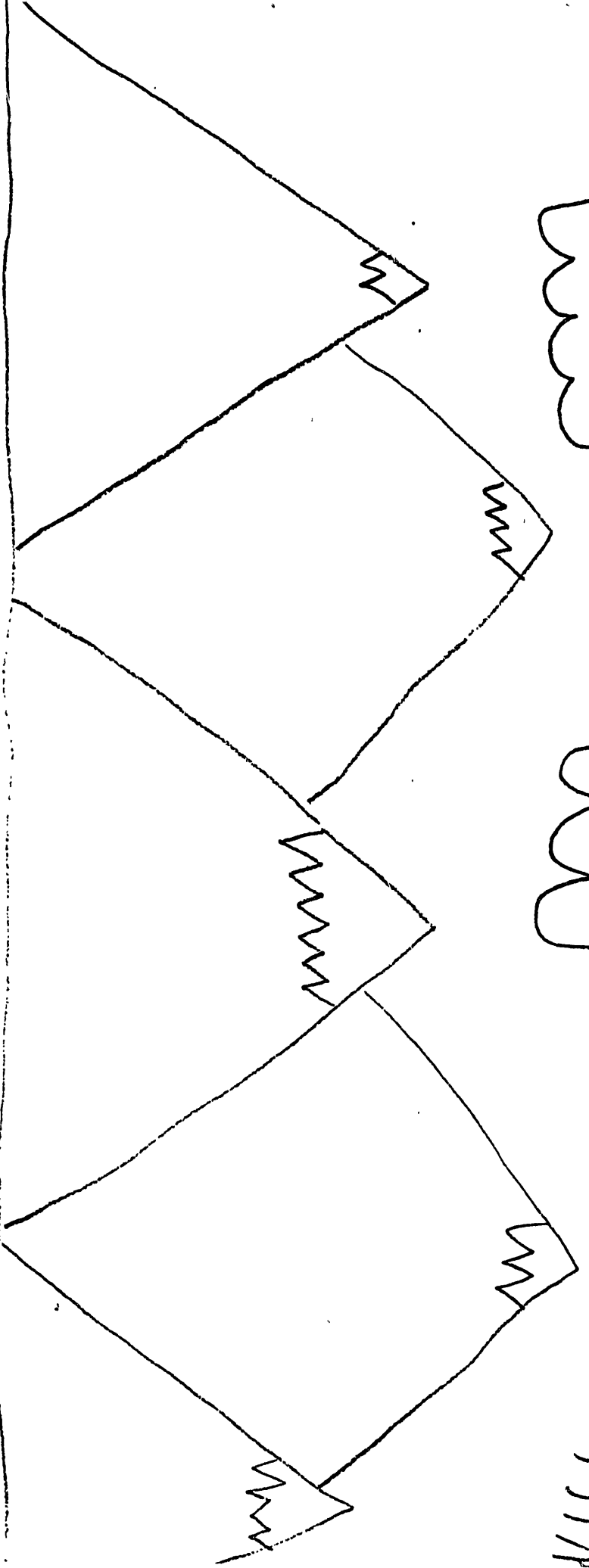
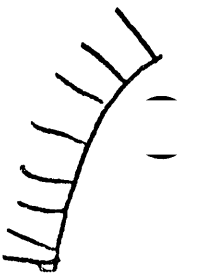
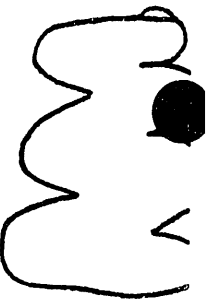
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NAME: ...  
Grade: 8<sup>th</sup>  
School: Bloomburg High School

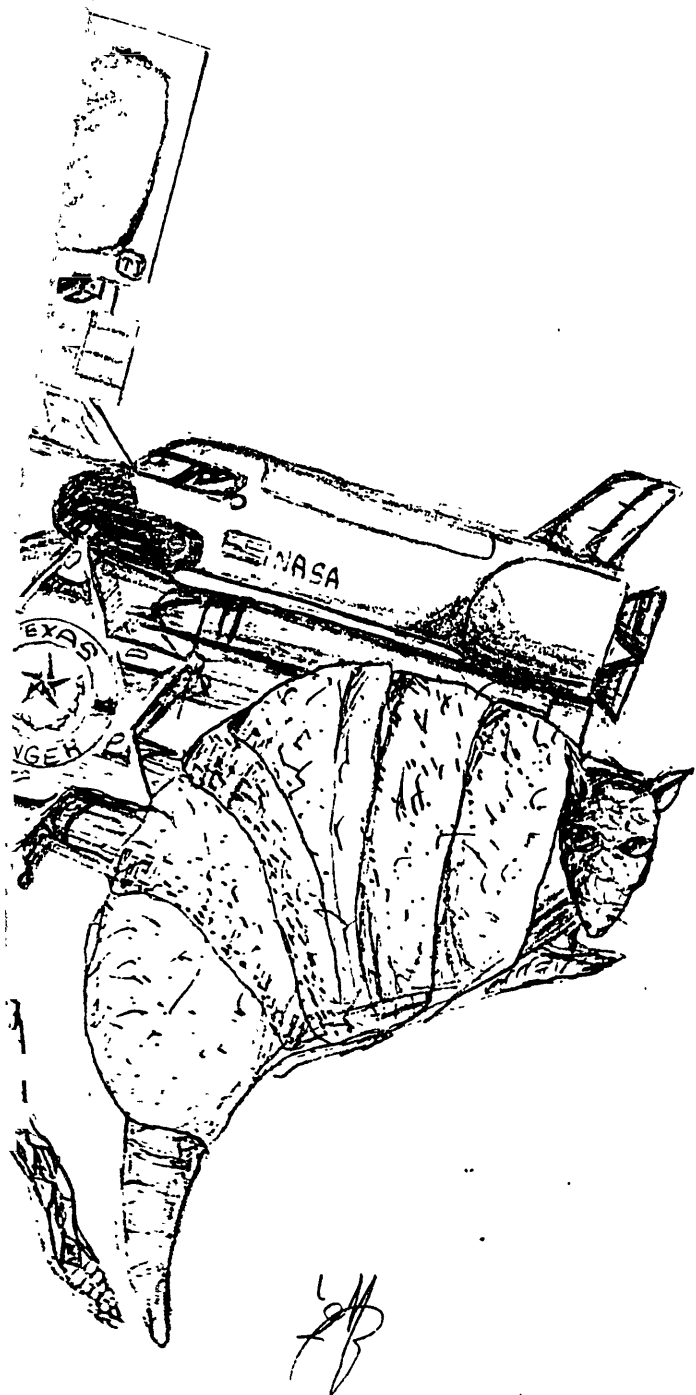


M. B. ...



Misti MacLusland

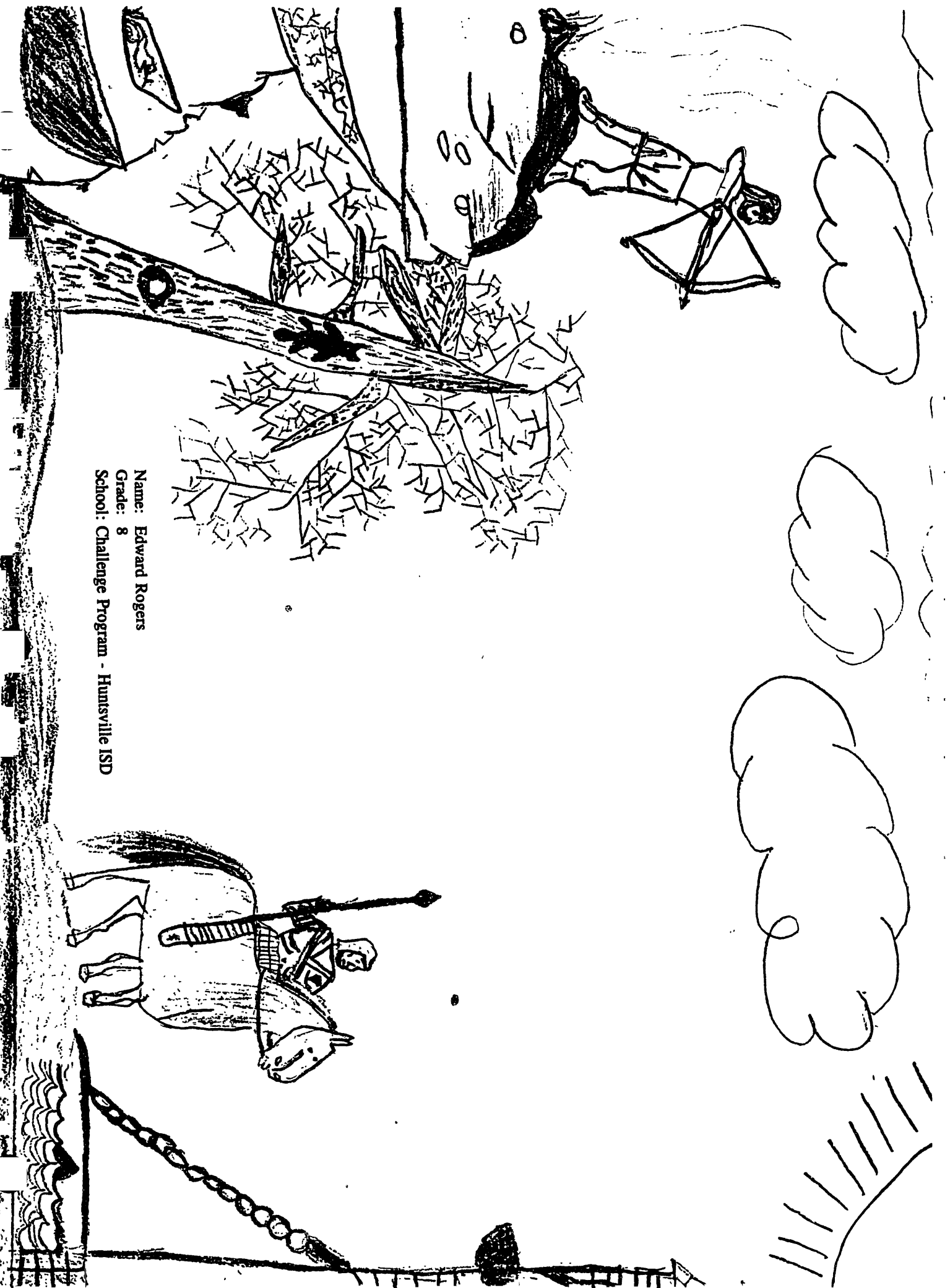
Elementary School



Bloomburg I. S. D., Bloomburg

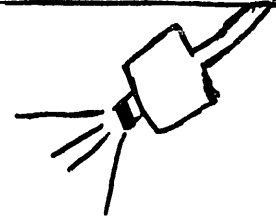
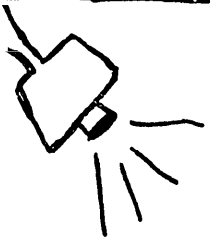






Name: Edward Rogers  
Grade: 8  
School: Challenge Program - Huntsville ISD

LIGHTS - CAMERA - ACTION!



Name: Frederich Wilson  
Grade: 8  
School: Challenge Program - Huntsville ISD

THE LEADING MAN

# 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 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 169. Veterinary Public Health

The Texas Department of Health (department) proposes the repeal of existing §§169.1-169.2 and §§169.11-169.13, concerning transportation of dead animals and meat and poultry inspection. Specifically, the sections cover identifying vehicles transporting dead animals/administrative penalties; federal regulations on meat and poultry inspection; meat inspection; and administrative penalties.

The repeal is necessary to move the sections to a more appropriate location in the Texas Administrative Code. These sections are adopted under Chapter 169 titled "Veterinary Public Health." A portion of the department's Bureau of Veterinary Public Health was combined with the Division of Food and Drug to become the Bureau of Food and Drug Safety (BFDS). Under BFDS, the Meat Safety Assurance Division is responsible for rules regulating the transportation of dead animals, and meat and poultry inspection. Therefore, these repealed sections are being proposed for adoption under new Chapter 221, titled "Meat Safety Assurance" in this issue of the *Texas Register*.

William W. Rosser, D.V.M., M.A., Chief, Bureau of Food and Drug Safety, has determined that for the first five-year period the sections are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Dr. Rosser also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be continued assurance of consumer safety by enforcing current United States Department of Agriculture regulations. There will be no cost on small businesses and individuals who are required to comply with the section as proposed. There will be no impact to local employment.

Comments may be submitted to Dr. Lee Jan, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78758. Comments will

be accepted for 30 days following publication of this proposal.

#### Transporting Dead Animals

##### • 25 TAC §169.1, §169.2

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

The repeals are proposed under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This action affects Health and Safety Code, Chapters 144, 341, and 433.

##### §169.1. Identifying Vehicles Transporting Dead Animals.

##### §169.2. Administrative Penalties.

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

Issued in Austin, Texas, on September 7, 1994.

TRD-9447698

Susan K. Steeg  
General Counsel, Office of  
the General Counsel  
Texas Department of  
Health

Proposed date of adoption: November 18, 1994

For further information, please call: (512) 458-7443

#### Meat and Poultry Inspection

##### • 25 TAC §§169.11-169.13

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas*

*Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This action affects Health and Safety Code, Chapters 144, 341, and 433.

##### §169.11. Federal Regulations on Meat and Poultry Inspection.

##### §169.12. Meat Inspection.

##### §169.13. Administrative Penalties.

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

Issued in Austin, Texas, on September 7, 1994.

TRD-9447697

Susan K. Steeg  
General Counsel, Office of  
the General Counsel  
Texas Department of  
Health

Proposed date of adoption: November 18, 1994

For further information, please call: (512) 458-7443

#### Chapter 221. Meat Safety Assurance

The Texas Department of Health (department) proposes new §§221.1, 221.2, and 221.11-221.13, concerning transportation of dead animals and meat and poultry inspection. Specifically, the sections cover identifying vehicles transporting dead animals/administrative penalties; federal regulations on meat and poultry inspection; meat inspection; and administrative penalties.

These new sections presently exist in 25 TAC §§169.1-169.2 and §§169.11-169.13 under

Chapter 169 titled "Veterinary Public Health." A portion of the department's Bureau of Veterinary Public Health was combined with the Division of Food and Drug to become the Bureau of Food and Drug Safety (BFDS). Under BFDS, the Meat Safety Assurance Division is responsible for rules regulating the transportation of dead animals, and meat and poultry inspection. As appropriate, the new sections are being proposed under a new chapter, titled "Meat Safety Assurance" more appropriately located in the Texas Administrative Code.

Because the language in new §§221.1-221.2 and §§221.12-221.13 remains unchanged from existing adopted language in Chapter 169, the only comments being accepted on these sections will be in regard to the moving of the sections to Chapter 221.

New §221.11 adopts by reference the most recent federal regulations concerning meat and poultry inspection. These federal regulations are preemptive and the State of Texas is required, through its cooperative agreement with the United States Department of Agriculture, to follow the federal regulations. This section includes all the most current federal regulations which the department is required to follow and reflects the departmental reorganization name changes. In addition, this section will enable the department to maintain the mandated "equal to" status required by United States Department of Agriculture.

William W. Rosser, D.V.M., M.A., Chief, Bureau of Food and Drug Safety, has determined that for the first five-year period the sections are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Dr. Rosser also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be continued assurance of consumer safety by enforcing current United States Department of Agriculture regulations. There will be no cost on small businesses and individuals who are required to comply with the sections as proposed. There will be no impact to local employment.

Comments may be submitted to Dr. Lee Jan, Texas Department of Health, 1100 W. 49th Street, Austin, Texas, 78758. Comments will be accepted for 30 days following publication of this proposal.

The new sections are proposed under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

## Transporting Dead Animals

### • 25 TAC §221.1, §221.2

This action affects Health and Safety Code, Chapters 144, 341, and 433; the Government Code, Chapter 2001; and 9 CFR Parts 301-381.

*§221.1. Identifying Vehicles Transporting Dead Animals.* Each licensee operating vehicles used in transporting dead animals and/or rendering raw materials under the provisions of the Texas Renderers' Licensing Act (Act) shall have such vehicles identified in the following manner.

(1) The number of the license shall be permanently affixed to the outside of each front door of the vehicle or on each side of the lower front corner of the box or trailer in letters 2 1/2 inches high, and in a color contrasting distinctly with the background. Preceding the license number shall be the inscription "TRLA #." In the case of rental trucks the inscription specified in this section shall be applied by means of a temporary placard (weatherproof). Waste cooking greases are considered to be rendering raw material under the provision of the Act.

(2) This identification shall be an integral part of the license, and shall expire with said license, and upon sale or trade of any vehicle bearing such identification, it shall be the responsibility of the licensee to remove it.

(3) If the vehicle is one of a fleet being operated by any facility licensed under the provision of the Act, it shall bear, in addition to the identification described in paragraph (1) of this section, an identifying symbol by which it may be distinguished from other vehicles of the same fleet.

(4) All license holders subject to this regulation shall be in compliance with the provision of this regulation on or before February 15, 1976.

### *§221.2. Administrative Penalties.*

(a) Purpose. The purpose of this section is to establish the criteria and procedures by which the commissioner of health will assess administrative penalties for violations by persons operating under the provisions of the Texas Renderers' Licensing Act (Act), Health and Safety Code, Chapter 144, these rules or a license or order issued under Chapter 144.

(b) Definitions. For purposes of this section, the Texas Department of Health will use the definitions as described in the Act, §144.002.

(c) Determining the amount of the penalty. In determining the amount of the penalty, the commissioner of health shall consider the criteria described in subsections (d)-(h) of this section.

(d) The seriousness of the violation.

(1) Violations shall be categorized by one of the following severity levels.

(A) Severity Level I covers violations that are most significant and have a direct negative impact on, or represent a threat to, the public health and safety and include, but are not limited to, operating without a license if required by the Act.

(B) Severity Level II covers violations that are very significant and have impact on the public health and safety including, but not limited to, continuing to operate following expiration of a license.

(C) Severity Level III covers violations that are significant and which, if not corrected, could threaten the public and have an adverse impact on the public health and safety, including, but not limited to, construction of new facilities and/or additions to existing facilities without a construction permit, when required as set out in the Act.

(D) Severity Level IV covers violations that are of more than minor significance, and if left uncorrected, would lead to more serious circumstances, including, but not limited to, causing a nuisance as defined by the Health and Safety Code, §341.011.

(E) Severity Level V covers violations that are of minor safety or fraudulent significance.

(2) The severity of a violation shall be increased if the violation involves deception, fraud, or other indication of willfulness. In determining the severity of a violation, the economic benefit gained by a person through noncompliance shall be taken into account.

(3) The following are examples only of severity levels; they are not exhaustive or controlling.

(A) Severity Level I shall apply to any person operating any licensable rendering related activity without a license.

(B) Severity Level II shall apply to any person operating any rendering related activity in excess of 15 days following expiration of a current license.

(C) Severity Level III shall apply to any person constructing any facility or addition to an existing facility without having the required construction permit.

(D) Severity Level IV shall apply to:

(i) any person creating a nuisance, as defined by the Health and Safety Code, §341.011; and

(ii) any person falsifying any information required on an application for a rendering license.

(E) Severity Level V shall apply to:

(i) any person failing to maintain a minimal level of sanitation;

(ii) any person failing to maintain records of all purchases and sales of renderable raw material as defined in the Act, §144.002;

(iii) any person failing to display the required and correct Texas Renderers' Licensing Act number on vehicles used in his/her rendering business;

(iv) any person failing to maintain a clean, leakproof vehicle; and

(v) any person failing to present any vehicle used in his/her rendering business for survey.

(e) History of previous violations. The department may consider previous violations. The base penalty may be reduced or increased by as much as 50% for past performance. Past performance involves the consideration of the following factors:

(1) how similar the previous violation was;

(2) how recent the previous violation was; and

(3) the number of previous violation(s) in regard to correction of the problem.

(f) Demonstrated good faith. The department may consider demonstrated good faith. The base penalty may be reduced by as much as 50% if good faith efforts to correct a violation have been made, or are being made. Good faith effort shall be determined on a case-by-case basis and be fully documented.

(g) Hazard to the health and safety of the public. The department may consider the hazard to the health and safety of the public. The base penalty shall be increased by as much as 50% when a direct hazard to the health and/or to the safety of the public is involved. It shall be taken into account, but need not be limited to, the following factors:

(1) whether any disease or injuries have occurred from the violation;

(2) whether any existing conditions contributed to a situation that could expose humans to a health hazard; or

(3) whether the consequences would be of an immediate or long range hazard.

(h) Other matters. The commissioner may consider other matters as justice may require.

(i) Levels of penalties.

(1) The department will impose different levels of penalties for different severity level violations as follows:

(A) Level I-\$15,000;

(B) Level II-\$10,000;

(C) Level III-\$6,250;

(D) Level IV-\$3,750; and

(E) Level V-\$1,250.

(2) Each day a violation continues may be considered a separate violation.

(j) Assessment, payment, and refund procedures.

(1) The commissioner may assess an administrative penalty only after a person charged with a violation is given an opportunity for an administrative hearing. The hearing shall be in accordance with the Health and Safety Code, §144.082; the Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(2) Payment of an administrative penalty shall be in accordance with the provision of the Health and Safety Code, §144.083.

(3) A refund of an administrative penalty shall be in accordance with the provisions of the Health and Safety Code, §144.084.

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 September 7, 1994.

TRD-9447689

Susan K. Steeg  
General Counsel, Office of  
the General Counsel  
Texas Department of  
Health

Proposed date of adoption: November 18, 1994

For further information, please call: (512) 458-7443

## Meat and Poultry Inspection

• 25 TAC §§221.11-221.13

The new sections are proposed under the Health Safety Code, §433.008, which provides the Commissioner with the authority to

adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This action affects Health and Safety Code, Chapters 144, 341, and 433.

### §221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The Texas Department of Health adopts by reference Parts 301-381 titled "Mandatory Meat Inspection, Voluntary Inspections and Certification Services, Mandatory Poultry Products Inspection," as amended.

(b) Copies of these regulations are indexed and filed in the Division of Meat Safety Assurance, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

### §221.12. Meat Inspection.

(a) Introduction. The purpose of this section is to protect the public health by establishing uniform rules to assure that meat and poultry products are clean, wholesome and truthfully labeled.

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

(1) Act-The Texas Meat and Poultry Inspection Act, Texas Civil Statutes, Article 4476-7.

(2) Change in ownership-

(A) a change in the business organization operating the business which changes the legal entity responsible for operation of the business; or

(B) any change in control of the business; or

(C) any change in ownership of the business which requires a reapplication to the Texas Department of Health for a grant of inspection and/or custom exemption to operate.

(3) Custom operations-The slaughtering of an animal or the processing of an inspected and/or uninspected carcass or parts thereof for the owner of that animal, carcass, or parts or the selling of live-stock, inspected carcasses, or parts to be slaughtered and/or processed by the purchaser on premises owned or operated by the seller for the exclusive use of the owner.

(4) Department-Texas Department of Health.

(5) Federal regulations-The regulations adopted by reference by the department in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection).

(6) Grant of custom exemption-An authorization from the department to engage in a business of custom slaughtering and/or processing.

(7) Grant of inspection-An authorization from the department to engage in a business subject to inspection under the Act.

(8) Person-Any individual, partnership, association, corporation, or unincorporated business organization.

(c) Grant of inspection and/or custom exemption.

(1) Basic requirements.

(A) A person shall not engage in a business subject to the Act unless that person has met the standards established by the Act, the federal regulations, and these sections, and has obtained the appropriate grant of inspection and/or custom exemption issued by the department.

(B) A person shall not engage in custom operations of livestock unless that person has met the standards established by the Act, the federal regulations, and these sections, and has obtained a grant of custom exemption issued by the department.

(2) Application. To apply for a grant of inspection and/or custom exemption, a person shall complete department application forms which can be obtained from the Division of Meat Safety Assurance, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) Duration. The applicant who has complied with the standards in the Act, the federal regulations, and these sections will receive a grant of inspection and/or custom exemption for an indefinite period subject to the denial, suspension, and revocation provisions in paragraph (7) of this subsection.

(4) Nontransferability. A grant of inspection and/or custom exemption is not transferable to another person.

(5) Change of ownership. Any person operating a business under a grant of inspection and/or custom exemption from the department shall notify the department of any change in ownership of that business and, in such event, shall relinquish the current grant to the department. The new owner shall make application for a new

grant on forms provided by the department. This notification and application shall be made prior to the ownership change.

(6) Temporary exemption. Each person engaged in a business subject to the Act at the time of enactment of the Act may be allowed a maximum period of 36 months to provide the drawings (blueprints of the business's physical plant) as required by the federal regulations and to bring the facility into compliance with these drawings. This 36-month period will begin upon the date the department gives the person official notice by certified mail that the person has 36 months to provide the drawings.

(7) Denial, suspension and revocation.

(A) The department may deny a grant of inspection and/or custom exemption to any applicant who does not comply with the standards of the Act, the federal regulations, and these sections.

(B) The department may suspend or revoke a grant of inspection and/or custom exemption of any person who violates the standards of the Act, the federal regulations, and these sections.

(C) A person whose grant has been denied, suspended, or revoked is entitled to an opportunity for a formal hearing in accordance with §§1. 21-1.34 of this title (relating to Formal Hearing Procedures).

#### §221.13. Administrative Penalties.

(a) Purpose. The purpose of this section is to establish the criteria and procedures by which the commissioner of health will assess administrative penalties for violations by persons operating under the provisions of the Texas Meat and Poultry Inspection Act, Health and Safety Code, Chapter 433, these rules, and licenses and orders issued pursuant to the Act or the rules.

(b) Determining the amount of the penalty. In determining the amount of the penalty, the commissioner of health shall consider the criteria described in subsections (c)-(g) of this section.

(c) The seriousness of the violation.

(1) Violations shall be categorized by one of the following severity levels.

(A) Severity Level I covers violations that are most significant and have a direct negative impact on, or represent a threat to, the public health and safety and including, but not limited to, adulteration,

misbranding, false representation, or false advertising that results in fraud.

(B) Severity Level II covers violations that are very significant and have impact on the public health and safety including, but not limited to, adulteration, misbranding, false representation, or false advertising, that results in fraud.

(C) Severity Level III covers violations that are significant and which, if not corrected, could threaten the public and have an adverse impact on the public health and safety, including, but not limited to, adulteration, misbranding, false representation, or false advertising that results in fraud.

(D) Severity Level IV covers violations that are of more than minor significance, and if left uncorrected, would lead to more serious circumstances.

(E) Severity Level V covers violations that are of minor safety or fraudulent significance.

(2) The severity of a violation shall be increased if the violation involves deception, fraud, or other indication of willfulness. In determining the severity of a violation, there shall be taken into account the economic benefit gained by a person through noncompliance.

(3) The following are examples only of severity levels; they are not exhaustive or controlling.

(A) Severity Level I shall apply to:

(i) any person causing a meat or poultry product to contain a poisonous or deleterious substance that may render it injurious to human health;

(ii) any person causing an unidentified or incorrectly identified and undecharacterized meat or poultry (such as meat from condemned livestock or livestock that died other than by slaughter) to be placed in food channels where it could enter the human food chain undetected; and

(iii) any person selling any product derived from condemned livestock or livestock that died other than by slaughter into the human food chain.

(B) Severity Level II shall apply to:

(i) any person selling a product adulterated with turkey gizzards, beef hearts, offal products, other species products and/or extenders to schools, governmental institutions or to anyone whose

written specifications specifically prohibit the inclusion of these items;

(ii) any person selling livestock slaughtered without approved state or federal ante-mortem and post-mortem inspection; and

(iii) any person purchasing a product from livestock slaughtered without approved state or federal ante-mortem and post-mortem inspection or who processes such product into consumer items, or who sells or makes the product available for sale.

(C) Severity Level III shall apply to:

(i) any person causing the removal of detain tags and/or the removal or use of detained product without authorization of the department;

(ii) any person denying access to review the records and/or a place of business where livestock products are being slaughtered, processed, sold, or made available for sale; and

(iii) any person threatening an authorized state employee in an effort to prevent such employee from performing his/her duties.

(D) Severity Level IV shall apply to:

(i) any person failing to maintain records of business transactions which will correctly identify all purchases and sales involving livestock product; and

(ii) any person adulterating product which has a standard, such as ground beef, hamburger, ground chuck, ground round, by the addition of extenders, offal products, other species products, or additives which will make the product appear better, or of greater quality, than it is, or sells or who makes the product available for sale.

(E) Severity Level V shall apply to:

(i) any person continuing unauthorized custom slaughter and/or processing of livestock;

(ii) any person continuing to exceed HRI sales (that is other than household consumers, such as hotels, restaurants, institutions, etc.) limitation;

(iii) any person selling or making available for sale uninspected meat and/or poultry product amenable to the inspection requirements of Title 9, Code of Federal Regulations, §303, titled "Exemptions," (product examples: tacos, eggrolls, sausage, tamales, jerky, etc.);

(iv) any person selling or making available for sale ground beef, hamburger, or similar items whose fat content exceeds the standard limitation or the fat content stated on the product label as set out in Title 9, Code of Federal Regulations, §319 titled "Definitions and Standards of Identity or Composition," as amended; and

(v) any person failing to correct labeling irregularities as set out in Title 9, Code of Federal Regulations, §317 titled "Labeling, Marking Devices, and Containers," as amended.

(d) History of previous violations. The department may consider previous violations. The base penalty may be reduced or increased by as much as 50% for past performance. Past performance involves the consideration of the following factors:

(1) how similar the previous violation was;

(2) how recent the previous violation was; and

(3) the number of previous violation(s) in regard to correction of the problem.

(e) Demonstrated good faith. The department may consider demonstrated good faith. The base penalty may be reduced by as much as 50% if good faith efforts to correct a violation have been made, or are being made. Good faith effort shall be determined on a case by case basis and be fully documented.

(f) Hazard to the health and safety of the public. The department may consider the hazard to the health and safety of the public. The base penalty shall be increased by as much as 50% when a direct hazard to the health and/or to the safety of the public is involved. It shall be taken into account, but need not be limited to, the following factors:

(1) whether any disease or injuries have occurred from the violation;

(2) whether any existing conditions contributed to a situation that could expose humans to a health hazard; or

(3) whether the consequences would be of an immediate or long range hazard.

(g) Other matters. The commissioner may consider other matters as justice may require.

(h) Levels of penalties.

(1) The Department will impose different levels of penalties for different severity level violations as follows:

(A) Level I -\$15,000;

(B) Level II-\$10,000;

(C) Level III-\$6,250;

(D) Level IV-\$3,750; and

(E) Level V -\$1,250.

(2) Each day a violation continues may be considered a separate violation.

(i) Assessment, payment, and refund procedures.

(1) The commissioner may assess an administrative penalty only after a person charged with a violation is given an opportunity for an administrative hearing. The hearing shall be in accordance with the Health and Safety Code, §433.095; the Government Code, Chapter 2001; and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(2) Payment of an administrative penalty shall be in accordance with the provision of the Health and Safety Code, §433.096.

(3) Refund of an administrative penalty shall be in accordance with the provisions of the Health and Safety Code, §433.097.

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 September 7, 1994.

TRD-9447700

Susan K. Steeg  
General Counsel, Office of  
the General Counsel  
Texas Department of  
Health

Proposed date of adoption: November 18, 1994

For further information, please call: (512) 458-7443

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**  
**Chapter 5. Property and**  
**Casualty**

**Subchapter P. Commercial**  
**Property Insurance**

• **28 TAC §5.12000**

The Texas Department of Insurance proposes new §5.12000, concerning the conduct of commercial property inspections and rating functions by private entities and the Department's regulatory oversight of these functions. This proposal replaces an earlier proposal published in the August 12, 1994, issue of the *Texas Register* (19 TexReg

6336) which is being withdrawn. The proposed new section provides necessary and appropriate procedures and standards for those private entities that will provide on and after September 1, 1994, commercial property inspection and rating services to the commercial property insurance industry in Texas. These new procedures and standards are needed to assure that the consumers of Texas are adequately and fairly served by these private entities. The proposed procedures and standards address the regulatory requirements for the private entities performing the commercial property inspections and rating functions; the duties and responsibilities of the Commissioner of Insurance and the Texas Department of Insurance relating to the oversight of these entities in their conduct of the commercial property inspections and rating functions; and the complaint handling procedures relating to these inspection and rating functions. Proposed subsection (a) outlines the purpose and scope of the new section. Proposed subsection (b) defines terms used in the new section. Subsection (c) as proposed specifies inspection, reporting, computer access, personnel training, and consumer information requirements for the private entities in their conduct of the commercial property inspections and rating functions. Proposed subsection (d) provides that these private entities are advisory organizations and subject to regulation under Article 5.73 of the Insurance Code and specifies regulatory sanctions for certain violations. Subsection (e) as proposed defines the duties and responsibilities of the Department and the Commissioner over the commercial property inspections and rating functions as conducted by private entities. These duties and responsibilities include oversight of the commercial property inspections and rating; review of commercial property rating schedules and/or public fire protection grading or classification schedules used by a private entity to establish base fire rates and/or public fire protection gradings or classifications of communities in Texas prior to the filing of those rating schedules by individual insurers pursuant to the Insurance Code, Article 5.13-2; providing of advice and assistance in the development of commercial property rating schedules, standards of construction, standards of fire protection (public or private), or any other standard relating to the establishment of a base fire rate or a public fire protection grading or classification; continued Departmental inspection and rating of certain residential risks; and dissemination of public information through publications and educational programs. Proposed subsection (f) specifies procedures for handling complaints relating to the commercial property inspections and rating functions performed by private entities.

Lyndon Anderson, associate commissioner, property and casualty program, has determined that for each year of the first five years the proposed new section will be in effect, there will be fiscal implications to state government as a result of enforcing or administering the section. The privatization of the commercial property inspection and rating function currently performed by the Texas Department of Insurance to determine commercial property base fire rates will result in

an estimated reduction in cost to state government of approximately \$1.65 million for the first year of the first five years the proposed new section will be in effect and approximately \$1.70 million for each of the fiscal years 1996 and 1997, and approximately \$1.90 million for each of the fiscal years 1998 and 1999. Table A shows for the first five years the proposed new section will be in effect the costs to the Department to continue to perform the commercial property inspections and rating function, the costs to the Department to conduct oversight of the performance of this function by a private entity or entities, and the savings to state government as a result of privatizing this function. By FY 1998, the privatization of the commercial property inspections and rating function should be running smoothly and the number of re-inspections and challenged ratings should gradually decline; consequently, it is anticipated that funding needed for this function will be less by FY 1998. FIGURE 1: 28 TAC 5.12000 preamble (Note: The Department has not applied an inflationary factor to the cost and savings estimates; however, even with the application of such a factor the proportional relationship of the figures would not change.) The Department's operation of this function is funded by maintenance tax assessments of individual insurers. No fees are collected by the Department to offset this cost. There will be no fiscal implications to local government nor to small business as a result of enforcing or administering the new section, and there will be no effect on local economy. There will also be no impact on local employment because personnel terminated by the Department as a result of privatization of this function will be employed by the private entity or entities that assume the function.

Mr. Anderson also has determined that for each year for the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the section is a reduction of approximately \$1.65 million in state government expenditures for the first year of the first five years the proposed new section will be in effect and a savings of approximately \$1.70 million for each of the fiscal years 1996 and 1997 and approximately \$1.90 million for each of the fiscal years 1998 and 1999. In addition, the public will benefit from the fact that this service can better be provided by private industry without increasing the cost of the service to consumers and without jeopardizing the integrity of the program or reducing any service to commercial property insureds in Texas. The costs, as shown in Table B, for a private entity to perform the commercial property inspections and rating function are estimated by the Insurance Services Office (ISO) to be \$3.69 million for the first year; \$2.60 million, the second year; \$2.18 million the third year; \$2.02 million the fourth year; and \$1.90 million the fifth year. ISO is at this time the only private entity actively pursuing the providing of this service. Table B also shows estimated increased costs to commercial property insurers as a result of privatization. These increased costs have two components: (1) service fees to be paid by individual commercial property insurers in Texas to the private entity for the performance of commercial

property inspections and rating service; and (2) maintenance tax assessments to be paid by all property and casualty insurers licensed in Texas to fund the Department's oversight functions. As shown in Table B, the initial costs to insurers will be greater because of start-up costs for a private entity. However, by the fifth year, the cost will be considerably less as new streamlined rating methods and inspection services are implemented.

FIGURE 2: 28 TAC 5.12000 preamble

The Department believes that within a few years the actual cost of the service by a private entity will be the same or below the cost to the Department. It is anticipated that as commercial property rating in Texas conforms more to that of other states, the overall operating cost to individual insurers doing business in Texas is likely to decrease. In addition, individual insurers have indicated to the Department that they will realize estimated cost savings ranging from \$100,000 per year to \$600,000 per year with the elimination of the need to maintain separate Texas processing of commercial property insurance. The cost to the industry is reflected in the cost to consumers. Over the long term, the cost of insurance to consumers should also decrease because of the savings by individual insurers and the existence of a competitive market that will allow consumers to shop for the best commercial property insurance coverage at the least cost.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC #113-2A, Austin, Texas, 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P.O. Box 149104, MC #103-1A, Austin, Texas, 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to the Insurance Code, Articles 5.25, 5.13-2, 5.73, 5.98, 1.02, and 1.03A and the Government Code §2001.004 et seq. It is the Department's interpretation that the language in Article 5.25(b) (Acts 1991, 72nd Legislature, Chapter 242, §2.23, effective September 1, 1991) which addresses the Department's conduct of commercial property inspections and prescription of rating schedules does not create a requirement for the Department to perform these functions, and therefore the Department may authorize third-parties to perform these functions. Article 5.13-2, provides for a file and use rate system for insurers writing commercial property insurance in Texas and requires each such insurer to file with the Commissioner all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state. Article 5.13-2, authorizes the Commissioner to disapprove a rate if the Commissioner determines that the rate filing made under this article does not meet the standards established under the rate standards section of Article 5.13-2. These rate standards include the requirement that rates may not be excessive, inadequate, or unfair



discriminatory. Section 1 of Article 5.73 provides a functional definition of an advisory organization, i.e., that every insurer transacting business in the state may, but is not required to, subscribe to an advisory organization and is permitted to submit to and receive from any advisory organization statistical plans, historical data, prospective loss costs, supplementary rating information, policy forms and endorsements, research and performance of inspections except final rates or recommendations regarding profit or expense provisions, other than loss adjustment expenses. Section 2 and §3(a) and (b) of Article 5.73 specify certain prohibited activities for insurers and advisory organizations. Section 3(c) of Article 5.73 provides that if, after a hearing, the Commissioner of Insurance finds that the furnishing of specified services by an advisory organization involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of Subchapter F, Chapter 5 of the Insurance Code (governing Joint Underwriting and Reinsurance; Advisory Organizations) or with the applicable laws of this state, the Commissioner may issue an order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of law and requiring the discontinuance of such act or practice, and in addition to any other remedies available at law, impose any sanction authorized under Article 1.10 of the Insurance Code. Section 4(b) of Article 5.73 provides that an advisory organization is subject to examination under Article 5.74 of the Insurance Code. Article 5.98 authorizes the Commissioner of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5 of the Insurance Code (Rating and Policy Forms). Articles 5.73 and 5.98 by their terms delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Regular Session, Chapter 685, §1.01), a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Section 1.23(c) of House Bill 1461 provides that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and hearings, proceedings, and rules related to these activities; such authority shall be exercised by the Board until no later than September 1, 1994. Section 1.23(d) of House Bill 1461 provides that on and after the date a Commissioner of Insurance is appointed under subsection (a) of §1.23 the Commissioner shall cooperate with the Board to assume the authority granted to the Board under subsection (c) of §1.23 and shall adopt rules as necessary to govern those activities. Section 1.23(d) further provides that as soon as possible after the appointment of the Commissioner under §1.23(a) but not later than September 1, 1994, the Commissioner shall assume the authority granted to the Board under §1.23(c). Pursuant to Board Order

Number 60574, November 29, 1993, the State Board of Insurance transferred the authority granted to the Board under §1.23(c) of House Bill 1461 to the Commissioner of Insurance, effective December 16, 1993. Article 1.03A, as enacted by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Regular Session, Chapter 685, §1.03), provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §2001.004 et seq. (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following statutes are affected by this rule: Insurance Code, Articles 5.13-2, 5.25, and 5.73.

*§5.12000. Commercial Property Inspections and Rating.*

(a) Purpose and Scope. The purpose and scope of this section is to specify necessary and appropriate procedures and standards for those private entities that are providing commercial property inspection and rating services to the commercial property insurance industry in Texas in order to assure that the consumers of Texas are adequately and fairly served by these private entities. These procedures and standards address:

(1) the regulatory requirements for the private entities performing the commercial property inspections and rating functions;

(2) the duties and responsibilities of the Commissioner of Insurance and the Texas Department of Insurance relating to the oversight of these entities in their conduct of the commercial property inspections and rating functions; and

(3) the complaint handling procedures relating to these inspection and rating functions.

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

(1) Base fire rate—The commercial fire structural loss costs determined by using a schedule of charges and credits to identify the loss costs of an individual building for construction, occupancy, exposure, location, and fire protection (public or private).

(2) Commissioner—Commissioner of Insurance of the State of Texas.

(3) Department—Texas Department of Insurance.

(4) Private entity—Any sole proprietorship, partnership, corporation, group, association, or organization that conducts any inspections of risks for insurers transacting commercial property insurance business in Texas for the purpose of establishing base fire rates for these insurers.

(c) Requirements for Private Entities Conducting Commercial Property Inspections and Rating Functions.

(1) Rating Inspection Requirements. Inspections conducted by a private entity for the purpose of establishing base fire rates for insurers transacting commercial property insurance in Texas must be in accordance with the commercial property rating schedules that have been filed pursuant to Article 5.13-2 of the Insurance Code and not disapproved by the Commissioner pursuant to Article 5.13-2, §7.

(2) Reporting Requirements.

(A) Any private entity conducting rating inspections as provided in paragraph (1) of this subsection shall provide the following information to the Department on a quarterly basis within 30 days after the end of each calendar quarter beginning with the fourth quarter of 1994:

(i) Number of rating inspections of risks to establish a base fire rate;

(ii) Number of rating re-inspections of risks to revise an existing base fire rate;

(iii) Number of base fire rate revisions not requiring an inspection,

(iv) Number of rating inspections not performed within 45 days of receipt of request for inspection;

(v) Number of inspections performed for classification or grading of community fire protection capabilities;

(vi) Number of inspections for verification of class rating eligibility;

(vii) Number of estimated rates provided for:

(I) construction of buildings;

(II) automatic sprinkler systems (full or partial); and

(III) automatic fire alarm systems.

(viii) Number of complaints received by the private entity showing the status of the complaints (resolved or

unresolved); these complaints shall include complaints from any users or recipients of the private entity's commercial property inspections and rating services.

(B) Any private entity conducting inspections as provided in paragraph (1) of this subsection shall provide to the Department on a monthly basis information on buildings, and their locations, inspected for rate purposes and rated. Such information shall be provided within ten days after the end of each month.

(C) In addition to the reports required in subparagraphs (A) and (B) of this paragraph, any private entity conducting inspections as provided in paragraph (1) of this subsection shall provide any other information as required by the Department to conduct its oversight responsibilities as specified in subsection (e) of this section.

(3) On-line Computer Access. Any private entity that maintains computer data of commercial buildings inspected and rated in Texas for commercial property insurance purposes shall provide the Department, in a manner that is agreeable to the Department, with on-line access to this computerized information for the purposes of reading and printing such information. Such computer data shall include any current rating information for individual buildings and their location.

(4) Training of Department Personnel. Any private entity introducing new or revised commercial property rating schedules for the purpose of establishing base fire rates shall cooperate with the Department in training Department personnel on the use and application of the new or revised rating schedules.

(5) Consumer Information. Any private entity conducting rating inspections as provided in paragraph (1) of this subsection shall provide, upon request, to the owner of the property being inspected and for which a base fire rate is being established, a copy of the base fire rate and any calculations used to determine such base fire rate. The private entity may charge a reasonable fee for reproduction and distribution of the information.

(d) Article 5.73 Regulation.

(1) Any private entity as defined in subsection (b)(4) of this section is an advisory organization subject to regulation under Article 5.73 of the Insurance Code.

(2) If, after a hearing, the Commissioner finds that any rating or inspection function performed by a private entity involved any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of any applicable law of this state, the Commissioner may issue a written

order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of law and requiring the discontinuance of such act or practice. In addition to other remedies available at law, the Commissioner may impose any sanction authorized under Article 1.10 of the Insurance Code.

(e) Duties and Responsibilities of the Department.

(1) Oversight of Commercial Property Inspections and Rating Functions.

(A) The Department shall maintain oversight of all inspections of commercial buildings and residential buildings in Texas, except those residential buildings specified in paragraph (4)(A) of this subsection, by private entities for the purpose of establishing base fire rates.

(B) The Department shall maintain oversight of the inspections by private entities of individual community fire protection capabilities in Texas and the public fire protection grading or classification of these capabilities.

(2) Review of Commercial Property Rating Schedules.

(A) The Department shall review all commercial property rating schedules and/or public fire protection grading or classification schedules used by a private entity to establish base fire rates and/or public fire protection gradings or classifications of communities in Texas prior to the filing of those rating schedules by individual insurers pursuant to the Insurance Code, Article 5.13-2. Nothing in this subparagraph shall preclude the filing of differing commercial property rating schedules by an individual insurer pursuant to Article 5.13-2 of the Insurance Code.

(B) The Department shall establish internal procedures for the acceptance by the Department of commercial property rating schedules by private entities as described in subparagraph (A) of this paragraph and the filing of such rating schedules on a reference basis by individual insurers to reduce the excessive and unnecessary flow of paper to the Department.

(3) Advice and Assistance.

(A) The Department may advise and assist any private entity in the development of commercial property rating schedules, standards of construction, standards of fire protection (public or private), or any other standard relating to the establishment of a base fire rate or a public fire protection grading or classification.

(B) The Department may advise and assist any private entity in the development of standards, schedules, or gradings or classifications to recognize methods and procedures for prevention and/or mitigation of commercial property losses. Such methods and procedures include, but are not limited to, use of enhanced fire sprinkler systems, use of fire resistant construction materials, separation of flammable contents from non-flammable contents, and separation of hazardous materials or substances from non-toxic materials or substances.

(4) Continued Inspection and Rating of Certain Residential Risks.

(A) The Department shall continue the inspection and rating of residential buildings which are single-family or two-family dwellings or duplexes to establish the appropriate fire rates for such risks. The inspection and rating of residential risks shall be limited to risks which may be of fire resistive or semi-fire resistive construction or which are protected by an automatic sprinkler system.

(B) The Department shall inspect residential buildings for the purpose of resolving any disputes regarding the location, occupancy or available fire protection of a residential risk.

(5) Dissemination of Public Information.

(A) Publications.

(i) The Department shall prepare, and update as necessary, a summary of rating schedules and procedures used by a private entity to determine base fire rates and extended coverage rates for commercial buildings and public fire protection gradings or classifications of individual community fire protection capabilities. The Department shall provide this summary to the public upon request and may collect a reasonable fee for the production and distribution of this information.

(ii) The Department may publish, and distribute to the public upon request, informational material that addresses construction elements and techniques used in commercial buildings that affect the base fire rating of individual buildings.

(B) Educational Programs. The Department may provide or sponsor educational programs for members of the building trades and the general public on building construction designs and techniques, new products, and fire protection techniques and enhancements that may be

employed to mitigate future insurance losses to commercial buildings and businesses.

(f) Complaint Procedures.

(1) The Department shall have the responsibility for handling and processing all complaints relating to commercial property inspections and rating functions that have not been resolved within 30 days after receipt by the private entity.

(2) All complaints as specified in paragraph (1) of this subsection shall be forwarded by the private entity to the Department's Safety Division. The Safety Division shall immediately notify the complainant that the complaint has been forwarded to the Department's Safety Division.

(3) All forwarded complaints and all complaints submitted directly to the Department shall be assigned to and handled by the Department's Safety Division.

(4) A private entity shall provide assistance in handling complaints as requested by the Department's Safety Division.

(5) Until final disposition of any complaint that is forwarded to the Department by a private entity or that is submitted directly to the Department, the complainant shall be notified by the Department's Safety Division of the status of the complaint at 30-day intervals.

(6) Any affected insured, any affected insurer, or any affected private entity may appeal the Safety Division staff disposition of any complaint to the Commissioner within 30 days after such disposition.

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 September 8, 1994.

TRD-9447802

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

Earliest possible date of adoption: October 17, 1994

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

◆ ◆ ◆  
**TITLE 31. NATURAL RE-  
SOURCE AND CONSER-  
VATION**

**Part X. Texas Water  
Development Board  
Chapter 365. Investment Rules**

The Texas Water Development Board (the board) proposes new 31 TAC Chapter 365,

Investment Rules, Sections 365.1, 365.2, 365.11, 365.12, 365.21, 365.22, 365.23, 365.24, 365.31, 365.32, 365.33, 365.34, 365.35, 365.51, 365.52, 365.53, 365.54 to establish rules regarding the investment of Texas Water Development Board and Texas Water Resources Finance Authority funds in accordance with the Texas Government Code, Chapter 2256. Chapter 365 will provide investment procedures which will preserve capital, establish prudent investment policies, and provide for reporting of investments.

Pamela Ansbury, Director of Finance, has determined that there will be no fiscal implications as a result of administering the rule. There will be no effect on state government for each of the first five years that the rule will be in effect. There will be no effect on local government or small businesses for the first five-year period the rule will be in effect.

Ms. Ansbury also has further determined that for each year of the first five years that the proposed new 31 TAC Chapter 365 is in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to establish investment procedures to preserve capital, establish prudent investment policies, and provide for reporting of investments. Ms. Ansbury has determined that there is no anticipated economic cost to persons who are required to comply with this rule as proposed. The Board staff has determined that the rule will have no impact on local economics.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to Veronica Hinojosa, Securities Management Section, (512) 463-7871, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

**General Provisions**

• 31 TAC §365.1, §365.2

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules necessary to invest funds.

There are no statutory provisions affected by the proposed rule.

*§365.1. Scope of Subchapter.*

(a) This subchapter shall govern investments of board funds. Provisions in bond resolutions or other documents which govern transactions relating to investments which specifically limit investments shall govern in the event of conflict.

(b) This subchapter shall govern investments of Texas Water Resources Finance Authority funds which the board has been authorized to invest on behalf of the authority pursuant to the "Sales and Servicing Agreement" entered into by the board and the authority.

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

Agencies—The Federal Home Loan Bank, the Federal National Mortgage Association and the Government National Mortgage Association.

Authorized dealers—Those dealers who have been approved to do business with the board.

Authorized investments:

(A) direct obligations of the United States;

(B) other obligations unconditionally guaranteed by United States agencies;

(C) obligations of the State of Texas;

(D) obligations of cities, counties, and other political subdivisions of the state;

(E) direct security repurchase agreements under which the board buys, holds in its possession or the possession of a financial institution acting solely as agent for the board for a specified time and then sells back any of the securities or obligations; or

(F) any investment authorized by statute or bond resolution of the board or authority.

Authority—The Texas Water Resources Finance Authority.

Board—The Texas Water Development Board.

Bond proceeds—The funds remaining after bonds have been issued and expenses have been paid.

Development fund director—The director of the Development Fund Division or a designated representative.

Executive administrator—The executive administrator of the Texas Water Development Board or a designated representative.

Firm—The company which employs the authorized dealer.

HUB—Historically Underutilized Business which is a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized because of their identification as women or as member of certain minority groups, including Black Americans, Hispanic Americans, Asian Pacific Americans, and Native Americans who

have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control.

**Internal auditor**—The auditor employed by the Texas Water Development Board.

**Investment officer**—A person authorized by the Development Fund Director to invest funds of the Board or funds for which the board has assumed responsibility to invest.

**Investment staff**—The staff employed by the Texas Water Development Board to make investments.

**Political subdivision**—A city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, and any non-profit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

**Portfolio**—The investments held by the Texas Water Development Board or the Texas Water Resources Finance Authority.

**Primary dealer**—A dealer that provides a complete market in United States Treasury securities and that reports to the Federal Reserve Bank of New York.

**Rating firm**—Those companies which are in the business of rating firms' outstanding debt and credit.

**Safekeeping Trust Company**—The division of the State Treasury which manages trust assets for state agencies and local governments.

**State Treasury**—The Treasury of the State of Texas.

**Secondary dealer**—A dealer that specializes in various investment markets but is not monitored by the Federal Reserve Bank of New York.

**Treasury pool**—The investments made on behalf of the Board by the State Treasury or the Safekeeping Trust Company.

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 September 12, 1994.

TRD-9447912

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: October 20, 1994

For further information, please call: (512) 463-7847



## Selection of Authorized Dealers

### • 31 TAC §§365.11, §365.12

The new sections are proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules necessary to invest funds.

**§365.11. Information Required.** All primary dealers and secondary dealers requesting qualification as an authorized dealer must submit all of the following information, if applicable, to the development fund director:

(1) name, address, telephone number, and contact person of the firm who would like to do business with the board;

(2) most current audited financial statement showing the net capital of the firm which clears the securities;

(3) years of experience and the type of securities that the firm primarily trades;

(4) proof that the firm is registered through National Association of Securities Dealers, or the Comptroller of the Currency;

(5) references from investment activity in Texas and one reference from the state in which the firm has its principle place of business;

(6) proof that the firm is registered to do business in Texas or is registered with the State Securities Board;

(7) proof that the firm qualifies as a HUB; and

(8) a copy of the firm's focus report.

### §365.12. Selection of Authorized Dealers.

(a) A primary dealer will automatically be added to the list of authorized dealers upon request and submission of information pursuant to §365.21 of this title (relating to Staff Requirements).

(b) Only those secondary dealers that meet the following criteria may be selected to do business with the board:

(1) the firm must execute or have traded in government securities for at least one year;

(2) the firm must have at least \$300,000 in net or liquid capital if it settles securities through its own firm;

(3) if the firm settles securities through an outside clearinghouse, then the firm acting as the clearinghouse must have at least \$2 million in capital;

(4) the firm must be registered with the National Association of Securities Authorized Dealers and registered to do business in Texas for at least one year.

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 September 12, 1994.

TRD-9447911

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: October 20, 1994

For further information, please call: (512) 463-7847

## Investment Procedures

### • 31 TAC §§365.21-365.24

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules necessary to invest funds.

### §365.21. Staff Requirements.

(a) Investment officers and investment staff shall not make personal investments which would conflict with their ability to make impartial investment decisions for the board.

(b) In the event that investment officers or investment staff have entered into a business transaction with a party that conducts business with the board, they shall disclose to the executive administrator and the internal auditor the investment activity entered into.

**§365.22. Authorized Dealer Requirements.** Each authorized dealer may be requested by board staff to provide the following:

(1) bids and offers for various investments; or

(2) information and research on various types of proposed investments.

**§365.23. General Provisions.** Investment officers and investment staff will follow these guidelines each time an investment is executed.

(1) Investment officers and investment staff will rotate authorized dealers to be used in the investment process based upon service, efficiency in the execution of trades, and competitiveness.

(2) At least three authorized dealers will be telephoned simultaneously prior to the purchase of each investment. If three authorized dealers cannot be reached, staff will verify the price of the security with the most recent issue of the Wall Street Journal or a financial data base service that offers fair and marketable quotes representing the then-current market.

(3) A good faith effort will be made by investment officers and investment staff to include HUB firm participation in at least 30% of the investment activity.

**§365.24. Termination of an Authorized Dealer.** Investment officers and investment staff will terminate any investment activity with an authorized dealer if any one of the following occurs:

(1) the firm fails to deliver a security on two occasions;

(2) the authorized dealer fails to provide efficient and professional service to the board; or

(3) the firm is placed on credit watch by a rating firm.

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 September 12, 1994.

TRD-8447910

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: October 20, 1994

For further information, please call: (512) 463-7847

◆ ◆ ◆  
**Standards for Investments and Reporting of Investments**

• 31 TAC §§365.31-365.35

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules necessary to invest funds.

**§365.31. Objectives.** Investments shall be made with judgement and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence ex-

ercise in the management of their own affairs, not for speculation but for investments, considering the probable safety of their capital as well as the possible income to be derived by:

(1) assuring that funds are readily available to meet all funding requirements;

(2) investing in a manner that ensures the preservation of capital; and

(3) attaining the highest possible rate of return and maintaining compliance with federal arbitrage and tax regulations.

**§365.32. Designation of Investment Officers.** The development fund director will designate and maintain a current list of those individuals or employment positions responsible for the investment of funds.

**§365.33. Investment Pool.** The board may invest funds in a pool of funds for state agencies in which the State Treasury or the Safekeeping Trust Company acts as custodian.

**§365.34. Management Reporting.**

(a) The investment officer will prepare a monthly written report of the board's and authority's investment transactions for the month.

(b) The report must include:

(1) the cash position for each fund;

(2) the weighted average yield based on cost for each fund; and

(3) the value at cost of all investments for each fund.

(c) The report shall be delivered to the development fund director, the executive administrator and the governing boards of the board and the authority.

**§365.35. Investments.** The board may invest in any authorized investment unless limited by bond resolution or statute.

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 September 12, 1994.

TRD-8447909

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: October 20, 1994

For further information, please call: (512) 463-7847

**Payment, Delivery, and Deposit of Investments**

• 31 TAC §§365.51-365.54

The new sections are proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules necessary to invest funds.

**§365.51. Payment of Investments.** The investment officer may pay for authorized investments purchased from a firm upon receipt of a confirmation from the seller of the investments showing that the investments have been purchased by the board.

**§365.52. Delivery of Investments Purchased by the Board.**

(a) An investment purchased by the board may be delivered to the board, the State Treasury, the Safekeeping Trust Company, or a national or state bank.

(b) The delivery shall be made under recognized practices in the securities and banking industries including the book entry procedures of the Federal Reserve Bank.

**§365.53. Deposit of Investments.**

(a) At the direction of the investment officer, an investment purchased may be deposited in trust with the State Treasury, the Safekeeping Trust Company, or with a national or state bank.

(b) The deposit shall be evidenced by a trust receipt of the institution depositing the investment.

**§365.54. Deposit of Funds.** If funds must be deposited overnight by investment staff or investment officers at a state or national bank, the funds will be collateralized according to the Texas Government Code, Chapter 2257.

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 September 12, 1994.

TRD-8447908

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: October 20, 1994

For further information, please call: (512) 463-7847

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part I. Texas Department of Public Safety

### Chapter 23. Vehicle Inspection

#### Vehicle Inspection Station Licensing

##### • 37 TAC §23.17

The Texas Department of Public Safety proposes new §23.17, concerning vehicle inspection station licensing. Section 23.17 is added as a new section which promulgates the guidelines required for the lease or sale of an inspection station during suspension.

Tom Haas, Chief of Finance, 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. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced credibility in the overall inspection program. There will be no effect on small or large businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be the \$25 cost of filing a lease.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The new section is proposed under Texas Civil Statutes, Article 6701d, Article XV, §§140-142, which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration of this Act.

Texas Civil Statutes, Article 6701d, Article XV, is affected by this proposal.

#### §23.17. Lease or Sale of Inspection Station During Suspension.

(a) Change of ownership. The application, investigation, forms, and procedure will be the same as set forth in §23.1 of this title (relating to New Applications).

(b) Lease of building and/or inspection bay.

(1) A copy of the lease agreement must be on file with the County Clerk.

(2) A certified copy of the lease agreement is required with the application for appointment as an official inspection station.

(3) A suspended owner/operator may not supervise the inspection of any

vehicle nor otherwise participate in the inspection of any vehicle.

(4) A station's certificate of appointment and the certificate of appointment of a lessee or an inspector will be subject to suspension if the lessee or inspector knowingly allows a suspended owner/operator to supervise the operation of the certified vehicle inspection station, inspectors or inspections performed at the leased location or otherwise participates in the inspection of any vehicle.

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 26, 1994.

TRD-9447721

James R. Wilson  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: October 17, 1994

For further information, please call. (512) 465-2890

## Part III. Texas Youth Commission

### Chapter 85. Admission and Placement

#### Placement Planning

##### • 37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning minimum length of stay. The amendment changes the start date from which TYC time is counted from the date of adjudication to the date of original disposition for the classifying offense.

John Franks, Director of Fiscal Affairs, 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. Franks 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 more efficient management of resources. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765

The amendment is proposed under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child committed to it according to rules established by the commission

The proposed rule implements the Human Resource Code, §61.034.

#### §85.25. Minimum Length of Stay.

(a) Policy. The Texas Youth Commission (TYC) establishes minimum length of stay requirements for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative level I hearing to have committed a felony or high-risk offense. Required minimum lengths of stay may include creditable time prior to commitment. Youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with GOP.47.09, §85.29 of this title (relating to Program Completion and Movement).

(b) Rules.

(1) Minimum Length of Stay.

(A) (No change.)

(B) Type A violent offenders must complete [serve] a minimum of 24-48 months in TYC's maximum restriction program[, minus any credited time] following the date of original disposition [adjudication] for the classifying offense. The minimum length of stay for each youth classified as a type A violent offender is established by the executive director following a recommendation from the superintendent of the maximum or high restriction placement. The superintendent shall submit the recommendation to the executive director within 90 days of the youth's admission to the placement. A minimum of longer than 24 months is based on the totality of the circumstances, including, but not limited to:

(i)-(viii) (No change.)

(C) If classified on or after March 25, 1994, all type B violent offenders must complete a minimum length of stay of [serve at least] 12 months in a medium, high or maximum restriction program[, minus any credited time] following the date of original disposition [adjudication] for the classifying offense.

(D) If classified before March 25, 1994, type B violent offenders must complete a minimum length of stay of [serve at least] 12 months if classified for conspiracy to commit murder or conspiracy to commit capital murder, solicitation of murder, or solicitation of capital murder, and complete [serve at least] nine months for any other designated offense. Youth are assigned to medium, high or maximum re-

striction program[, minus any credited time] following the date of original disposition [adjudication] for the classifying offense.

(E) Chronic serious offenders must complete a minimum length of stay of [serve at least] nine months in a medium or high restriction program if classified on or after March 25, 1994 or six months if classified before that date.

(F) Controlled substances dealers must complete a minimum length of stay of [serve at least] nine months in a medium or high restriction program if classified on or after March 25, 1994 or six months if classified before that date.

(G) Firearms offenders must complete a minimum length of stay of [serve at least] nine months in a medium or high restriction program if classified on or after March 25, 1994 or six months if classified before that date.

(H) General offenders must complete a minimum length of stay of [serve at least] six months in a medium or high restriction program.

(I) (No change.)

(J) Youth given a disciplinary assigned minimum stay complete [serve] up to six months to run concurrent with any other minimum length of stay.

(2) Creditable Time.

(A) (No change.)

(B) For a youth, except a sentenced offender, whose classifying offense was found at an earlier due process hearing:

(i) minimum length of stay is counted from the date of original disposition [adjudication] for the classifying offense;

(ii) (No change.)

(C) In no case will creditable time reduce the minimum length of stay while in TYC to less than six months.

(D) (No change.)

(3) (No change.)

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

Issued in Austin, Texas, on September 8, 1994.

TRD-9447769

Steve Robinson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: October 17, 1994

For further information, please call: (512) 483-5244

### Chapter 91. Discipline and Control

#### Control • 37 TAC §91.59

The Texas Youth Commission (TYC) proposes an amendment to §91.59, concerning use of force. The amendment will allow doors to be locked in locations other than the security unit when criteria is met.

John Franks, Director of Fiscal Affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a safer environment for youth and staff. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

#### §91.59. Use of Force.

(a) (No change.)

(b) Rules.

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

(3) Restrictions.

(A) Physical force is justified only as a last resort and only in instances listed in paragraph (2) of this subsection, Criteria for Use. Last resort indicates that the staff has engaged in measured, progressively intense action to assist an out of control youth to regain self-control prior to considering use of force. When use of physical force is necessary, it should be measured and progressive in nature, however, the amount and type of force necessary to control violence should be used. Physical force is considered progressive as listed in clauses (i)-(v) of this subparagraph.

(i)-(iii) (No change.)

(iv) place in isolation (permitted only in TYC high restriction [the] institutions [institution] [security unit])

(v) (No change.)

(B)-(G) (No change.)

(4)-(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 September 8, 1994.

TRD-9447768

Steve Robinson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: October 17, 1994

For further information, please call: (512) 483-5244

### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

#### Part I. Texas Department of Human Services

#### Chapter 50. Day Activity and Health Services

The Texas Department of Human Services (DHS) proposes the repeal of §§50.901-50.904, 50.1901-50.1903, 50.2901, 50.2903-50.2910, 50.3901-50.3915, 50.4901, 50.4902, and 50.5901; and proposes new §§50.1-50.5, 50.101-50.105, 50.201, 50.202, 50.301, 50.302, 50.401-50.410, 50.501, 50.502, 50.601, 50.701-50.704, and 50.801-50.803, concerning program overview, eligibility requirements, provider eligibility, standards of operation, recipients' rights, utilization review, contracting, facility staffing requirements, service requirements, billing, monitoring/quality assurance/audits, and sanctions, in its day activity and health services chapter. The purpose of the proposal is to incorporate some day activity and health services rules into Chapter 98, Adult Day Care Facilities; create new rules to clarify current policy; and make minor clarifications to the remaining day activity and health services rules. This proposal results from the September 1, 1993, transfer from the Texas Department of Health to DHS of responsibility for the licensure of adult day care and adult day health care facilities. Also in this issue of the Texas Register, DHS is proposing related amendments, repeals, and new sections in Chapter 98, Adult Day Care Facilities.

Burton F. Ralford, 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 the merger of licensure rules concerning day activity and health services into one set of rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Maria Garcia Montoya at (512) 450-3155 in DHS's Community Care Program Services section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-190, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## Program Overview

### • 40 TAC §§50.1-50.5

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

**§50.1. Definitions.** The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

**Abuse**—The willful infliction of injury; unreasonable confinement; intimidation; or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation by a caretaker or oneself of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

**Applicant**—A person initially requesting service.

**Assignee**—A legal entity that assumes the responsibilities and duties of a day activity and health services (DAHS) contract through a legal assignment of contract from another legal entity.

**Assignor**—A legal entity that assigns its DAHS contract to another legal entity through an assignment of contract.

**Authorization**—A Texas Department of Human Services' (DHS's) employee decision, before services begin and before payment can be made, that DAHS may be provided to a client.

**Caseworker**—A DHS employee who is responsible for case management activities. Activities include, but are not limited to eligibility determination, client registration, assessment and reassessment of client's needs, service plan development, and intercession on the client's behalf.

**Client**—A person determined by the caseworker to be eligible for DAHS and/or for community care services.

**Contract manager**—A DHS employee, designated as the primary contact point between the facility and DHS, who is responsible for the overall management of the contract.

**Days**—Calendar days, not workdays, unless otherwise noted in the text.

**Fraud**—A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which the individual is not entitled.

**Income eligible**—An adult who is neither a supplemental security income (SSI) or Aid to Families with Dependent Children (AFDC) client, but who has an income that is equal to or less than the eligibility level established by DHS.

**Licensed vocational nurse (LVN)**—A person currently licensed by the Board of Vocational Nurse Examiners of Texas who works under the supervision of a registered nurse (RN) or a physician.

**Medicaid eligible**—An individual eligible for Medicaid as an SSI or AFDC client, or eligible for medical assistance only while living in the community, or eligible through a federally approved waiver.

**Neglect**—The failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

**Personal care services**—Assistance in dressing, eating, grooming, bathing, toileting, transferring/ambulation, or assistance with self-administering medication.

**Physician's orders**—An order for DAHS that is signed and dated by a medical doctor (MD) 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 facility that will deliver DAHS. The physician's order must include the physician's license number.

**Registered nurse (RN)**—A person currently registered by the Texas State Board of Nurse Examiners to practice professional nursing.

## §50.2. General Requirements for Participation.

(a) To contract with the Texas Department of Human Services (DHS) to provide day activity and health services (DAHS), the facility must:

(1) be licensed by DHS's Licensing and Certification division as an adult day care facility; and

(2) meet all DAHS program standards.

(b) The facility must also participate in the Child and Adult Care Food Program (CACFP). The facility must submit documentation of participation in the CACFP to DHS. Documentation consists of a copy of the CACFP agreement and/or a copy of the application for participation in the CACFP.

## §50.3. Availability of Services and Emergency Information.

(a) The facility must have services available at least ten hours each day, five days a week (Monday-Friday), except for published holidays.

(b) The facility must make available a brochure or letter which outlines the facility's hours of operation, holidays, and a description of activities offered.

(c) The facility must post emergency telephone numbers, including the abuse hotline telephone number, near all telephones.

**§50.4. Service Description.** The facility must provide services that include but are not limited to:

(1) Nursing Services. Nursing services include:

(A) assessing, observing, evaluating, and documenting a client's health condition, and instituting appropriate nursing intervention to stabilize or improve a client's condition or prevent complications;

(B) assisting the client order, maintain, or administer prescribed medications or treatments, as indicated by physician's orders;

(C) counseling the client on his health needs and illness and involving significant others in the discussions of his immediate and long-term health goals; and

(D) providing or supervising personal care services to enable the client to restore, maintain, or improve his ability to perform personal care tasks.

(2) Physical Rehabilitative Services. Physical rehabilitative services include:

(A) restorative nursing; and

(B) group and individual exercises, including range of motion exercises.

(3) Nutrition/Food Services. Nutrition/food services include:



(A) one hot noon meal served between the hours of 11:00 a.m. and 1:00 p.m. The meal must:

(i) be suitable in quantity and adequacy to attain and maintain nutritional requirements, including those of special needs clients; and

(ii) supply 1/3 of the recommended daily allowance for adults as recommended by the United States Department of Agriculture;

(B) special diets as required by the client's plan of care;

(C) a supplementary mid-morning and mid-afternoon snack;

(D) dietary counseling and nutrition education for the client and his family; and

(E) assisting the client with his meals if necessary. This includes:

(i) food texture modification, including grinding meats and mashing vegetables for clients having trouble chewing; and

(ii) food management, including spoon feeding, bread buttering, and milk opening for clients with hand deformities, paralysis, or hand tremors.

(4) Other Supportive Services. Other supportive services include:

(A) community interaction, cultural enrichment, educational or recreational activities, and other social activities on site or in the community in a planned program to meet the social needs and interests of the clients;

(B) providing at least three social activities per day; and

(C) posting a monthly activity calendar at least one week in advance.

(5) Transportation Services.

(A) Transportation services include:

(i) transportation to and from the facility; and

(ii) transportation to and from a facility approved to provide therapies, if the client requires specialized services on days of attendance at the day activity and health services facility.

(B) Vehicles used for transportation services must be properly operated and maintained and have proper heating and cooling systems to maintain reasonable temperature levels inside vehicle.

§50.5. Method of Payment.

(a) The facility is reimbursed based on units of authorized service provided to a prior approved client.

(b) A unit of authorized service is defined as half a day. One unit of service constitutes three hours but less than six hours of covered services provided by the facility. Six hours or more of service constitutes two units of service. Time spent in approved transportation provided by the facility shall be counted in the unit of service.

(c) The facility must accept the Texas Department of Human Services' payment as payment in full.

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 September 8, 1994.

TRD-8447831

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Contracting**

• 40 TAC §§50.101-50.105

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.101. *Effective Date of Contract.* The effective date of a day activity and health services contract is the date the Texas Department of Human Services (DHS) receives the license or license notice from:

- (1) DHS's Licensing and Certification division; or
- (2) the facility.

§50.102. *Denial of Contract.* The Texas Department of Human Services (DHS) reserves the right to deny any facility a contract if it is not in the best interest of DHS.

§50.103. *Subcontracting.*

(a) If a facility intends to subcontract a part of its program components, the facility must obtain written prior approval from the Texas Department of Human Services' (DHS's) Community Care section in state office.

(b) All subcontractors must meet the same requirements as the prime contractor. A subcontract does not terminate the legal responsibility of the prime contractor.

(c) All subcontractors must agree to:

(1) accept and abide by all terms and conditions imposed on subcontracts/individuals providing services under the primary contract between DHS and the facility; and

(2) require its subcontractor(s) to accept and abide by each of the provisions of the contract with DHS.

§50.104. *Assignment of Contracts.*

(a) If the facility plans to assign a contract, the assignor must inform the Texas Department of Human Services' (DHS's) Community Care section, state office, in writing, about its intent to assign a contract. This notification must include the legal name of the entity that will be assuming the contract and must be submitted as soon as the facility decides to assign the contract. If the facility fails to provide this information in a timely manner, the contract assignment may be delayed. DHS reserves the right to deny any assignment if it is not in the best interest of DHS or its clients.

(b) If a contract assignment application does not meet all the requirements or does not include all the required documents, DHS considers it unacceptable and returns it to the assignee. The effective date of the contract assignment is the first day of the following month after the application has been fully processed.

(c) If the assignee does not meet the conditions for contracting, DHS immediately terminates the assignor's contract and transfers all clients to another day activity and health services (DAHS) facility.

(d) Before an assignment is made, the assignee must follow the requirements stipulated in paragraphs (1)-(3) of this subsection:

(1) resolve all audits completed or in progress;

(2) prepare a contract assignment agreement which includes the following statements:

(A) the reason(s) for the contract assignment;

(B) both the assignee and assignor are each responsible for collecting and reporting financial and statistical data on DHS's cost report that corresponds to its respective contract periods;

(C) DHS reserves the right to receive restitution for any audit exceptions from either agency;

(D) any adverse action pending or in place when the contract is assigned is applied to both the assignee and the assignor;

(E) the assignee adheres to the DAHS contract, reimbursement method and amount, service delivery requirements, and standards established by DHS; and

(F) the assignee meets all criteria for being a provider agency of DAHS. Documentation of eligibility must be provided before DHS will agree to a contract assignment;

(3) the contract assignment agreement must also:

(A) identify both legal entities;

(B) identify the current contract number(s) and service(s) to be assigned;

(C) be notarized and signed by the person authorized for each legal entity; and

(D) include a line for the Department of Human Services' representative to sign and approve.

#### §50.105. Advertising and Solicitation.

(a) The day activity and health services (DAHS) contract does not allow advertising or soliciting that:

(1) states or implies that the facility provides better DAHS than other facilities;

(2) solicits potential clients; or

(3) might in any other way limit or influence a client's freedom of choice.

(b) Advertisements that merely provide an announcement of services available at a facility that has a DAHS contract are appropriate as long as the advertisements do not solicit applicants.

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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#### Eligibility

##### • 40 TAC §50.201, §50.202

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

*§50.201. Eligibility Requirements.* The applicant/client is eligible for day activity and health services (DAHS) if he:

(1) is Medicaid eligible outside an institution (Title XIX DAHS) or meets social services block grant income eligibility guidelines and resource limits;

(2) meets or exceeds the medical criteria established for DAHS, as specified in §50.202 of this title (relating to Medical Criteria); and

(3) has physician's orders for DAHS.

*§50.202. Medical Criteria.* To be eligible for day activity and health services (DAHS), the applicant/client must have:

(1) a medical diagnosis and physician's orders requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse;

(2) a related functional disability; and

(3) one or more of the following personal care or restorative needs which can be stabilized, maintained, or improved by participation in DAHS.

(A) Bathing, dressing, and grooming. The applicant/client may need help with bathing, dressing, and routine hair and skin care.

(B) Transfer and ambulation. The applicant/client may need help with transferring from chair or commode or moving about.

(C) Toileting. The applicant/client may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant/client may require perineal care or bowel or bladder training.

(D) Feeding. The applicant/client may need feeding (for example, gastric, ng tube, feeding pump) or help with eating.

(E) Fluid intake. The applicant/client may need assistance in maintaining adequate fluid intake.

(F) Nutrition. The applicant/client may need therapeutic diet or texture modification for treatment or control of an existing condition.

(G) Medication. The applicant/client may require supervision or administration of ordered medications or injectables.

(H) Treatments. The applicant/client may require treatments that include:

(i) catheter care—routine or frequent care for indwelling catheter;

(ii) weight—measurement of weight related to monitoring a specific condition;

(iii) ostomy care—assistance or supervision of ostomy care based on individual needs;

(iv) recording of vital signs—taking and recording of vital signs to monitor an existing condition or medications being administered;

(v) diabetic tests—periodic testing of blood or urine for sugar/acetone content or both;

(vi) skin care—assistance with skin care including application of lotions, observations, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubiti and chronic skin conditions; and

(vii) dressings—dressing based on the physician's orders and the application of sterile dressings and elastic stockings and bandages.

(I) Restorative nursing procedures. The applicant/client requires assistance with range-of-motion exercises (active or passive) or proper positioning.

(J) Behavioral problems. The applicant/client may have behavioral problems which can be managed by facility staff.

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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## Facility Staffing Requirements

### • 40 TAC §50.301, §50.302

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### §50.301. Nurse Requirements.

(a) A nurse must be present at the facility at least eight hours per day when one or more clients are present. Facilities staffed with a registered nurse (RN) and a licensed vocational nurse (LVN) are not required to have RN consultation.

(b) When enrollment at the facility exceeds 61 clients, both an RN and LVN must be present at the facility at least eight hours per day.

(c) If a nurse leaves the facility to perform other duties related to the provisions of day activity and health services, an LVN or another RN must fulfill the duties of the nurse.

#### §50.302. Housekeeper/driver.

(a) A facility may employ a part-time or full-time housekeeper.

(b) A facility may employ a part-time or full-time driver. The driver must:

(1) operate the facility's vehicles in a safe manner;

(2) maintain accurate daily transportation and mileage records, and records of expenses for purchase of gas and oil;

(3) have a current operators license, issued by the Texas Department of Public Safety, appropriate for the class of vehicle used to transport clients; and

(4) receive adult cardiopulmonary resuscitation (CPR) certification.

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

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## Service Requirements

### • 40 TAC §§50.401-50.410

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.401. Requirement to Service Eligible Clients. Unless a facility is operating at licensed capacity, the facility is contractually obligated to serve clients who have been determined eligible for day activity and health services by the caseworker and the prior approval nurse. The facility may not refuse to serve eligible clients.

#### §50.402. Written Referrals.

(a) Day activity and health services (DAHS) facilities receive written referrals from caseworkers based on the following priorities:

- (1) client's choice;
  - (2) physician's choice, if stated;
- and
- (3) rotation of eligible providers.

(b) When a facility receives a referral from the caseworker, the facility nurse must make every effort to request prior approval for the client within 14 days of the referral date on the Texas Department of Human Services' (DHS's) Approval for CCAD Services—Referral Response form.

(c) If the facility cannot request prior approval within 14 days, the facility must notify the caseworker about the reason for delay. This notification must be sent on DHS's Case Information form within 14 days of the referral date.

(d) Within the same 14 days of the receipt of DHS's Approval for CCAD Services—Referral Response form from the caseworker and before requesting prior approval, the nurse must conduct a health assessment/plan of care with the client, using DHS's Client Health Assessment/Plan of Care form. If the client is unable to participate due to cognitive impairment, the client's responsible party should participate.

(e) If the nurse cannot conduct the health assessment within 14 days of the referral date, the facility must notify the caseworker about the reason for delay. The notification must be sent on DHS's Case Information form within the 14-day period.

(f) Within the same 14 days of receipt of DHS's Approval for CCAD Services—Referral Response form from the caseworker, the nurse must obtain a physician's order for the client by sending DHS's Physician's Order for Day Activity and Health Services form to the client's physician. The nurse sends a copy of DHS's Client Health Assessment/Plan of Care form to the physician.

(g) If the facility cannot obtain physician's orders within 14 days of the referral date, the facility must notify the caseworker about the reason for delay. The notification must be sent on DHS's Case Information form within the 14-day period. DHS's Case Information form must include the date of the health assessment/plan of care and must be dated after the health assessment/plan of care date, if one has been conducted.

(h) If the physician fails to date DHS's Physician's Order for Day Activity and Health Services form or if the signature date is illegible, the facility stamp-in date will be considered the date of the physician's order. The date stamp must include the day, month, year, and the name of the facility. An abbreviated name or initials are acceptable.

**§50.403. Facility-Initiated Referrals.**

(a) A facility may not accept facility-initiated referrals until three months after the effective date of the facility contract with the Texas Department of Human Services (DHS).

(b) The applicant may be admitted to a day activity and health services facility as soon as verbal physician's orders are obtained if he appears to:

(1) have an immediate need for placement as defined by DHS;

(2) be Medicaid eligible; and

(3) meet the medical/functional need criteria based on the information collected on DHS's Client Health Assessment/Plan of Care form.

(c) When immediate placement is requested:

(1) the facility interviews the applicant to determine whether he:

(A) meets the criteria for immediate placement; and

(B) appears to be Medicaid eligible. The facility determines Medicaid eligibility by reviewing the information on the applicant's Medical Care Identification Card;

(2) the nurse:

(A) conducts a health assessment/plan of care to determine whether the applicant appears to have a medical need for the service. The nurse determines medical need by completing DHS's Client Health Assessment/Plan of Care form; and

(B) obtains verbal or written physician orders, if the applicant appears to meet the medical/functional need criteria;

(3) the facility verbally notifies the DHS caseworker or intake unit of the immediate placement the day the applicant contacts the facility. The facility follows up the notification in writing within seven days using DHS's Case Information form. This verbal notification is a request for community care for aged and disabled (CCAD) services.

(d) An applicant or his physician may contact a facility to request an immediate placement.

(e) The facility must request written prior approval for the applicant from the regional nurse within 14 days from the date of the physician orders.

(f) If the facility submits documentation that fails to support the prior ap-

proval, the facility must submit any additional information the regional nurse requests. This additional information must be postmarked within seven days of the date of request, unless the regional nurse gives written permission for an extension.

(g) If the facility fails to submit prior approval forms or additional documentation within required time frames, or if the additional documentation is not adequate, the regional nurse cancels the facility-initiated prior approval and the facility is not reimbursed for services.

(h) If DHS's Client Health Assessment/Plan of Care form or Physician's Order for Day Activity and Health Services form is missing, or if any of the critical omissions or errors stated in paragraphs (1)-(11) of this subsection have occurred in the required documentation, the facility cannot obtain prior approval.

(1) The nurse fails to sign or date DHS's Client Health Assessment/Plan of Care form or omits the registered nurse/licensed vocational nurse credentials that should follow his signature.

(2) Documentation on DHS's Client Health Assessment/Plan of Care form does not support the medical eligibility criteria specified in §50.202 of this title (relating to Medical Criteria).

(3) Items A, B, in Sections II and III of DHS's Client Health Assessment/Plan of Care form are not completed or completed incorrectly and medical need cannot be determined.

(4) For renewal of prior approval, DHS's Client Health Assessment/Plan of Care form has a date that is earlier than 30 days before the end of the prior approval period.

(5) DHS's Physician's Order for Day Activity and Health Services form does not include the MD or DO credential of the physician who signed the form.

(6) DHS's Physician's Order for Day Activity and Health Services form does not include the license number of the physician who signed it.

(7) The physician who signed the order is excluded from participation in Medicare or Medicaid.

(8) The physician's signature is not on DHS's Physician's Order for Day Activity and Health Services form.

(9) The physician's signature date is missing or illegible and the facility's stamped date is missing from DHS's Physician's Order for Day Activity and Health Services form.

(10) The facility's stamped date used instead of the physician's date on DHS's Physician's Order for Day Activity

and Health Services form does not include the provider agency's name, abbreviated name, or initials.

(11) For renewal of prior approval, the physician's order has a date that is earlier than 30 days before the end of the prior approval period.

**§50.404. Corrections to Facility Documentation.** Corrections of critical omissions or errors in facility documentation must be postmarked or date stamped as received by the Texas Department of Human Services (DHS) within 14 days after the regional nurse mails DHS's Notification of Critical Omissions/Errors in Required Documentation form to the facility. If the facility fails to meet this time frame, the date of prior approval can be no earlier than the postmark or DHS-stamped date on the corrected documentation. DHS may refer the client to another facility of the client's choice.

**§50.405. Initiation of Services.**

(a) The facility must initiate services within seven days of the beginning date of coverage in Item 4 of the Texas Department of Human Services' (DHS's) Prior Approval/Confirmation of Services form.

(b) If the facility does not initiate services within the seven-day period, the facility must notify the caseworker, using DHS's Case Information form, by the eighth day after the beginning date of coverage in Item 4 of DHS's Prior Approval/Confirmation of Services form. DHS's Case Information form must include the reasons for the delay and the date when services are scheduled to begin.

(c) The facility must complete and return DHS's Approval for CCAD Services-Referral Response form, to the caseworker within 14 days from the beginning date of coverage in Item 4 of DHS's Prior Approval/Confirmation of Services form. The facility must indicate the date services were initiated, the schedule for delivering services, and the total units authorized for the client.

**§50.406. Documentation.**

(a) The nurse must document monthly progress notes on medical care provided to the client. The progress notes must be signed and dated by the nurse.

(b) The activities director must document monthly progress notes about activities provided to clients. The progress notes must be signed and dated by the activities director.

**§50.407. Notifications.**

(a) If a client becomes ill or injured at the facility, the director/nurse must notify a relative or other responsible person the same day of the occurrence. Clients with communicable diseases cannot attend the facility until the physician has released the client. Examples of communicable disease are lice and scabies.

(b) If a client is absent from a regularly scheduled program, facility staff must contact the client or someone knowledgeable about his condition the same day that the absence occurs. If facility staff is unable to contact the client or someone knowledgeable about his condition, he documents this in the client's record.

(c) The facility must inform clients in writing about the facility's complaint procedures within ten calendar days of the initiation of service. The facility must also date-stamp all written complaints received and maintain accessible records of the complaint and resolution. The facility must register and evaluate client complaints brought to the facility's attention within three days of receipt of complaint. All incidents must be reported to the contract manager, with a report on the resolution of the complaint within three workdays of resolution of the complaint. The facility must investigate and respond in writing to all written complaints received from the Texas Department of Human Services (DHS) staff within 14 days of receipt of the complaint.

(d) The facility must verbally notify DHS by the next DHS workday of the following occurrences that are pertinent to facility operations:

(1) change in operation, telephone number, and location of administrative office;

(2) change in hours of operation; and

(3) change in director, activities director, nurse, or membership of governing board.

(e) The occurrences specified in subsection (d) of this section must be followed up in writing to DHS within seven days of verbal notification.

(f) The facility must report suspected cases of client abuse, neglect, and exploitation within 24 hours of awareness to the local Community Care for Aged and Disabled unit or to the Texas Department of Protective and Regulatory Services' hotline at 1-800-252-5400.

**§50.408. Changes in the Client's Condition.** No later than the first Texas Department of Human Services' (DHS's) workday after becoming aware of changes in the

client's status or condition, the facility must verbally notify the caseworker or staff in the caseworker's office about any change that may require a change in the client's plan of care, units, or service termination. The facility must follow up this verbal notification in writing, to the caseworker, using DHS's Case Information form. Written notification must occur within seven days after verbal notification.

**§50.409. Suspension of Services.**

(a) The facility must suspend services before the end of the prior approval period if one or more of the circumstances specified in paragraphs (1)-(10) of this subsection occur:

(1) the client leaves the state or moves outside the geographic area served by the facility;

(2) the client dies;

(3) the client is admitted to a hospital, nursing home, state school, or state hospital;

(4) the client requests that services end;

(5) the physician requests that services end;

(6) the Texas Department of Human Services (DHS) denies the client's Medicaid/Title XX eligibility;

(7) DHS enforces sanctions against the facility by terminating the contract;

(8) the client threatens the health and safety of himself or others;

(9) the client is absent from the facility for 15 consecutive days;

(10) the client becomes ineligible for Medicaid. Each month the facility must verify that a client has a current DHS Medical Care Identification Card.

(b) No later than the first DHS workday after services are suspended, the facility must verbally notify the caseworker or staff in the caseworker's office about the reason the facility suspended services. Written notification on DHS's Case Information form must be sent to the caseworker within seven work days of the incident that was reported verbally.

**§50.410. Renewal of Services.**

(a) The client's physician must renew his order for day activity and health services at least every 12 months.

(b) To request renewal of prior approval, the facility nurse must submit prior approval material to the regional nurse in time for it to be postmarked or date stamped by the Texas Department of Human Ser-

vices no later than one day after the termination date of the current prior approval period. If the required forms are not submitted within this time frame, a gap in client coverage occurs.

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 September 8, 1994.

TRD-9447828

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3785

◆ ◆ ◆  
**Billing**

• 40 TAC §50.501, §50.502

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

**§50.501. Facility not Entitled to Payment.**

(a) The facility is not entitled to payment if:

(1) services are ordered by a physician who has been excluded from the Medicare or Medicaid programs or both;

(2) services are billed at a unit rate that does not match the client's priority level;

(3) services are not prior approved on the Texas Department of Human Services' (DHS's) Prior Approval for CCAD Services/Confirmation of Services to be Delivered form;

(4) the facility was reimbursed for services and the client did not have valid physician orders;

(5) the facility fails to submit prior approval forms or supporting documentation to the regional nurse within the required time frames for facility initiated referrals;

(6) the facility completed DHS's Daily Attendance/Daily Transportation Record form in pencil;

(7) the facility did not maintain the staff-client ratio for one or more days;

(8) the facility exceeded its license capacity;

(9) the number of hours for which the facility was reimbursed exceed the number of hours authorized for the client on DHS's Prior Approval for CCAD Services/Confirmation of Services to be Delivered form;

(10) the facility's monthly claims do not correspond to the facility's service authorizations and DHS's Daily Attendance/Daily Transportation Record form; or

(11) the initial claim is not received in state office Fiscal division within 95 days of the end of the service month.

(b) The facility will not be reimbursed for services provided to a client currently receiving day activity and health services from another facility without prior approval from the caseworker/regional nurse.

(c) A provider of Medicaid (Title XIX) services may not charge or take other recourse against Medicaid client-patients or income-eligible clients, their family members, or their representatives for any claim denied or reduced by DHS because of the provider's failure to comply with any DHS rule, regulation, or procedure.

#### §50.502. Submittal of Claims.

(a) The facility must file claims for services using the Texas Department of Human Services' (DHS's) Community Care Purchased Services Delivery Reports. The facility must submit a State of Texas Purchase Voucher form with each claim.

(b) If DHS rejects a claim because of errors, the facility must research the errors and return the corrected claim to DHS. If the corrected claim is submitted 95 days or more after the end of the service month, a copy of the error message must be attached to the claim.

(c) A facility delegating signature authority to office staff or to a billing service for claims preparation is responsible for the accuracy of the claim submitted for payment.

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

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Texas Department of  
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## Recordkeeping Requirements

### • 40 TAC §50.601

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 §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### §50.601. Records.

(a) The facility must keep medical records and all other pertinent and identifying information necessary for a complete client health/social record. The facility must maintain the client's medical records for five years after the client leaves the facility.

(b) The facility must ensure that each client's record contains at least the following information:

(1) the Texas Department of Human Services' (DHS's) Approval for CCAD Services-Referral Response form;

(2) DHS's Client Health Assessment/Plan of Care form;

(3) DHS's Confirmation of Services to be Delivered form;

(4) daily record of all treatments;

(5) significant changes in the client's condition;

(6) summary of any hospital stays while enrolled;

(7) significant complaints and results of investigation of complaints;

(8) progress notes;

(9) documentation that the client was notified of complaint procedures and client rights; and

(10) incident reports. Incidents include falls, arguments, and allegations of abuse, neglect, or exploitation.

(c) The facility must maintain financial records according to recognized fiscal and accounting procedures and according to DHS procedures. The facility must keep the records current and available for review at any time by authorized agents of DHS, the attorney general's Medicaid Fraud Control Unit, the Texas Department

of Health, and/or the United States Department of Health and Human Services.

(d) The facility must keep personnel records in a central location in the facility. Personnel records include staff qualifications, performance reports, attendance, and staff development records. The facility must maintain these documents and records according to the retention requirements. The facility must document staff coverage for days when regular staff are away from the facility on sick or vacation leave.

(e) The facility must use DHS forms to document client daily attendance and transportation to and from the facility.

(f) The facility must maintain a daily record of client attendance including the time each client began receiving services and the time he left the facility's care. If transportation is provided by the facility, driver's transportation records must be used. Arrival and departure times must be documented for clients not using facility-provided transportation.

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

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Texas Department of  
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For further information, please call: (512) 450-3765

## Monitoring/Quality Assurance/Audits

### • 40 TAC §§50.701-50.704

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### §50.701. Documentation Errors.

(a) The Texas Department of Human Services (DHS) may disallow claims for services because of documentation errors.

(b) Two types of documentation errors may cause monetary exceptions.

(1) Administrative errors. Administrative errors result in exceptions applied to the administrative portion of the unit of service. For day activity and health services, an exception of 24% of the paid unit rate is the administrative portion applied to the unit of service.

(2) Financial errors. Financial errors result in exceptions applied to the total amount paid for the unit of service.

(c) If an error is considered both an administrative and a financial error, DHS uses the financial error in determining the exception.

(d) DHS may consider an administrative error a financial error if the facility fails to comply with DHS's corrective action plans or fails to correct deficiencies identified in previous audits.

*§50.702. Determining the Number or Value of Administrative and Financial Errors.* The Texas Department of Human Services (DHS) develops a statistical projection, based on the number or value of administrative errors found in the audit or review sample, to determine the number or value of administrative errors to be found in the total cases or claims for which the facility has been paid during the audit period. DHS uses the same process to determine total financial errors.

*§50.703. Administrative Errors.* Administrative errors include, but are not limited to, the following:

(1) the facility:

(A) leaves the month and year of service blank at the top of the Texas Department of Human Services' (DHS's) Daily Attendance Record form, but the month and year can be verified elsewhere on the same form. DHS applies the error to the total number of units reimbursed for the billing period;

(B) enters a date of signature on DHS's Daily Attendance Record form that is before the date of the last day services are provided. DHS applies the error to the total number of units reimbursed after the signature date;

(C) fails to sign DHS's Daily Attendance and/or Daily Transportation Record form. DHS applies the error to the total number of units reimbursed for the billing period;

(2) daily transportation records indicate client was transported to the facility

and daily attendance records do not list client as being in the facility. DHS applies the error to the total number of units reimbursed for the dates of the billing period in question.

*§50.704. Financial Errors.* In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the errors specified in paragraphs (1)-(8) of this section.

(1) The facility makes a claim for services, but the Texas Department of Human Services' (DHS's) Daily Attendance and/or Daily Transportation Record form is missing or was not used for the period for which services are reimbursed. DHS applies the error to the total number of units reimbursed for the billing period.

(2) The facility is reimbursed for units that exceed the units recorded on DHS's Daily Attendance and/or Daily Transportation Record form. DHS applies the error to the total number of units reimbursed in excess of the units recorded.

(3) The facility is reimbursed for units of service and the client did not receive services or was Medicaid ineligible. DHS applies the error to the total number of units reimbursed for the days the client did not receive services or was Medicaid ineligible.

(4) The facility makes an illegible entry or illegible correction to any portion of DHS's Daily Attendance and/or Daily Transportation Record form. DHS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(5) The facility completes DHS's Daily Attendance and/or Daily Transportation Record form in pencil. DHS applies the error to the total number of units reimbursed that were completed in pencil.

(6) The facility uses liquid paper/correction fluid to correct an entry in DHS's Daily Attendance and/or Daily Transportation Record form. DHS applies the error to the total number of units reimbursed that were corrected for the billing period.

(7) The facility received reimbursement for services, but a valid DHS Prior Approval for CCAD Services form is missing for the period claimed. DHS applies the error to the total number of units claimed and not covered by a valid DHS Prior Approval for CCAD Services form.

(8) The facility received reimbursement for services, but a valid DHS Physician's Orders form is missing for the period claimed. DHS applies the error to the total number of units claimed and not covered by valid DHS Physician's Orders form.

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

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Texas Department of  
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For further information, please call: (512) 450-3765



## Sanctions

### • 40 TAC §§50.801-50.803

The new sections 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 new sections implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### *§50.801. Sanctions.*

(a) A sanction may be imposed even if none of the administrative actions listed in subsection (c) of this section have been imposed.

(b) The Texas Department of Human Services (DHS) can deny and recoup funds from a facility for the days it exceeded its licensed capacity. The amount denied or recouped is two units of service (regardless of the number of units actually provided) for every individual (client, applicant, private pay, etc.) that exceeded the facility license capacity.

(c) In addition to the reasons specified in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanction), DHS may take sanctions against the facility for failure to acknowledge, within the required time frame, receipt of the Day Activity and Health Services Provider Manual and revisions, contract amendments, and policy clarifications.

#### *§50.802. Vendor Holds.*

(a) The Texas Department of Human Services (DHS) may withhold a facility's payment for reasons including, but not limited to:

(1) failure to comply with the terms of the contract;

(2) contract termination, whether voluntary or involuntary;

(3) failure to follow the agreed upon audit resolution payment plan by facility and DHS;

(4) expiration of the facility license;

(5) monetary penalties assessed by DHS which have not been appealed; or

(6) monetary penalties, including interest, which have been assessed by DHS, which have been appealed by the facility, and which have been sustained by a final decision.

(b) When notice of a contract termination is sent to a facility, DHS may place a vendor hold on one or more of the facility's contracts with DHS. DHS may accept an irrevocable letter of credit, in a format and an amount approved by DHS, to allow the release of all or a portion of vendor payments on hold.

(c) Vendor holds may be released after all outstanding audits and/or contract compliance issues are resolved.

(d) DHS may place a hold on client referrals to a facility on vendor hold if it determines the client's health and safety is being jeopardized, for potential contract termination, or while the contract is being appealed.

#### **§50.803. Termination of Contracts.**

(a) When a contract is involuntarily terminated by the Texas Department of Human Services (DHS), clients are transferred to other facilities even if the facility appeals the termination. If the facility appeals termination, DHS has the option of not returning clients to the terminated facility.

(b) A facility involuntarily terminated by DHS may not reapply for another day activity and health services contract until six months after the date of the contract termination. DHS reserves the right to not recontract with the facility if it is not in the best interest of DHS.

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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For further information, please call: (512) 450-3765

#### **• 40 TAC §§50.901-50.904**

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### **§50.901. Legal Authority.**

#### **§50.902. Service Objective.**

#### **§50.903. Definitions.**

#### **§50.904. Service Descriptions.**

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

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TRD-9447837 Nancy Murphy  
Section Manager, Media  
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Texas Department of  
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### **Eligibility Requirements**

#### **• 40 TAC §§50.1901-50.1903**

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### **§50.1901. Service Criteria.**

#### **§50.1902. Enrollment.**

#### **§50.1903. DAHS Medical Criteria.**

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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Section Manager, Media  
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Texas Department of  
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For further information, please call: (512) 450-3765

### **Provider Eligibility**

#### **• 40 TAC §§50.2901, 50.2903-50.2910**

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### **§50.2901. Provider Enrollment.**

#### **§50.2903. Claims Processing.**

#### **§50.2904. Provider Requirements.**

#### **§50.2905. Change of Ownership.**

#### **§50.2906. Facility Ceases to Participate.**

#### **§50.2907. Vendor Hold.**

#### **§50.2908. Contracts.**

#### **§50.2909. Limitations on Provider Charges to Patients.**



**§50.2910. Compliance with Patient Self-Determination Act.**

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

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◆ ◆ ◆  
**Standards of Operations**

**• 40 TAC §§50.3901-50.3915**

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

**§50.3901. Staff Qualifications.**

**§50.3902. Staff Responsibilities.**

**§50.3903. Staff Requirements.**

**§50.3904. Initial Training.**

**§50.3905. Ongoing Training.**

**§50.3906. Recipient Records.**

**§50.3907. Notification.**

**§50.3908. Plan of Care..**

**§50.3909. Miscellaneous Records.**

**§50.3910. Financial Records.**

**§50.3911. Personnel Records.**

**§50.3912. Medication Administration.**

**§50.3913. Community Interaction.**

**§50.3914. Food Service.**

**§50.3915. Transportation.**

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

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TRD-9447834 Nancy Murphy  
Section Manager, Media  
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Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Recipients' Rights**

**• 40 TAC §§50.4901, §50.4902**

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which 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 repeals implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

**§50.4901. Recipients' Rights.**

**§50.4902. Complaint 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.

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TRD-9447833 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

**Utilization Review**

**• 40 TAC §50.5901**

*(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.

**§50.5901. On-Site Review.**

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

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Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Chapter 98. Adult Day Care  
[and Adult Day Health  
Care] Facilities**

The Texas Department of Human Services (DHS) proposes amendments to §§98.1, 98.2, 98.11-98.14, 98.41, 98.61, 98.81, 98.92, 98.103, and 98.122; proposes the repeal of §§98.15-98.18, 98.20, 98.42, 98.43, 98.101, 98.102, 98.104, and 98.121; and proposes new §§98.15-98.21, 98.42-98.44, 98.102, 98.104, 98.105, 98.121, and 98.123, concerning licensure of adult day care facilities. The purpose of the amendments, repeals, and new sections is to incorporate Day Activity and Health Services (DAHS) rules into Chapter 98, retitled Adult Day Care Facilities. This proposal results from the September 1, 1993, transfer from the Texas Department of Health to DHS of responsibility for the licensure of adult day care and adult day health care facilities. Also in this issue of the *Texas Register*, DHS is proposing related repeals and new sections in Chapter 50, Day Activity and Health Services (DAHS).

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. Rairford 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 the merger of adult day care and day activity and health services rules into one set of rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Marc Gold at (512) 450-3174 in DHS's Institutional Programs Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-379, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## Subchapter A. Introduction

### • 40 TAC §98.1, §98.2

The amendments are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care facilities; and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Human Resources Code, Chapter 103, §§103.001-103.011.

**§98.1. Purpose.** The purpose of this chapter is to implement the provisions of the Human Resources Code, Chapter 103, by providing licensing procedures, establishing [and adopting] standards for quality adult day care, and a safe and sanitary environment for clients of adult day care [and adult day health care] facilities.

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

**Adult day care facility**—A facility that [which] provides [counseling, recreation, or food, or any combination of these] services under an Adult Day Care Program on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

**Adult day care program**—A structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting. [Adult day health care facility—A facility that provides health care

or physical therapy or both and that may also provide adult day care services on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.]

**Affiliate**—With respect to a:

(A) (No change.)

(B) corporation, each officer, director, principal stockholder, and subsidiary;[,] and each person with a disclosable interest;

(C) natural person which includes each:

(i) [each] person's spouse;

(ii) [each] partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) [each] corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

**Applicant**—A person required to be licensed under Human Resources Code [Health and Safety Code], Chapter 103.

**Client**—A person who receives the services of an adult day care program [facility or an adult day health care facility].

**Department**—Texas Department of Human Services.

**DHS**—Texas Department of Human Services.

**Dietitian Consultant**—A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

**Existing building**—In these standards, except where defined otherwise, a building either occupied as an adult day care facility [or an adult day health care facility] at the time of initial inspection by the department or converted to occupancy as an adult day care facility [or an adult day health care facility].

**Facility**—A building occupied by an adult day care program [An adult day care facility or an adult day health care facility].

**Handicapped person**—As used in this chapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in the Human Resources Code, Chapter 103. [A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.]

**Functional impairment**—Condition that requires assistance with one or more personal care services including, but not limited to, bathing, dressing, preparing meals, feeding, grooming, taking self-administered medication, toileting, and ambulation.

**Health services**—Includes personal care, nursing, or therapy services. Personal care services include services listed under the definition of functional impairment in this section. Nursing services may include the administration of medications; physician-ordered treatments, such as dressing changes; and monitoring the health condition of the individual. Therapy services may include physical, occupational, or speech therapy.

**Human services**—All of the following major areas constitute human services:

(A) personal social services (day care, counselling, in-home care, protective services);

(B) health services (home health, family planning, preventive health programs, nursing home, hospice);

(C) education services (all levels of school, Head Start, vocational programs);

(D) housing and urban environment services (Section 8, public housing);

(E) income transfer services (Aid to Families with Dependent Children, Food Stamps); and

(F) justice and public safety services (parole and probation, rehabilitation).

**Human service program**—An intentional, organized, ongoing effort designed to provide good to others. The characteristics of human service programs are that they are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization and developmental experiences;

(C) used to aid, rehabilitate, or treat those in difficulty or need.

**Individual plan of care**—A written plan which documents functional impair-

ment and the health, social, and related support needed by an individual. The plan is developed jointly with and approved by the individual and/or responsible party.

**Long-term care facility**—A facility that provides care and treatment or personal care services to four or more unrelated persons, including a nursing facility, a personal care facility, and a facility serving persons with mental retardation and related conditions.

**Management services**—Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not [shall not] include contracts solely for maintenance, laundry, or food services.

**Manager**—A person having a contractual relationship to provide management services to a facility.

**Medically-related program**—A human services program under the human services-health services category in the definition of human services in this section.

**Nurse**—A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

**Person**—An individual, corporation, or association.

**Person with disabilities**—A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

**Protective setting**—A setting in which an individual's safety is ensured by the physical environment and/or personnel (staff).

**Related support services**—Provision of services to the client, family member, or other caregivers that may improve their ability to assist with an individual's independence and functioning. Services include, but are not limited to, information and referral, transportation, teaching caregiver skills, respite, counseling, instruction and training, and support groups.

**Social activities**—Therapeutic, educational, cultural enrichment, recreational, and social activities on site or in the community in a planned program to meet the social needs and interests of the individual.

**Working with people**—Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity. A person serving as a minister receiving an expense allowance in money plus free housing qualifies for experience in working with people.

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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and Policy Services  
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For further information, please call: (512) 450-3785

## Subchapter B. Application Procedures

### • 40 TAC §§98.11-98.21

The new sections and amendments are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care 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 new sections and amendments implement the Human Resources Code, Chapter 103, §§103.001-103.011.

#### §98.11. Criteria for Licensing.

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

(c) An applicant for a license must affirmatively show the following:

(1) the applicant, person with a disclosable interest, affiliate, and manager have not been convicted [has had no conviction] of a felony or crime involving moral turpitude in this state or any other state;

(2)-(4) (No change.)

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

(f) The license must be posted in the area where clients are admitted and accessible to them and/or their legal guardians.

#### §98.12. Building Approval.

(a) Local fire authority. All applications for license must [shall] include the written approval of the local fire authority that [having jurisdiction based on] the facility and its operation meet [meeting] local [applicable] fire ordinances.[.] The written [such] approval must be submitted on the forms and in the manner specified by the Texas Department of Human Services

(DHS) [shall be on forms or in a manner as determined by the licensing agency].

(b) Local Health Authority. The following procedures allow the local health authority to provide recommendations to DHS concerning licensure of a facility. [The local health authority may provide recommendations regarding licensure utilizing the following procedure and process.]

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility will provide to DHS [the licensing agency] a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor will also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to DHS [the licensing agency] regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received by DHS [the licensing agency] within ten days after the date of the sponsor's notice of the fire marshal or building code authority approval for occupancy. The local health authority may recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS [the licensing agency].

(2) Increase in capacity [Client increase]. The license holder must [shall] request an application for increase in capacity from DHS [the licensing agency]. DHS must [The licensing agency shall] provide the license holder with the application form, and DHS must [the Texas Department of Human Services (department) shall] notify the local fire marshal and the local health authority of the request. The license holder must [shall] arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder must [shall] notify the local health authority and DHS [the licensing agency] in writing if the facility meets local code requirements. The local health authority may provide recommendations to DHS [the licensing agency] regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received within ten days after the date of the facility's notice of the local fire marshal or building code authority approval. The local health authority may recommend that an increase in capacity be granted or denied; however, the final decision on the increase remains with DHS [the licensing agency]. DHS [The licensing agency] will approve the application only if the facility is found to be in compliance with the standards.

Approval to occupy the increased capacity may be granted by DHS [the licensing agency] prior to the issuance of the license covering the increased capacity after inspection by DHS [the licensing agency] if standards are met.

(3) Change of ownership. The applicant for a change of ownership license will provide to DHS [the licensing agency] a copy of a letter notifying [to] the local health authority of the request for a change of ownership [under §90.16 of this title (relating to Change of Ownership)]. The local health authority may provide recommendations to DHS [the licensing agency] regarding the status of compliance with local codes, ordinances, or regulations. Local authority recommendations must be received within ten days of the date of the letter [dated notice] from the new owner or date of change of ownership, whichever is later, if the [local health official] recommendations are to be considered by DHS [the licensing agency].

(4) Renewal. DHS sends the [The] local health authority [having jurisdiction shall receive] a copy of the DHS [department] license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to DHS [the licensing agency] regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS [the licensing agency]. Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by DHS [the licensing agency].

(5) Inspection/plan review. Any existing building being considered for licensure must either submit a plan for review and approval or request a feasibility inspection to be performed by a representative of DHS [the department] to determine construction or renovation requirements. The fees for inspection and/or plan review must be in accordance with §98.21 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

*§98.13. Applicant Disclosure Requirements.*

(a) Scope of section. No person may [shall] apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section. [The disclosure is required if the person is applying for a license for the first time or if the person owned, operated, or managed another facility in this or any other state, using the same or any other business name.]

(b) Disclosure form. All applications must [shall] be made on forms prescribed by and available from the Texas Department of Human Services (DHS) [department. Applications include initial applications, change of ownership and renewal applications.] Each application must be completed in accordance with DHS [department] instructions, [and] signed, and notarized.

(c) General information required. An applicant must [shall] file with DHS [the department] an application which must [shall] contain:

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

(4) the name of the director [administrator];

(5) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. [If the applicant is not the owner of the real estate, the lease agreement must clearly state that the applicant, lessee has the right to renovate, repair, and maintain the real estate as may be required to meet the licensing standards.] The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, must [shall] be disclosed to DHS [the department];

(6)-(7) (No change.)

(d) Disclosure requirements. Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, [facility lessor,] officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:

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

[(4) federal or state liens;]

(4)[(5)] unsatisfied final judgments;

(5)[(6)] operation of a facility that has been decertified in any state under Medicare or Medicaid;

(6)[(7)] debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(7)[(8)] eviction involving any property or space used as a facility in any state;

[(9) unresolved state or federal Medicare or Medicaid audit exceptions; and]

(9)[(10)] orders from any court restraining or enjoining the applicant, manager, or any person with a disclosable interest from operating a health care, long-term care, personal care, or day care facility in any state; and [.]

(10) any of the adverse actions listed in this subsection taken against the applicant by all relevant licensing and certification agencies in all other states in which the applicant owns, operates, or manages long-term care, personal care, or adult day care facilities. The applicant must obtain letters or other documentation from those agencies attesting to the adverse actions or the absence of any such adverse actions.

(e) Required ownership [Ownership] and management information for the past year [required].

(1) Each applicant for a license to operate a facility must [shall] disclose to DHS [the department] the name and business address of each:

(A) limited partner and general partner if the applicant is a partnership;[. of]

(B) [each] director and officer if the applicant is a corporation;[.] and

(C) [each] person having a beneficial ownership interest of five percent or more in the applicant corporation, partnership, or other business entity.

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of five percent or more in any other health care, long-term care, personal care, or adult day care facility, the applicant must [shall] disclose the relationship to DHS [the department], including the name and current or last address of the facility and the date such relationship commenced and, if applicable, the date it was terminated.

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

(5) The information required by this section must [shall] be provided to DHS [the department] upon initial application for licensure, and changes in the information must [shall] be provided to DHS [the department] on an annual basis, except that a licensee must [shall] notify DHS [the department] within 30 days of any change of the facility's administrator [manager] or management services.

(f) The provisions of this section do [shall] not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

#### §98.14. Increase in Capacity.

(a) During the license term, a license holder may not increase capacity without approval from the Texas Department of Human Services (DHS) [(department)]. The license holder must [shall] submit to DHS [the department] a [to] complete application for increase in capacity on a form provided by DHS [the department].

(b) Upon approval of an increase in capacity, DHS will [the department shall] issue a new license.

#### §98.15. Renewal Procedures and Qualifications.

(a) Each license issued under this chapter must be renewed annually. Each license expires 12 months from the date issued. A license issued under this chapter is not automatically renewed.

(b) Each license holder must file an application for renewal with the Texas Department of Human Services (DHS) at least 45 days prior to the expiration of the current license. DHS considers that an individual has filed a timely and sufficient application for the renewal of a license, if the license holder:

(1) submits a complete application to DHS, and DHS receives that complete application at least 45 days before the current license expires; or

(2) submits an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 45 days before the current license expires.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

(d) The application for renewal must contain the same information required for an original application as well as payment of the annual licensing fees.

(e) The renewal of a license may be denied for the same reasons an original application for a license may be denied (see §98.19 of this title (relating to Criteria for

Denying a License or Renewal of a License)).

#### §98.16. Change of Ownership.

(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder must notify the Texas Department of Human Services (DHS) that a change of ownership will be occurring.

(b) To avoid a gap in the license because of a change in ownership of the facility, the prospective purchaser must submit to DHS a complete application for a license under §98.11 of this title (relating to Criteria for Licensing) at least 30 days before the anticipated date of sale. The applicant must meet all requirements for a license. If the applicant has filed a timely and sufficient application for a license and otherwise meets all requirements for a license, DHS will issue the applicant a license effective on the date of transfer of ownership. DHS considers an individual has filed a timely and sufficient application for a license if the individual:

(1) submits a complete application to DHS, and DHS receives that complete application at least 30 days before the anticipated date of sale;

(2) submits an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 30 days before the anticipated date of sale; or

(3) submits an application to DHS, and DHS receives the application by the date of sale, and the individual proves to DHS's satisfaction that the health and safety of the facility clients required an emergency change of ownership.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

#### §98.17. Change of Staff.

(a) A new facility director must submit qualifying documentation (see §98.42 of this title (relating to Program Requirements)) for Texas Department of Human Services (DHS) approval within 30 days of the change. If the facility director leaves, a facility director must be in place within 30 days of such vacancy.

(b) A new facility activities director must submit qualifying documentation (see §98.42 of this title (relating to Program

Requirements)) for approval within 30 days of the change. A facility activities director must be in place within 30 days of such vacancy.

(c) A new facility nurse must submit qualifying documentation (see §98.42 of this title (relating to Program Requirements)) for approval within 24 hours of the change. A facility nurse must be in place within 24 hours of such vacancy.

#### §98.18. Time Periods for Processing Licensing Applications.

(a) The Texas Department of Human Services (DHS) will process only applications received within 60 days prior to the requested date of the issuance of the license.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

(d) Long-Term Care-Regulatory will notify facilities within 30 days of receipt of the application if any of the following applications are incomplete:

- (1) initial application;
- (2) change of ownership;
- (3) renewal; and
- (4) increase in capacity.

(e) A license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. The issuance of the license constitutes DHS's official written notice to the facility of the acceptance and filing of the application.

(f) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in this section, the applicant has a right to request of the program director full reimbursement of all filing fees paid in that particular application process. If the program director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(B) another public or private entity used in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(3) If the request for full reimbursement is denied, the applicant may appeal directly to the commissioner for resolution of the dispute. The applicant must send a written statement to the commissioner describing the request for reimbursement and the reasons for it. The program director also may send a written statement to the commissioner describing the program's reasons for denying reimbursement. The commissioner makes a timely decision concerning the appeal and notifies the applicant and the program in writing of the decision.

*§98.19. Criteria for Denying a License or Renewal of a License.*

(a) The Texas Department of Human Services (DHS) may deny an initial license or refuse to renew a license if an applicant, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §§98.41-98.44 of this title (relating to General Requirements, Program Requirements, Safety, and Sanitation) including, but not limited to:

(A) noncompliance that poses a serious threat to health and safety; or

(B) a failure to maintain compliance on a continuous basis;

(2) aids, abets, or permits a substantial violation described in paragraph (1) of this subsection about which the applicant, manager, or affiliate had or should have had knowledge;

(3) fails to provide the required information, facts, and/or references;

(4) knowingly provides the following false or fraudulent information:

(A) submits false or intentionally misleading statements to DHS;

(B) uses subterfuge or other evasive means of filing;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact; or

(E) is responsible for fraud;

(5) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §98.20 of this title (relating to License Fees); and

(B) franchise taxes, if applicable;

(6) discloses any of the following actions within the two-year period preceding the application:

(A) operation of a facility that has been decertified and/or had its contract canceled under the Medicare or Medicaid program in any state;

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as a facility in any state;

(F) suspension of a license to operate a health facility, long-term care facility, personal care facility, or a similar facility in any state.

(b) Concerning subsection (a)(6) of this section, DHS may consider exculpatory information provided by the applicant, manager, or affiliate to grant a license under subsection (a)(6) of this section if DHS finds the applicant, manager, or affiliate able to comply with the rules in this chapter.

(c) DHS will not issue a license to an applicant to operate a new facility if the applicant discloses any of the following actions during the two-year period preceding the application:

(1) revocation of a license to operate a health care facility, long-term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting the applicant, manager, or affiliate from operating a facility.

(d) Only final actions are considered for purposes of subsections (a)(6) and (c) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(e) If an applicant owns multiple facilities, the overall record of compliance in all of the facilities will be examined. An overall record poor enough to deny issuance of a new license will not preclude the renewal of licenses of individual facilities with satisfactory records.

(f) If DHS denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing. Administrative hearings must be held under the provisions of the Administrative Procedures Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq, and DHS's formal hearing rules in §§79.1601-79.1614 of this title (relating to Formal Hearings).

*§98.20. License Fees.* The license fee is \$25. The fee must be paid with each initial application, change of ownership application, and annually with each application for renewal of the license. Payment of fees must be by check or money order made payable to the Texas Department of Human Services.

*§98.21. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.*

(a) Under Texas Civil Statutes, Article 4413(502) historical note (Vernon Supplement 1994) (Act of August 9, 1991, 72nd Legislature, First Called Session, Chapter 15, §1.11, 1991 Texas General Laws 298), the Texas Department of Human Services (DHS) has the authority to charge fees for providing services described in this section. Pursuant to this authority, DHS establishes the fees, as shown in the fee schedule in subsection (j) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are designed not to exceed the costs to DHS to provide these services.

(b) When DHS finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for such plan review. There will similarly be no fee for a

construction visit made pursuant to a plan review.

(c) The plan review fees shown in the fee schedule in subsection (j) of this section cover the review of plans in all the stages of development.

(d) In determining the cost of additions or remodeling, only the direct construction costs need to be considered; that is, construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural and/or engineering fees, financing, legal fees, fund-raising fees, furnishings, or movable equipment.

(e) Remodeling is the construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (including sprinkler and fire alarm systems), that will change the existing plan and use areas of the facility.

(f) General maintenance and repairs of existing material and equipment; repainting; applications of new floor, wall, or ceiling finishes; or similar projects are not included as remodeling, unless as a part of new construction. DHS must be provided flame spread documentation for new materials applied as finishes.

(g) Fees are due for payment as follows.

(1) When plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid.

(2) Construction inspection fees for new facilities and for additions or remodeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by DHS under licensure.

(3) Feasibility inspection fees are due for payment prior to the inspection being made.

(h) Payment of fees must be by check or money order made payable to the Texas Department of Human Services. All fees are nonrefundable except as provided by the Texas Government Code, Chapter 2005.

(i) If the facility or institution requests construction inspections beyond those called for in the schedule, the appropriate additional fees must be submitted. If DHS elects to make additional construction inspections, there will be no charge for these inspections.

(j) The fee schedule is as follows.

(1) Facility Plan Review-Adult Day Care and Adult Day Health Care Facilities.

(A) New Facility-\$10 per licensed person capacity (Maximum \$500).

(B) Existing Licensed Facility.

(i) Additions-1% of project cost or \$10 per additional client, whichever is greater (Minimum \$100).

(ii) Remodeling-\$30 per square foot (Maximum \$500).

(2) Inspections-All facilities.

(A) Construction.

(i) Preliminary inspections (each)-\$5.00 per bed (Minimum \$150).

(ii) Final inspections (each)-\$12 per bed (Minimum \$150).

(B) Feasibility. Each feasibility inspection and each subsequent visit including final survey prior to licensure-\$10 per bed (Minimum \$250)

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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Nancy Murphy  
Section Manager, Media  
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Texas Department of  
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◆ ◆ ◆  
• 40 TAC §§98.15-98.18, 98.20

*(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, Chapter 103, which provides the department with the authority to license adult day care 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 repeals implement the Human Resources Code, Chapter 103, §§103.001 - 103.011.

§98.15. Change in Ownership.

§98.16. Criteria for Denying a License or Renewal.

§98.17. License Fees.

§98.18. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.

§98.20. License.

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

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◆ ◆ ◆  
Subchapter C. Standards for  
Adult Day Care [and Adult  
Day Health Care] Facilities

• 40 TAC §§98.41-98.44

The new sections and amendment are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care 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 new sections and amendment implement the Human Resources Code, Chapter 103, §§103.001-103.011.

§98.41. General Requirements.

(a) The Human Resources Code, Chapter 103, requires the [Texas Department of Health (department) and the] Texas Department of Human Services (DHS) to adopt standards for the licensure of facilities which cover the following topics [The department is responsible for adoption of standards relating to safety and sanitation. The Texas Department of Human Services is responsible for adoption of standards for]:

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

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; [and]

(8) prohibiting racial discrimination; and [.]

(9) safety and sanitation.

(b) All facilities are required to meet the following: [standards adopted by the Texas Department of Human Services in 40 Texas Administrative Code, Chapter 50 (relating to Day Activity and Health Services).]

(1) the requirements for advance directives under the state plan for Medical assistance;

(2) the Health and Safety Code, Chapter 250, concerning conducting criminal history checks;

(3) the requirements of the Americans with Disabilities Act;

(4) workplace standards to comply with HIV/AIDS and related conditions in the workplace; and

(5) all relevant federal and state standards.

(c) All facilities must:

(1) make an oral report to DHS at (512) 834-6778 on learning of an alleged abuse or neglect of a client. A written investigation report must be sent to DHS no later than the fifth calendar day after the oral report;

(2) maintain incident reports; and

(3) ensure the confidentiality of individual client records and other information related to clients.

#### §98.42. Program Requirements.

(a) Staff qualifications.

(1) Director.

(A) The director must:

(i) have graduated from an accredited four-year college or university and have no less than one year of experience in working with people in a human service or medically related program, or have an associate degree with three years of experience in working with people in a human service or medically related program; or

(ii) be a registered nurse with one year of experience in a human service or medically related program; or

(iii) meet the training and experience requirements for a license as

a nursing home administrator under the rules of the Texas Board of Licensure for Nursing Home Administrators; or

(iv) have, on July 16, 1989, met the qualifications for the position under the requirements in effect at that time and have served continuously in the capacity of director of a Texas Department of Human Services-certified facility since that date; or

(v) have worked for the required time with people in a human service or medically-related program as defined in §98.2 of this title (relating to Definitions).

(B) The facility nurse may also be the facility director when the following conditions exist:

(i) the facility enrollment is less than 25 clients; and

(ii) he is not a licensed vocational nurse without a degree.

(C) The activities director may fulfill the function of facility director if he meets the other qualifications for facility director.

(D) One person may not serve as facility nurse, activities director, and facility director, regardless of qualifications.

(2) Nurse. The facility nurse must be a registered nurse (RN) or a licensed vocational nurse (LVN).

(A) The RN must have a current license from the Board of Nurse Examiners for the State of Texas and must practice in compliance with the Nurse Practice Act and rules and regulations of the Board of Nurse Examiners.

(B) The LVN must have a current license from the Board of Vocational Nurse Examiners of Texas and must practice in compliance with the Vocational Nurse Act and rules and regulations of the Board of Vocational Nurse Examiners.

(C) If the nurse who is fulfilling the role of the director leaves the facility to perform other duties as related to the provisions of the day care program, an LVN or another RN must fulfill the duties of the facility nurse.

(D) The facility must always have a nurse on duty.

(3) Activities Director. The activities director must have graduated from high school and have:

(A) a bachelor's degree from an accredited college or university, plus one year of full-time experience in working with the elderly or people with disabilities in a human service or medically related program; or

(B) 60 semester hours from an accredited college or university, plus two years of full-time experience in working with the elderly or people with disabilities in a human service or medically related program; or

(C) completed a state-approved activities director's course, plus two years of full-time experience in working with the elderly or people with disabilities in a human service or medically related program; or

(D) four years of full-time experience in working with the elderly or people with disabilities in a human service or medically related program.

(4) Attendants. The attendant must be 18 years old or older and able to perform the following duties.

(A) If an attendant is used as the driver, he must have a current operator's license, issued by the Texas Department of Public Safety, which is appropriate for the class of vehicle used to transport clients.

(B) If an attendant handles food in the facility, he must meet the requirements described in the Texas Department of Health rules on food service sanitation as described under Texas Administrative Code, Title 25, §§229.161-229.172 (relating to Food Service Sanitation).

(C) Attendants may also include, but are not limited to, aids, cooks, janitors, porters, maids, and laundry workers.

(5) Food Service Personnel. If the facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements described in the Texas Department of Health rules on food service sanitation as described under Texas Administrative Code, Title 25, §§229.161-172 (relating to Food Service Sanitation).

(b) Staffing Ratio. The facility must ensure that the overall ratio of direct service staff to clients in the facility is at least one to eight. This ratio must be maintained during provision of all covered services except during facility-provided transportation.



(c) Staff Health. All direct staff must be free of communicable diseases.

(d) Staff Responsibilities.

(1) Facility Director. The facility director is responsible for:

(A) managing the adult day care program and/or the facility;

(B) training and supervising facility staff;

(C) monitoring the facility building and grounds to ensure compliance;

(D) maintaining all financial and client records;

(E) developing relationships with community groups and agencies for identification and referral of clients;

(F) maintaining communication with the client's family members or responsible parties;

(G) assuring the development and maintenance of the individual plan of care; and

(H) ensuring that if he serves as the nurse consultant during the same eight-hours-per-day period, he is fulfilling his responsibility as director.

(2) Facility Nurse. The facility nurse is responsible for:

(A) assessing the client's nursing and medical needs;

(B) developing a client's individual plan of care;

(C) obtaining physician's orders for medication and treatments to be administered;

(D) determining whether self-administered medications have been appropriately taken, applied, or used;

(E) entering, dating, and signing monthly progress notes on medical care provided;

(F) administering medication and treatments;

(G) providing health education; and

(H) maintaining medical records.

(3) Activities Director. The activities director is responsible for:

(A) planning and directing the daily program of activities, including physical fitness exercises or other recreational activities;

(B) recording the client's social history;

(C) assisting the client's related support needs;

(D) assuring that the identified related support services are included in the client's individual plan of care; and

(E) signing and dating monthly progress notes about social and related support services activities provided.

(4) Attendant. The attendant is responsible for:

(A) providing personal care services (assistance with activities of daily living);

(B) assisting the activities director with recreational activities; and

(C) providing protective supervision (observation and monitoring).

(5) Food Service Personnel. Food service personnel are responsible for:

(A) preparing meals and snacks; and

(B) maintaining the kitchen area and utensils in a safe and sanitary condition.

(6) Dietitian Consultant.

(A) The facility must receive consultation at least four hours each month from a dietitian. The dietitian consultant plans and/or reviews menus and must:

(i) prior approve and sign each snack and luncheon menu;

(ii) review menus monthly to ensure that substitutions were appropriate;

(iii) develop any special diets ordered by physicians for individual clients;

(B) The dietitian consultant is required for all facilities, even those that have their meals delivered from another facility who have their own dietitian consultants. A consultant may provide consultation to several facilities as long as each facility receives at least four hours a month. The four hours cannot be "shared" by several facilities.

(7) Registered nurse consultant. In facilities where the nurse is a licensed vocational nurse, a registered nurse consultant must provide on-site consultation four hours per week. The RN consultant must document the consultation provided. The RN consultant must provide the consultation during the time when clients are present in the facility. The RN consultant may provide the following types of assistance:

(A) reviewing plans of care and suggesting changes, if appropriate;

(B) assessing clients' health conditions;

(C) consulting with the LVN in solving problems involving client care and service planning;

(D) counseling clients on their health needs;

(E) training, consulting, and assisting the LVN in maintaining proper medical records; and

(F) in-service training for direct service staff.

(e) Training.

(1) Initial training. The facility must:

(A) provide all staff with training in the fire, disaster, and evacuation procedures within three workdays of employment. The training must be documented in the facility records.

(B) provide direct delivery staff a minimum of 18 hours of training during the first three months of employment. Training must be documented in the facility records. Training must include:

(i) adult cardiopulmonary resuscitation (CPR) certification;

(ii) first aid taught by an RN or obtained through the American Red Cross;

(iii) orientation to health care delivery including the following components:

(I) safe body function and mechanics;

(II) personal care techniques and procedures; and

(III) overview of client population served at the facility.

(iv) identification of abuse, neglect, or exploitation.

(C) Staff employed as substitutes on an infrequent and irregular basis are not required to have 18 hours of initial training. Substitute and consultant staff must receive a minimum of three hours of orientation. Substitutes for direct service staff used by a facility on a regular basis must meet all training requirements as specified under this subsection.

(2) Ongoing training.

(A) The facility must provide a minimum of three hours of ongoing training to direct service staff quarterly. The facility must ensure that direct delivery staff maintain current certification in CPR.

(B) The facility must practice evacuation procedures with staff and clients quarterly. The evacuation results must be documented in the facility records.

(f) Medications.

(1) Administration.

(A) Clients who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law which authorizes the licensee to administer medications; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(B) All medication prescribed to clients must be dispensed through a pharmacy or by the client's treating physician or dentist.

(C) Physician sample medications may be given to a client by the facility provided the medication has specific dosage instructions for the individual client.

(D) Each client's medications must be listed on an individual client's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a client's medication regimen by facility staff may be provided to clients who are incapable of self-administering. Supervision includes, and is limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual client's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Clients who self-administer their own medications must be counseled at least once a month by facility staff to ascertain if the clients continue to be capable of self-administering their medications and/or treatments. A written record of counseling must be kept by the facility.

(B) Clients who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication and/or treatment regimen. A facility staff member must remain in or at the storage area the entire time any client is present.

(4) General.

(A) Facility staff must immediately report to the client's physician and

responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the client does not receive or take his medications and/or treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

(i) central storage area; and

(ii) medication cart.

(B) Each client's medication must be stored separately from other clients' medications within the storage area.

(C) A refrigerator must have a designated and locked storage for medications requiring refrigeration.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medical area.

(E) The medication room or cabinet medication storage area must have a separate, permanently attached cabinet, box, or drawer with a lock to store drugs covered by Schedule II of the Controlled Substances Act of 1970.

(F) Medications requiring refrigeration must be stored in the medication room in a refrigerator used only for medicine storage or kept in a separate, permanently attached, and locked medication storage box in a refrigerator.

(6) Disposal.

(A) Medications no longer being used by the client for the following reasons must be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications which remain after a client is deceased; or

(iii) medications which have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by Texas Administrative Code, Title 25, §§1.131-1.137 (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(C) Medications kept in a central storage area are released to discharged clients when a receipt has been signed by the client or responsible party.

(g) Accident, injury, or acute illness.

(1) In the event of accident or injury requiring emergency medical, dental, or nursing care, or in the event of apparent death, the adult day care facility must:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment (including, but not limited to, physician's office, clinic, or hospital);

(B) immediately notify the client's physician and next of kin, responsible party, or agency who placed the client in the facility; and

(C) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(h) Menus.

(1) Menus must be planned at least two weeks in advance, dated, maintained on file, and posted in the facility. Meals must be served according to approved menus.

(2) Special diet meals ordered by the client's physician and developed by the dietician must be labeled with the client's name and type of diet.

#### §98.43. Safety.

(a) Environmental safety.

(1) The physical plant safety requirements are designed to provide safety to the clients, participants, or adult individuals receiving day care.

(2) The facility must conform to all applicable state laws and local ordinances pertaining to occupancy. When these laws, codes, and ordinances are more stringent than the standards in this section, the more stringent requirements govern. If state laws or local codes or ordinances conflict

with the requirements of these standards, the licensing agency will be so informed so that these conflicts may be legally resolved.

(3) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(4) The jurisdiction of the licensing agency extends beyond the licensed facility when the licensed area is only a part of a building or floor that is not fire separated in accordance with the Life Safety Code, §10-7.1.2.

(b) Life Safety Code.

(1) The principles of the Life Safety Code, of the National Fire Protection Association (NFPA), 1988 edition, under §10-7 "Day Care Centers," and operating features under §31-3.4 "Day Care Centers," must be used in establishing life safety requirements for adult day care facilities, with the interpretation and exceptions as listed in paragraphs (2) and (3) of this subsection.

(2) Interpretations of the Life Safety Code, 1988, §10-7, are as follows.

(A) The principles of §10-7 apply to any size facility requiring licensing with four or more clients or participants.

(B) The principles of §10-7.1.1.3 relating to children six years of age and over apply.

(C) The manual fire alarm system and automatic smoke detection system must be installed in accordance with NFPA 72 series and state fire marshal licensing requirements.

(3) Exceptions to the Life Safety Code, 1988, §10-7, are as follows.

(A) All required smoke detectors must be powered by the facility electrical system and be interconnected with the fire alarm system.

(B) Reference to apartment buildings in §10-7.1.2 must be deleted. Any floor above or below the floor of exit discharge which is used by semiambulatory

clients, or those whose disability prevents them from taking appropriate action for self-preservation in emergencies, must be provided with smoke compartmentation.

(C) Emergency lighting must not be required for means of egress if the facility operation is during daylight hours and if natural light, direct or borrowed, is provided so that the means of egress is usable in emergencies.

(D) Special protective electrical receptacle covers must not be required.

(E) NFPA 96 publication relating to Vapor Removal Cooking Equipment must not be applicable if the facility has residential-type cooking equipment

(F) Public corridors must not be used for return or supply air systems

(G) Residential-type heating units or heating units designed for attic installations must not be considered to be units requiring furnace room construction as specified under §10-7.3.2.1.

(H) New additions or remodeling must be as required for new construction in accordance with paragraph (4) of this subsection.

(I) Sprinkler system for janitor's closet as specified under §10-7.2.2 must not be required unless the building has a complete NFPA 13 system.

(4) For new construction, the licensing agency must require conformance to the following codes, except that the licensing agency may accept other nationally recognized codes that are locally enforced.

(A) If the municipality has a building code and a plumbing code, then those codes govern in those areas of construction. Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item apply unless otherwise determined by the authority having jurisdiction for local codes and the licensing agency.

(B) In the absence of local municipal codes or ordinances, nationally recognized codes must be used, such as the Standard Building Code and the Standard Plumbing Code, both of which are part of the Southern Building Code, published by Congress International, Inc. These nationally recognized codes, when used, must all be publications of the same group or organization to assure the intended continuity.

(C) Heating, ventilating, and air-conditioning (HVAC) systems must be designed and installed in accordance with NFPA 90A, relating to the Standard for the Installation of Air Conditioning and Ventilating Systems, and NFPA 90B, relating to the Standard for the Installation of Warm Air Heating and Air Conditioning Systems, as applicable, and the American Society of Heating, Ventilating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

(D) Electrical and illumination systems must be designed and installed in accordance with NFPA 70, relating to the National Electrical Code, and the Lighting Handbook of the Illuminating Engineering Society (IES) of North America except as may be modified in this subchapter.

(5) An existing building either occupied as an adult day care facility at the time of initial inspection by the licensing agency, or converted to occupancy as an adult day care facility, must meet all local requirements pertaining to the building for that occupancy. The licensing agency may require the facility sponsor or licensee to submit evidence that local requirements are satisfied.

(6) Adult day care facilities must be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads. The Texas Department of Human Services (DHS) may require submission of evidence to this effect.

(7) Electrical and mechanical systems must be safe and in working order. DHS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city and/or county building official having jurisdiction or a report from a registered professional engineer.

(8) Modifications to requirements are as follows:

(A) For facilities operating as adult day care facilities at the time of their first application for licensure under this program, DHS may modify those requirements which, if strictly applied, would clearly be impractical in DHS's judgment. Any of these modifications must be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(B) For existing buildings and structures which are converted to adult

day care occupancy, DHS may modify those requirements which, if strictly applied, would clearly be impractical in DHS's judgment. Any of these modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(c) Personal safety.

(1) Fire safety.

(A) Fire safety must be observed at all times.

(B) Storage items must be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products must not be stored in the building housing clients unless approved by the local fire marshal. Accumulations of extraneous material and refuse is not permitted.

(C) The building must be kept in good repair; electrical, heating, and cooling systems must be maintained in a safe manner. Electrical appliances, devices, and lamps must be used in a manner that prevents overloaded circuits. Any extension cords in excess of six feet must be shielded or protected.

(D) The facility must report all fires to DHS on DHS's Fire Report Form within 15 days after the fire. The facility must immediately notify DHS by phone of disasters or any fires which caused death or serious injury. A telephone report must be followed by a written report on DHS's Fire Report Form.

(E) The facility must develop and conspicuously post throughout the facility an emergency evacuation plan approved by the local fire marshal having jurisdiction and DHS. The emergency evacuation plan must be updated and resubmitted for approval every two years.

(F) Smoking regulations must be established and conspicuously posted in the facility. All smoking must be supervised. Ashtrays of noncombustible material and safe design must be provided.

(G) The facility must have an emergency fire lane for access of fire apparatus if required by local authorities.

(H) There must be at least one telephone in the facility available to either staff or clients to use in case of an emergency. Emergency telephone numbers

must be posted conspicuously at or near the telephone.

(I) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests are required when the facility has major renovations or additions during which the gas service is interrupted. All gas heating systems must be checked for proper operation and safety prior to the heating season. Any unsatisfactory conditions must be corrected promptly.

(J) Curtains and/or draperies in public spaces and individual rooms in which smoking is allowed must be flame retardant.

(K) Provide 2 1/2 gallon pressurized water type portable fire extinguishers in client use areas. A portable Underwriters Laboratory or Factory Mutual approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen, and walk-in mechanical room. An ABC type extinguisher may be used in serving kitchens.

(L) Metal wastebaskets of substantial gauge or any U.L. or F.M. approved containers must be provided in all areas where smoking is permitted. Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any U.L. or F.M. approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(2) General requirements.

(A) All exterior site conditions must be designed, constructed, and maintained in the interest of clients' safety. Newly constructed ramps must not exceed 1:12 slope. Ramps, walks, and steps must be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails must be provided as required.

(B) All stairways must have substantial hand rails properly secured.

(C) Tubs or showers for client use must have non-slip bottoms or floor surfaces, either built in or applied to the surface.

(D) Elevators for client use must be in safe operating condition.

(E) An adequate supply of hot water must be provided. The hot water system connected to all client-use fixtures must deliver warm water no hotter than 120 degrees Fahrenheit at the fixture. Hot water for other sanitary usages must be provided at the temperatures required for the appliance or fixture served, or for the operation involved.

(F) There must be no occupancies or activities adversely affecting the safety of the clients in the buildings or on the premises of the facility.

(G) There must be at least 35 square feet provided for each ambulatory client and at least 50 square feet for each semiambulatory client. This space may not include the kitchen and food service area, rest rooms, bath areas, office, corridors, stairways, storage areas, and outdoor space.

(H) An office area must be provided in a central location to record and maintain files for each client.

(I) An area for rest, other than the treatment and/or exam room, must be provided with a sufficient number of reclining lounge chairs or beds to accommodate the needs of clients. A room or rooms with beds must be provided for those clients who prefer privacy.

(J) The facility must have at least one room available as a treatment and/or examination room for use by the nursing staff or the client's physician. The client may not be treated and/or examined in an area other than the treatment room.

(K) The facility must have a safe, secure, and suitable outdoor recreation and/or relaxation area for clients. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility. This area must be enclosed by a wall or a fence or located in a courtyard and supervised by staff to prevent wandering and large enough to conduct outdoor activities.

#### §98.44. Sanitation.

##### (a) General.

(1) Waste water and sewage must be discharged into a state-approved municipal sewage system; any exception must be as approved by the Texas Department of Human Services (DHS).

(2) The water supply must be as approved by DHS. Quantity and pressure must be as necessary to serve the needs of the facility.

(3) Waste, trash, and garbage must be disposed from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. Outside containers must have tight-fitting lids left in closed position. Containers must be maintained in a clean and serviceable condition.

(4) The building and grounds must be kept neat and free of refuse, litter, extraneous materials, and unsightly or injurious accumulations.

(5) The facility must make every effort possible to guard against insects, rodents, rainwater, and other conditions adversely affecting a sanitary environment or the well-being of the client.

(6) A pest control program must be provided by qualified facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must be used. Documented evidence of routine efforts to remove rodents and insects must be maintained.

(7) The facility must be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Floors must be maintained in good condition and cleaned regularly; walls and ceilings must be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas, attics, and cellars must be free of refuse and extraneous materials.

(8) There must be complete and separate rest room facilities for men and women. Toilets must be provided as necessary to meet the needs of the clients; however, there must be not less than one toilet and one lavatory for every 15 clients or fraction thereof. Multiple toilets must be compartmented. All toilets must be equipped with grab bars. Lavatories must be provided with hot and cold water, soap, and individual towels. A minimum of one bathing unit must be provided.

(9) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated to the exterior for odor control; the use of windows is not permissible. In existing facilities operating as adult day care facilities at time of initial licensure, the requirements for ventilation must be considered per individual facility.

(10) In kitchens and laundries, there must be procedures which prevent cross contamination between clean and soiled utensils and clean and soiled linens.

##### (b) Kitchen.

(1) The rules in Texas Administrative Code, Title 25, §§229.161-229.172 (relating to Food Service Sanitation) and local health ordinances or requirements

must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(2) Food preparation kitchens must have separate hand washing fixtures including hot and cold water, soap, and individual towels, preferably paper towels, in accordance with Texas Administrative Code, Title 25, §§229.161-229.172 (relating to Food Service Sanitation).

(3) Where kitchen provisions consist of serving kitchens only, and cooking equipment is used only to warm food, prepare hot drinks, or provide similar food service, the kitchen is not required to have separate hand-washing fixtures.

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 September 8, 1994.

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Nancy Murphy  
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and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3785

#### ◆ ◆ ◆ • 40 TAC §98.42, §98.43

*(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, Chapter 103, which provides the department with the authority to license adult day care 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 repeals implement the Human Resources Code, Chapter 103, §§103.001-103.011.

#### §98.42. Safety.

#### §98.43. Sanitation.

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 September 8, 1994.

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3785

◆ ◆ ◆  
Subchapter D. Facility Construction Procedures

• 40 TAC §98.61

The amendment is proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care 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 Human Resources Code, Chapter 103, §§103.001-103.011.

§98.61. Plans, Approvals, and Construction Procedures.

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the Texas Department of Human Services DHS [(department)], or remodeling of existing licensed facilities, one copy of the preliminary proposed plans must [shall] be submitted to the architectural section of DHS [the department (architectural section)] for review prior to the preparation of working drawings. For additions, an overall plan similar to the plan described in subsection (b)(4) of this section must [shall] be included.

(2) Fees for plan reviews are [will be] required in accordance with §98.21 [§98.18] of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) The project is [will be] considered abandoned and the plans must [will] be destroyed if final plans are not submitted to DHS [the department] within 24 months from the submittal date of the preliminary plans for review and approval. Resubmittal of plans and additional plan review fees are [will be] required if, after the abandonment period, the project will be constructed.

(4) The plans must [shall] be drawn to scale, must [shall] indicate the usage of all spaces, sizes of areas and

rooms, and the type and location of fixed equipment. New construction or additions must [shall] include a site plan showing all pertinent conditions including grades and all structures on the site.

(5) A general description of the surrounding area and vicinity including, but not limited to, [(commercial, residential, rural, shopping, and available transportation, [etc.])] must [shall] be furnished for new locations.

(b) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction must [shall] be submitted to DHS [the department] for review within 60 days of receipt of the [such] documents and required plan review fee. These documents must [shall] be prepared according to accepted architectural practices and must [shall] include general construction, special conditions, schedules, and any other pertinent information that DHS [the department] may require. In addition, two extra copies of the floor plan (only) must [shall] be submitted with the complete set of plans.

(2) The project is [will be] considered abandoned and the plans destroyed if the project is not under construction and continuing construction progress shown within 12 months from the date of the final review of the plans. Resubmittal of plans and full plan review fee is required [will again be required] if, after the abandonment period, the project will be constructed. Fees are [will be] as required in accordance with §98.21 [§98.18] of this title (relating to Fees for Plan Reviews, Construction, Inspection Services, and Feasibility Inspection Services).

(3) Final copies of plans must [shall] have (in the reproduction process by which plans are reproduced) a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications must [shall] bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for additions, remodeling, and construction of an entirely new facility must [shall] be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must [shall] bear the seal of the architect.

(4) A final plan for a major addition to a facility must [shall] include a basic layout to scale of the entire building

onto which the addition connects. North direction must [shall] be shown. Usually the entire basic layout can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling must [shall] be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction must [shall] not be started until the final contract documents are reviewed and approved in writing by DHS [the department] within 60 days of receipt of final drawings and required plan review fee.

(7) (No change.)

(c) Contract documents.

(1) Site plan documents must [shall] include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must [shall] include general foundation design and details.

(3) Floor plan documents must [shall] include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must [shall] be drawn or reduced to fit on an 8 1/2-inch by 11-inch sheet. Two reduced plans must [shall] be submitted for file record.

(5) Schedules must [shall] include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must [shall] include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, etc.; and interior elevations where needed for special conditions.

(7) Details must [shall] include wall sections as needed (especially for spe-

cial conditions); cabinet and built-in work, basic design only; cross-sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must [shall] include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when cannot be adequately shown on cross-section); and cross-sections in quantity and detail to show sufficient structural design and structural details as necessary to ensure adequate structural design, and also calculated design loads.

(9) Electrical documents must [shall] include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); staff communication system; fire alarm and similar systems (such as control panel, devices, and alarms); sizes and details sufficient to assure safe and properly operating systems.

(10) Plumbing documents must [shall] include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilating, and air-conditioning (HVAC) documents must [shall] include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, HVAC layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents must [shall] include plans and details of NFPA designed systems, plans, and details of partial systems provided only for hazardous areas; electrical devices must be interconnected to the alarm system.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems must [shall] be reviewed by the local health or wastewater authority having jurisdiction. If there is no local authority, then the plans must [will] be reviewed by DHS [the department].

(14) Specifications must [shall] include installation techniques; quality standards and/or manufacturers; references to specific codes and standards; design crite-

ria; special equipment; hardware; painting; and any others as needed to amplify drawings and notes.

(d) Construction and initial survey of completed construction.

(1) Construction phase.

(A) DHS must [The department shall] be notified in writing of construction start.

(B) All construction must [shall] be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior approval of DHS [the department]. Revised drawings may be required if the change is significant.

(C) A preliminary stage construction inspection is required unless otherwise instructed by DHS [the department]. A minimum of three weeks' notification prior to applying interior wall and ceiling surfaces (except for smoke barrier wall surfaces which must [shall] be completed) must be given so that the inspector may schedule the preliminary visit.

(2) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by the architectural section of DHS [the department (architectural section)] prior to admitting clients. A minimum of three weeks' advance notice is needed. The completed construction must [shall] have the written approval of the local authorities having jurisdiction, including the fire marshal, and certificate of occupancy by local authorities.

(B) After the completed construction has been surveyed by a representative of the architectural section of DHS [the department] and found acceptable, this information must [will] be conveyed to DHS's [the] licensing section [officer of the department] as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, and parking must be essentially 100% [percent] complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(C) The following documents must be available to DHS's [the department's] inspecting surveyor at the time of the survey of the completed building:

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

(iii) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), and rated ceilings [, etc.]. This must include a signed letter from the installer [, in the case of carpeting, etc.] verifying that the material [carpeting] installed, such as carpeting, is the material [carpet] named in the laboratory test document;

(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or the designing engineer. A copy of the material list and test certifications must [shall] be available;

(v) service contracts for maintenance and testing of security systems including, but not limited to, alarm and [systems,] sprinkler systems [, etc.];

(vi) (No change.)

(vii) a written statement from an architect and/or [I] engineer stating that, to the best of his [her] knowledge, the building was constructed in accordance with the approved drawings for large facilities; and

(viii) (No change.)

(3) Nonapproval of new construction.

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

(C) Copies of reduced size floor plan (on an 8 1/2-inch by 11-inch sheet) must [shall] be submitted in duplicate to DHS [the department] for record and/or [I] file use and for the facility's use including, but not limited to, for evacuation plan and [,] fire alarm zone identifications [, etc.]. The plan must [shall] contain basic legible information such as scale, room usage names, actual room numbers, doors, windows, and any other pertinent information.

(e) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to a facility for adult day care [or adult day health care]. This inspection must [shall] be requested through the licensing section [office]. A fee is [will be] charged as required by §98.21 [§90.18] of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection 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 September 8, 1994.

TRD-8447818

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3765

## Subchapter E. Inspections, Surveys, and Visits

### • 40 TAC §98.81, §98.82

The amendments are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care facilities; and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Human Resources Code, Chapter 103, §§103.001-103.011.

#### §98.81. Procedural Requirements.

(a) Texas Department of Human Services (DHS) [(department)] inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified [inspector or] surveyor or by a team, of which at least one member is a qualified surveyor [depending on the purpose of the inspection or survey, size of facility, levels of care and service provided by the facility, and other factors. The team composition may vary from two members to several members. However, an inspection by a single person may be necessary from time to time].

[(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents while satisfying the intent of the inspection.]

(c) [(d)] Generally, all inspections,

surveys, complaint investigations, and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced. Any exceptions must be justified. [With respect to being unannounced or announced, inspections, surveys, and other visits shall meet the following.]

[(1) All inspections, surveys, and other visits that are routine in nature and that are made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.]

[(2) Call-back visits will be unannounced, although it is recognized that the schedule of a call-back visit often relates to a date of correction made known to or by a facility in advance; any exceptions must be justified.]

[(3) Any nonroutine or special inspection, survey, and other visit involving that appropriateness of some aspect of resident care will be unannounced unless particular circumstances justify otherwise.]

[(4) Complaint investigations will be unannounced.]

[(5) Some inspections or visits may be announced, such as inspections or visits to determine the progress or completion of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.]

[(6) Consultation visits should be arranged with the facility in advance; inspections to determine how a physical plant may be expanded or upgraded may be considered consultation visits.]

[(7) The inspections, surveys, and visits described in paragraphs (1)-(6) of this subsection are listed as examples and are not intended to be all-inclusive.]

(d) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs, or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(e) The facility must [shall] make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS [the department] upon request.

(1) DHS [The department] is authorized to photocopy documents, photograph residents, and use any other available recording [recording] devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that DHS [the department] reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records, medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge DHS [the department] at the rate not to exceed the rate DHS charged [by the department] for copies. The procedure of copying is [will be] the responsibility of the director [administrator] or his designee. If copying requires that the records be removed from the facility, a representative of the facility is [will be] expected to accompany the records and assure their order and preservation.

(4) DHS protects [The department will protect] the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and DHS [department] policy.

[(f) The department shall provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.]

[(1) At the department's discretion, based on record review, random sample, or any other determination, the department may assign a team to conduct a validation survey. The department may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.]

[(2) Facilities will be required to correct any additional deficiencies cited by the validation team but will not be subject to any new or additional punitive action.]

#### §98.82. Determinations and Actions Pursuant to Inspections.

(a) The Texas Department of Human Services (DHS) [(department)] will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations are [will be] listed on forms designed for the purpose of the inspection [or will be listed in letter form when administrative penalties are being proposed].



(c) At the conclusion of an inspection or survey, the violations are [will be] discussed in an exit conference with the facility's management. A written list of the violations is [will be] left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) is [will be] communicated to the facility in writing within ten workdays of the exit conference, and the facility has ten workdays [will have three working days] to [communicate a] reply before the [such] additional violation is [added to or] made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions [found] are [will be] furnished to the facility.

(d) Violations found during complaint investigations are [will be] discussed with the facility management and a plan of correction obtained; the violations are [will be] furnished in writing to the facility, as well as any supporting narratives, but must [shall] not reveal the source of the complaint.

(e) A clear and concise summary in nontechnical language of each licensure inspection, inspection of care, and/or complaint investigation is [will be] provided by DHS [the department]. That summary outlines [will be in a form outlining] significant violations noted at the time of the visit, but does not [to] include names of residents, staff, or any other statement that would identify individual residents or other prohibited information under general rules of public disclosure. The summary is [will be] provided to the facility at the time the report of contact or similar document is provided.

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 September 8, 1994.

TRD-8447815 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

## Subchapter F. Enforcement

### • 40 TAC §§98.101, 98.102, 98.104

*(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, Chapter 103, which provides the department with the authority to license adult day care 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 repeals implement the Human Resources Code, Chapter 103, §§103.001-103.011.

#### §98.101. Enforcement Generally.

#### §98.102. Suspension.

#### §98.104. Administrative Hearings.

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

Issued in Austin, Texas, on September 8, 1994.

TRD-8447814 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

### • 40 TAC §§98.102-98.105

The amendment and new sections are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care 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 and new sections implement the Human Resources Code, Chapter 103, §§103.001-103.011.

#### §98.102. Nonemergency Suspension.

(a) The Texas Department of Human Services (DHS) may suspend a facility's license when the facility's violation of the licensure rules threatens to jeopardize the health and safety of residents.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to DHS.

(c) The facility will be notified by certified mail of DHS's intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The facility has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §98.105 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(d) The facility will be notified by certified mail of DHS's suspension of the facility's license. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance with §§79.1601-79.1614 of this title (relating to Formal Hearings). The suspension will take effect when the deadline for appeal of the suspension passes, unless the facility appeals the suspension. If the facility appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter.

(e) The suspension will remain in effect until DHS determines that the reason for suspension no longer exists. DHS will conduct an onsite investigation prior to making a determination. During the suspension, the license holder must return the license to DHS.

#### §98.103. Revocation.

(a) When a serious violation occurs, such that the health and safety of clients is jeopardized, the Texas Department of Human Services (DHS) [(department)] may revoke the license.

(b) In addition, DHS [The department] may revoke a license if the licensee:

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

(3) concealed a material fact in the application for a license or failed to disclose information required in §98.13 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §98.19 [§98.16] of this title (relating to Criteria for Denying a License or Renewal of a License).

(c) (No change.)

(d) The facility will be notified by certified mail of DHS's intent to revoke the [a] license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §98.105 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(e) The facility has 15 calendar days from receiving the certified mail notice [within which] to request a hearing, in accordance with §98.104 of this title (relating to Administrative Hearings) and §§79.1601-79.1614 of this title (relating to Formal Hearings). If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter.

**§98.104. Emergency Suspension and Closing Order.**

(a) The Texas Department of Human Services (DHS) will suspend a facility's license or order an immediate closing of part of the facility if:

(1) DHS finds that the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order. Written notice includes notice by facsimile transmission.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) A licensee whose facility is closed under this section is entitled to request an administrative hearing in accordance with §§79.1601-79.1614 of this title (relating to Formal Appeals), but a request for an administrative hearing does not suspend the effectiveness of the order.

**§98.105. Informal Reconsideration.**

(a) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, the Texas Department of Human Services (DHS) gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license by sending the director of Long Term Care-Regulatory a written request for an informal review. The request must:

(A) be postmarked within ten days of the date of DHS's notice and be received in the state office of the director of Long Term Care-Regulatory within ten days of the date of the postmark; and

(B) contain specific documentation refuting DHS's allegations.

(b) DHS's review will be limited to a review of documentation submitted by the license holder and information used by DHS as the basis for its proposed action and will not be conducted as an adversary hearing. DHS will give the license holder a written affirmation or reversal of the proposed action.

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

Issued in Austin, Texas, on September 8, 1994.

TRD-9447813

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3765

**Subchapter G. Miscellaneous Provisions**

**• 40 TAC §98.121**

*(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, Chapter 103, which provides the department with the authority to license adult day care 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 repeal implements the Human Resources Code, Chapter 103, §§103.001-103.011.

**§98.121. Time Periods for Processing Licenses for Personal Care Facilities.**

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 September 8, 1994.

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Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3765

**• 40 TAC §§98.121-98.123**

The amendment and new sections are proposed under the Human Resources Code, Chapter 103, which provides the department with the authority to license adult day care 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 and new sections implement the Human Resources Code, Chapter 103, §§103.001-103.011.

**§98.121. Time Periods for Processing License Applications.**

(a) The Texas Department of Human Services (DHS) will process only applications received within 60 days prior to the requested date of the issuance of the license.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

(d) Long-Term Care-Regulatory will notify facilities within 30 days of receipt of the application if any of the following applications are incomplete: initial application; change of ownership; renewal; and increase in capacity.

(e) A license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. The issuance of the license constitutes DHS's official written notice to the facility of the acceptance and filing of the application.

(f) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated, the applicant has a right to request of the program director full reimbursement of all filing fees paid in that particular application process. If the program director does not agree that the established periods have been violated or finds that good cause ex-

isted for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(B) another public or private entity used in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(3) If the request for full reimbursement is denied, the applicant may appeal directly to the commissioner for resolution of the dispute. The applicant must send a written statement to the commissioner of DHS describing the request for reimbursement and the reasons for it. The program also may send a written statement to the commissioner describing the program's reasons for denying reimbursement. The commissioner will make a timely decision concerning the appeal and notify the applicant and the program in writing of the decision.

**§98.122. Required Postings.** Each facility must [shall] prominently and conspicuously post for display in a public area of the facility that is readily available to clients [residents], employees, and visitors:

(1) (No change.)

(2) a sign prescribed by the Texas Department of Human Services (DHS) [(department)] that describes complaint procedures and specifies how complaints may be filed with DHS [the department];

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

**§98.123. Procedures for Inspection of Public Records.**

(a) Procedures for inspection of public records will be in accordance with the Texas Government Code, Chapter 552, and as further described in this section.

(b) The Long-Term Care-Regulatory, Texas Department of Human Services (DHS), is responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application must be made to the Long-Term Care-Regulatory, Texas Department of Human Services, 8407 Wall Street, Austin, Texas 78754.

(2) The requestor must identify himself.

(3) The requestor must give reasonable prior notice of the time for inspection and/or copying of records.

(4) The requestor must specify the records requested.

(5) On written applications, if DHS unable to ascertain the records being requested, DHS may return the written application to the requestor for clarification.

(6) DHS will provide the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, DHS will so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from DHS offices.

(e) Records maintained by Long-Term Care-Regulatory are open to the public, with the following exceptions.

(1) Incomplete reports, audits, evaluations, and investigations made of, for, or by DHS are confidential.

(2) All reports, records, and working papers used or developed by DHS in an investigation of reports of abuse and neglect are confidential, and may be released to the public only as follows.

(A) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to DHS as part of the investigation.

(B) The reporter and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect, whether DHS concluded that abuse or neglect occurred or did not occur.

(3) All names and related personal, medical, or other identifying information about a resident are confidential.

(4) Information about any identifiable person which is defamatory or an invasion of privacy is confidential.

(5) Information identifying complainants or informants is confidential.

(6) Itineraries of surveys and inspections are confidential.

(7) Other information that is exempted from release by the Government Code, Chapter 552 is confidential.

(8) To implement this subsection, DHS may not alter or deidentify original records. Instead, DHS will make available for public review or release only a properly deidentified copy of the original record.

(f) Long-Term Care-Regulatory will charge for copies of records upon request.

(1) If the requestor simply wants to inspect records, the requestor will specify the records to be inspected. DHS will make no charge for this service, unless the director of Long-Term Care-Regulatory determines a charge is appropriate based on the nature of the request.

(2) If the requestor wants copies of a record, the requestor will specify in writing the records to be copied on an appropriate DHS form, and DHS will complete the form by specifying the cost of the records which the requestor must pay in advance. Checks and other instruments of payment must be made payable to the Texas Department of Human Services.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and General Services Commission or DHS for office machine copies.

(4) For documents that are mailed, DHS will charge for the postage at the time it charges for the production. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one long-term care facility, each facility will be considered a separate request.

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

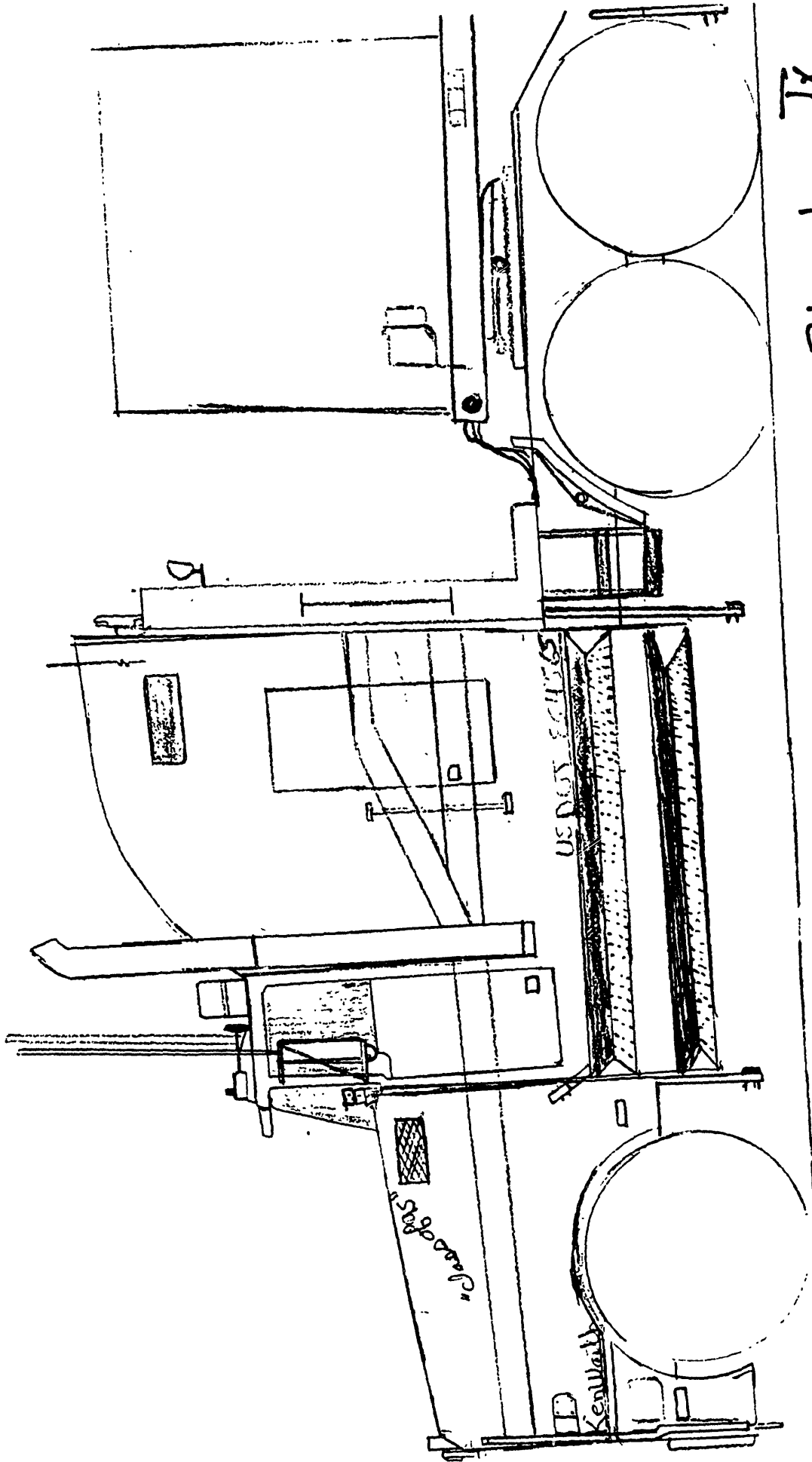
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Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: December 1, 1994

For further information, please call: (512) 450-3765



ME: Josh Hamilton  
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# WITHDRAWN RULES

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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**.

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty

#### Subchapter P. Commercial Property Insurance

#### • 28 TAC §5.12000

The Texas Department of Insurance has withdrawn from consideration for permanent adoption a proposed new §5.12000 which appeared in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6336). The effective date of this withdrawal is September 8, 1994.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447804

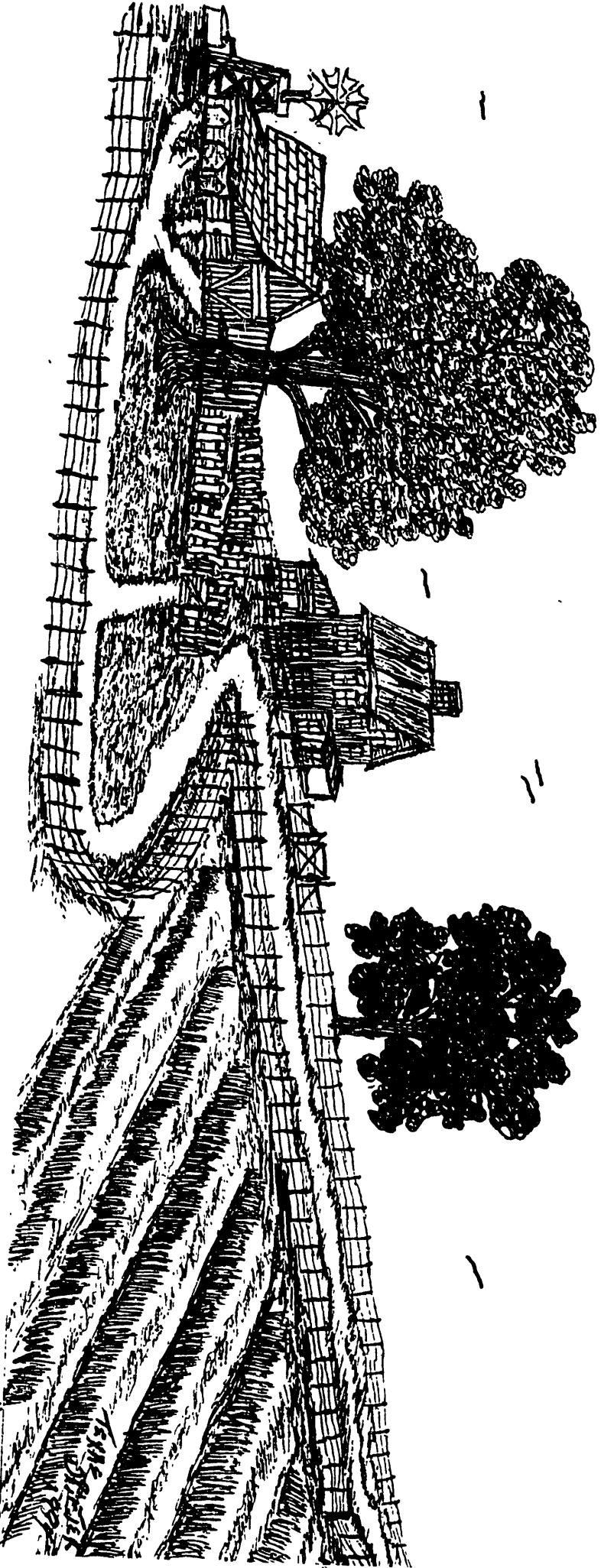
D. J. Powers  
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Effective date: September 8, 1994

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463-6327

◆ ◆ ◆

GRADE 6  
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Bloomburg I. S. D.



# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 1. ADMINISTRATION

### Part XV. Health and Human Services Commission

#### Chapter 351. Coordinated Planning and Delivery of Health and Human Services

##### • 1 TAC §351.5

The Health and Human Services Commission (HHSC) adopts new §351.5, concerning charges for public records, without changes to the proposed text as published in the June 5, 1994, issue of the *Texas Register* (19 TexReg 5141).

The new rule is required to comply with Texas Government Code, §552.261, note (Acts 1993, 73rd Legislature, Chapter 428, §5).

The new rule's function is to specify the charges the Health and Human Services Commission will make for public records.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §552.261, note (Acts 1993, 73rd Legislature, Chapter 428, §5), which gives the Health and Human Services Commission authority to specify the charges the agency will make for public records and establish a charge that is equal to the full cost to the agency of providing the copy.

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 September 7, 1994.

TRD-9447712

Cebby Gardner  
General Counsel  
Health and Human  
Services Commission

Effective date: September 28, 1994

Proposal publication date: June 5, 1994

For further information, please call: (512) 502-3200

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Quarantines

##### • 4 TAC §5.178

The Texas Department of Agriculture (the department) adopts amendments to §5.178, concerning establishment of administrative committees governing pink bollworm quarantine zones, with changes to the proposed text as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6084).

Currently there is no method of securing nominees to Pink Bollworm Pest Management Committees in zones that do not have a cotton grower organization. The amendments are adopted to establish alternative methods for nominating and appointing producer representation to serve on Pink Bollworm Pest Management Committees in all regulated zones. The department has made changes to subsections (b) and (c) for purposes of clarification.

No comments were received regarding adoption of the amendments.

The amendments provide an acre-based method for determining the number of representatives to represent a county as the administrative committee and procedures for submitting nominees in areas where no certified cotton organization is established. In addition, the amendments provide other qualifications for nominees and procedures for nominating producers.

The amendments are adopted under the Texas Agriculture Code, §74.054, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the control and eradication of the pink bollworm.

##### §5.178. Quarantine Zones.

(a) An administrative committee shall govern each quarantine zone. The committee shall consist of one authorized representative of the department and cotton producers representing each county within the zone. Producer representation of counties within the zone shall be based on acreage as follows:

(1) one to 25,000 acres = one representative;

(2) 25,001 to 50,000 acres = two representatives;

(3) 50,001 to 75,000 acres = three representatives;

(4) 75,001 to 100,000 acres = four representatives;

(5) 101,001 to 125,000 acres = five representatives;

(6) 125,001 to 150,000 acres = six representatives;

(7) 150,001 to 175,000 acres = seven representatives;

(8) 175,001 to 200,000 acres = eight representatives;

(9) 200,001 to 225,000 acres = nine representatives; and

(10) 225,001 to 250,000 acres = ten representatives.

(b) The commissioner shall appoint the producer members of the administrative committee for a term of two years expiring on December 31 of the second year, selecting the appointees from a pool of nominees submitted by certified cotton producer organizations as defined in the federal Cotton Research and Promotion Act, §14 (7 United States Code §§2101-2118). In cases where no certified cotton producer organization is established in a covered county, nominees may be submitted in the following order of priority by either: a County Extension Agriculture Committee; an established agriculture business that is representative of the entire county; or any other established business or non-profit organization as designated by the department.

(c) Nominees must be an active producer and/or resident from the county they will represent. A minimum of three nominees must be provided for each producer position on each administrative committee. Some counties may not be represented on the committee if cotton acreage is determined by the county's nominating body to be negligible or if county producers decide not to be represented.

(d) The administrative committee of a quarantine zone organized under this section shall:

(1) make recommendations to the department regarding control of the pink bollworm in the zone, including recommendations or regulations needed to control and prevent pink bollworm infestation;

(2) make recommendations on any legislative changes needed to increase effectiveness of current regulations; and

(3) give advice and counsel to the department regarding effective enforcement of this subchapter within the zone.

(e) Quarantine zones shall be as follows.

(1) Zone 1. Includes the following counties: Atascosa, Bexar, DeWitt, Frio, Goliad, Karnes, Kinney, Live Oak, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

(2) Zone 2. Includes the following counties: Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington.

(3) Zone 3. Includes the following counties: Bastrop, Caldwell, Comal, Guadalupe, Hays, Lee, Travis, and Williamson.

(4) Zone 4. Includes the following counties: Anderson, Angelina, Bell, Bosque, Brazos, Burleson, Burnet, Coryell, Cherokee, Ellis, Falls, Freestone, Grimes, Hamilton, Hardin, Henderson, Hill, Hood, Houston, Jasper, Johnson, Lampasas, Leon, Limestone, McLennan, Madison, Milam, Montgomery, Nacogdoches, Navarro, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Trinity, Tyler, and Walker.

(5) Zone 5. Includes the following counties: Pecos, Ward, and Reeves.

(6) Zone 6. Includes the following whole and partial counties.

(A) Includes the following whole county: El Paso County.

(B) Hudspeth County. That portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south and a line from old Fort Whitman, north along Highway 34 to Interstate 10 on the east.

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 September 9, 1994.

TRD-9447860

Dolores Alvarado Hibbs  
Administrative Law Judge  
Texas Department of  
Agriculture

Effective date: September 30, 1994

Proposal publication date: August 5, 1994

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

## TITLE 16. ECONOMIC REGULATION

### Part III. Texas Alcoholic Beverage Commission

#### Chapter 45. Marketing Practices

#### Subchapter C. Standards of Identity for Malt Beverages

##### • 16 TAC §45.73

The Texas Alcoholic Beverage Commission adopts an amendment to §45.73 concerning the prohibition of private or exclusive labels of malt beverages for retail accounts, without changes to the proposed text as published in the July 29, 1994, issue of the *Texas Register* (19 TexReg 5817).

This amendment was adopted to clarify statutory provisions of the Alcoholic Beverage Code which prohibit the use of private labels of malt beverages. This amendment clarifies that in addition to any malt beverages which are prohibited because they use the name, logo, or tradename of a retail establishment or a chain of establishments, a fact situation whereby it is determined that any other brand name of malt beverage that is sold to one establishment or chain of establishments so as to be a private label, in fact, will have the label approval denied for the product and it will become an illegal product.

This rule will prohibit direct dealings between manufacturers of malt beverages and retail accounts, by prohibiting the supply of products exclusively for one account or chain of accounts that is prohibited under the three-tier regulatory system of regulation in effect in Texas.

FOR: One comment was received by a beer distributor in favor of the amendment to the rule as published.

AGAINST: No comments were received against the amendment.

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

This amendment to the rule affects the Alcoholic Beverage Code, §101.41 and §101.67.

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 September 6, 1994.

TRD-9447693

Doyme Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date: September 28, 1994

Proposal publication date: July 29, 1994

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

### Subchapter D. Advertising and Promotion-All Beverages

##### • 16 TAC §45.101

The Texas Alcoholic Beverage Commission adopts an amendment to §45.101 concerning the prohibition of offering rebates, coupons, and premium stamps with changes to the proposed text as published in the July 29, 1994, issue of the *Texas Register* (19 TexReg 5818).

This amendment was adopted to clarify statutory provisions of the Alcoholic Beverage Code, §102.07(d) and §108.06 which prohibit the use of coupons by the alcoholic beverage industry. The rule as amended prohibits the alcoholic beverage industry from the use of any coupons for any products, whether for rebates, cents-off or for free, with or without the purchase of an alcoholic beverage.

This rule will prohibit anyone in the alcoholic beverage industry from using coupons to induce the public to purchase any alcoholic beverage either through cheaper prices or through temptation by offering discounts on other products. A clarification is included to authorize retailers to offer their own discounts on food or other packages, such as hotel packages which may include a complimentary drink as an incidental part of a weekend special, meal packages, and airline frequent flier coupons since the price of a beverage is already included in the package. Also, a clarification was added to insure that companies who may also be in other businesses are not prohibited from independently offering promotions to those businesses so long as there is no promotional tie to their alcoholic beverage business.

FOR: One comment was received by the Texas Restaurant Association regarding the rules, but asked for clarification for meal packages. This was added in the rule.

AGAINST: Coors Brewing Company commented against the rule unless clarification was added for other jointly owned businesses. Language was added to address this concern.

This amendment to the rule was adopted under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.



This amendment to the rule affects Alcoholic Beverage Code, §§102.07(d) and 108.08.

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

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

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

(c) No holder of a manufacturing, wholesale, or retail level license or permit may offer or give away with or without the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product. A retailer, manufacturer, or wholesaler may, however, offer a discount, rebate, or cents-off coupon on any non-alcohol product that he sells if it does not require the purchase of any alcoholic beverage.

(d) None of the above prohibits any retailer from offering a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a wholesaler or manufacturer.

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 September 6, 1994.

TRD-9447694 Doyme Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date: September 28, 1994

Proposal publication date: July 29, 1994

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

◆ ◆ ◆  
• 16 TAC §45.106

The Texas Alcoholic Beverage Commission adopts new §45.106 concerning the conduct of sweepstakes to promote alcoholic beverages, with changes to the proposed text as published in the July 29, 1994, issue of the *Texas Register* (19 TexReg 5819).

This rule was adopted to implement Alcoholic Beverage Code, §102.07(e) and §108.061 which authorize the alcoholic beverage industry to conduct sweepstakes to promote their products.

The rule as adopted will allow companies to promote alcoholic beverage products through random drawing sweepstakes but prohibits the use of game pieces, instant win devices, cards, or other games of chance other than a random drawing.

FOR: Miller Brewing Company submitted a letter in favor of the rule but requested changes to allow entries to be packaged inside packages of alcoholic beverages. Coors Brewing Company testified that they also desired to package entries with a package of alcoholic beverages such as printing an entry blank on the inside of a carton. The commission made changes to authorize entries to be included, as long as identical entries are also provided at the point of purchase so customers do not have to make a purchase to enter.

AGAINST: Gambirinus Importing Company (owner of Shiner Brewing) submitted a letter against contests because they cannot utilize them since they do not sell their product in 30 states. This was discussed and determined to be a legislative condition, not one limited by this rule which could be changed by the commission.

This amendment to the rule was adopted under Alcoholic Beverage Code, §5. 31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

This amendment to the rule affects Alcoholic Beverage Code, §102.07(e) and §108.061.

**§45.106. Sweepstakes and Games of Chance.**

(a) As authorized in the Alcoholic Beverage Code, §102.07 and §108.061, the holder of the following licenses and permits may offer a prize to a consumer if the offer is part of a nationally conducted promotional sweepstakes activity legally offered and simultaneously conducted during the same time period in 30 or more states:

- (1) manufacturer's license;
- (2) non-resident manufacturer's license;
- (3) brewer's permit;
- (4) non-resident brewer's permit;
- (5) distiller's and rectifier's permit;
- (6) winery permit;
- (7) wine bottler's permit; or
- (8) non-resident seller's permit.

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

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

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

(e) No game piece, or other form of instant win device may be packaged with, within, or printed on any packages of alcoholic beverages. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverage.

(f) No sweepstakes entry may be packaged with, within, or printed on any packages of alcoholic beverages unless there is provided at the point of sale identical entries available to the consumer. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.

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

This agency hereby certifies that the 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 September 6, 1994.

TRD-9447695 Doyme Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date: September 28, 1994

Proposal publication date: July 29, 1994

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

◆ ◆ ◆  
• 16 TAC §45.110

The Texas Alcoholic Beverage Commission adopts a new §45.110 concerning the prohibition of activities which lead to the exclusion of competitors' brands of alcoholic beverages in retail accounts, without changes to the proposed text as published in the July 29, 1994, issue of the *Texas Register* (19 TexReg 5820).

The rule was adopted to give examples of the types of activities that are prohibited under the Alcoholic Beverage Code, §109.08, that result in the total or partial exclusion of any competitors' products in a marketplace.

The new section will function by clearly defining those practices which tend to exclude competitors from the marketplace and are therefore forbidden.

No comments were received from anyone regarding the adoption of this rule.

The new section is adopted under the Alcoholic Beverage Code, §5.31, which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code and §109.08 which prohibits activities that tend to exclude competitors from the marketplace.

Statutes affected by this new rule are Alcoholic Beverage Code, §109.08.

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 September 6, 1994.

TRD-9447696      Doyme Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date: September 28, 1994

Proposal publication date: July 29, 1994

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

## ◆      ◆      ◆ Part IV. Texas Department of Licensing and Regulation

### Chapter 67. Auctioneers

#### • 16 TAC §§67.60, 67.70, 67.80-67.83, 67.100

The Texas Department of Licensing and Regulation adopts new §67.60 and amendments to §§67.70, 67.80, 67.81, 67.82, 67.83, and 67.100 concerning Auctioneers. Section 67.100 is adopted with changes to the proposed text as published in the July 19, 1994, issue of the *Texas Register* (19 TexReg 5573). Sections 67.60, 67.70, 67.80, 67.81, and 67.83 are adopted without changes and will not be republished.

The new section lists the responsibilities of the department to initiate administrative action against an auctioneer to suspend, revoke, or deny a license based on action in another state. Section 67.70 requires auctioneers to notify the department within 30 days after conviction of a felony or misdemeanor or after suspension, revocation, or denial by another state. The statement that fees are not refundable has been deleted from §§67.80, 67.81, 67.82, and 67.83. Section 67.100 clarifies the disclosure to a consumer required in advertising.

The new §67.60 and the amendments to §67.70 and §67.100 will function by making consumer protection more effective. The

amendments to §§67.80, 67.81, 67.82, and 67.83 will function by increasing program integrity.

Comments were received from several auctioneers against §67.100. The comments concerned the limits on the number of exceptions allowable in a sale advertised as without reserve, the ethics of advertising a sale without reserve even if exceptions are disclosed in the advertisement, and viability of readvertising a sale with changed terms. The department has revised the section in a manner that satisfies both the auctioneers who commented and the department.

The new and amended rules are adopted under Texas Civil Statutes, Article 8700, which authorizes the department to license and regulate auctioneers.

#### §67.100. Technical Requirements-General.

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

(d) If an auctioneer advertises an auction as "absolute" or "without reserve," no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve;" however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

(e) All auctioneers and auction companies shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The licensees may use a sticker or rubber stamp to convey the required information. The notification shall be included on any seller or consignor contract and on at least one of the following:

- (1) a sign prominently displayed at the place of the auction;
- (2) any bill of sale or receipt to be given to the buyer; or
- (3) on bidder cards.

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 September 9, 1994.

TRD-9447858      Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: September 30, 1994

Proposal publication date: July 19, 1994

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

## TITLE 19. EDUCATION Part II. Texas Education Agency

### Chapter 75. Curriculum

#### Subchapter D. Essential Elements-Grades 9-12

#### Essential Elements for English Language Arts; Other Languages; Mathematics; Science; Health; Physical Education; Fine Arts; Social Studies; Texas and United States History; Economics with Emphasis on the Free Enterprise System and its Benefits; and Business Education

#### • 19 TAC §75.62

The Texas Education Agency (TEA) adopts an amendment to §75.62, concerning the essential elements for languages other than English, without changes to the proposed text as published in the June 21, 1994, issue of the *Texas Register* (19 TexReg 4806).

With the implementation of the recommended high school program and the increase in the amount of foreign language recommended for graduation to three years, essential elements are needed for a third year of American Sign Language (ASL). The amendment adds these essential elements to accompany the current essential elements for ASL I and II. The amendment will allow students who are deaf and other students who may want to become interpreters for the deaf to take ASL as a foreign language and graduate under the recommended high school program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.101, which authorizes the State Board of Education to designate by rule the essential elements of each subject comprising a well-balanced curriculum.

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 September 12, 1994.

TRD-9447915      Criss Clout  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Effective date: October 3, 1994

Proposal publication date: June 21, 1994

For further information, please call: (512) 463-9701

## Chapter 89. Adaptations for Special Populations

### Subchapter J. Migrant Education Program

#### • 19 TAC §89.331

The Texas Education Agency (TEA) adopts an amendment to §89.331, concerning the State Parent Advisory Council for Migrant Education, with changes to the proposed text as published in the June 21, 1994, issue of the *Texas Register* (19 TexReg 4810).

The rule establishes the council, describes its responsibilities, and specifies procedures for appointing members. Currently, the rule states that council members are appointed by the State Board of Education (SBOE) for three-year terms based on the recommendation of the commissioner of education. To comply with House Bill 2585, the amendment changes procedures for appointing members so members will be appointed by the commissioner of education subject to confirmation by SBOE for four-year terms. The amendment also includes minor editorial changes. The change to subsection (f) deletes an obsolete reference.

No comments have been received regarding adoption of the amendment.

The amendment is adopted under Public Law 100-297, 34 Code of Federal Regulations §201.35(b), which requires a state agency implementing programs extending for the duration of the school year to establish a parent advisory council; and the Texas Education Code, §11.25(d) and §11.957(a) and (b), which authorizes the commissioner of education to appoint advisory committees subject to confirmation by SBOE and to establish the durations of advisory committees.

#### §89.331. State Parent Advisory Council for Migrant Education.

(a) A parent advisory council for migrant education shall be responsible for advising the Texas Education Agency (TEA) in planning, implementing, and evaluating the state program designed to meet the educational needs of migrant children.

(b) The State Parent Advisory Council for Migrant Education shall consist of 15 members. The majority of members shall be parents of identified migrant students served in a migrant project. All council members shall be knowledgeable of the needs of migratory children. Because of the high concentration of migrant education programs in a few areas of the state, the council may have more than one representative from the same State Board of Education (SBOE) district.

(c) Council members shall be appointed by the commissioner of education for a term of four years upon confirmation by the SBOE. Members shall be eligible for reappointment once.

(d) The commissioner of education shall solicit recommendations from local district-wide advisory councils for members to be nominated to the State Parent Advisory Council for Migrant Education.

(e) The council shall meet at least three times annually. In scheduling meetings, the chair shall consider the mobility patterns of migrants.

(f) A council member who does not attend two of the three regularly scheduled meetings in one calendar year shall automatically vacate membership on the council.

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 September 12, 1994.

TRD-9447916

Cris Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Effective date: October 3, 1994

Proposal publication date: June 21, 1994

For further information, please call: (512) 463-9701

## Chapter 109. Budgeting, Accounting, and Auditing

### Subchapter D. Adoptions by Reference

#### • 19 TAC §109.61

The Texas Education Agency (TEA) adopts an amendment to §109.61, concerning the adoption by reference of Change 29 to the financial accounting manual (Bulletin 679) for school districts and regional education service centers, without changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5688). The amendment is necessary to comply with state and federal laws and current accounting requirements.

Change 29 updates the standard accounting system relating to accrual accounting rules for Foundation School Program revenues and updates Procedure CDE-402 for fund codes previously shown in Appendix E of the manual (issued February 1994). Change 29 also provides the sample audit report format to be followed for the 1993-1994 fiscal year independent audit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §11.29, which directs the commissioner of education to adopt annually a budget for operating the Foundation School Program, the Central Education Agency, and other programs for which the State Board of Education has responsibility.

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 September 12, 1994.

TRD-9447917

Cris Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Effective date: October 3, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512) 463-9701

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 85. Admission and Placement

##### Placement Planning

#### • 37 TAC §85.37

The Texas Youth Commission (TYC) adopts an amendment to §85.37, concerning discharge, without changes to the proposed text as published in the March 18, 1994 issue of the *Texas Register* (19 TexReg 1942).

The justification for amending the section is to provide a more efficient system for length of stay determination and discharge of youth committed to TYC.

The amendment will eliminate language which required discharge of TYC youth by age 18 who were committed for an offense which occurred before September 1, 1985. The maximum age of jurisdiction was increased from 18 years to 21 years by the legislature effective on that date. TYC, by policy, will begin discharging youth classified as firearms offenders by age 21 rather than the current age 18.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge youth from control when it is satisfied that discharge will best serve the youth's welfare and the protection of the public. The proposed rule implements the Human Resource Code, §61.034.

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 September 8, 1994.

TRD-9447803

Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: November 1, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 483-5244

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter OO. Electronic Benefit Transfer (EBT) Retailer Requirements

###### • 40 TAC §§3.5001-3.5010

The Texas Department of Human Services (DHS) adopts new §§3.5001-3.5010, concerning Electronic Benefit Transfer (EBT) retailer requirements in the Aid to Families with Dependent Children (AFDC) and Food Stamp Programs, in its Income Assistance Services rule chapter. New §§3.5003, 3.5006, and 3.5010 are adopted with changes to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5342). New §§3.5001, 3.5002, 3.5004, 3.5005, and 3.5007-3.5009 are adopted without changes to the proposed text and will not be republished.

The justification for the new sections is to establish rules regarding the relationship between retailers and the primary EBT contractor and between retailers and DHS.

The new sections function by delineating the qualifications and general conditions for retailer participation, requirements for retailers operating point-of-sale (POS) terminals supplied by the EBT contractor, and provisions for POS terminal deployment. The rules will also govern off-line (manual) transactions, settlements and credits, and third-party processor requirements. In addition, the rules will outline appeal rights regarding disputes between a retailer, third-party processor, and the primary EBT contractor.

No comments were received regarding adoption of the proposed new sections; however, DHS is adopting the sections with the following clarifications: §3.5003(g) regarding a retailer not being able to charge a fee to a client to access the EBT system is withdrawn. Subsequent to the publication of this proposed rule, the United States Department of Health and Human Services, Administration for Children and Families, notified DHS that clients can be charged a nominal transaction fee to access their AFDC cash accounts under certain conditions. These conditions will be included as provisions in the Retailer Agreement between the primary EBT contractor and each retailer authorized to provide cash-back to AFDC clients. Section 3.5003(h)-(i) are redesignated as §3.5003(g)-(j). Section 3.5006(g) is also clarified to identify

the specific regulatory citation. Section 3.5010(2) is adopted with a change in the reference in the third sentence from "a hearing" to "an informal review" for consistency.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The new sections implement the Human Resources Code, §§22.001 and §33.002.

##### §3.5003. General Conditions for Retailer and Third-Party Processor Participation.

(a) Compliance with program regulations. Retailer participation is governed by federal regulations set forth in 7 Code of Federal Regulations (CFR) §274.12(g). A retailer must also comply with all program regulations governing retailer participation in the Food Stamp program as codified in 7 CFR §274 and §278 and this title of the Texas Administrative Code.

(b) Written agreement. A retailer or third-party processor and the primary Electronic Benefit Transfer (EBT) contractor must execute a written agreement adopted in compliance with 7 CFR §274.12(g)(6).

(c) Voluntary participation.

(1) Participation in the EBT program by a retailer is voluntary. A Food and Nutrition Service-certified retailer must notify the primary EBT contractor in writing that it wishes to decline participation in the EBT program.

(2) If a retailer is suspended or terminated as a redeemer of Food Stamp program benefits, for any reason, the retailer must immediately notify the primary EBT contractor and cease utilization of the EBT system to redeem Food Stamp benefits.

(d) Training. Retail store employees must be trained in EBT system operation prior to implementation.

(1) The primary EBT contractor must provide a retailer with training in the processing of EBT program transactions, including the operation of the equipment (if supplied by the primary EBT contractor). The primary EBT contractor must notify the retailer in advance of the retailer's scheduled time for in-person training.

(2) In lieu of in-person training, retailers may receive training by mail. These retailers must certify that they have undertaken the course of written instruction with their staff.

(e) Systems testing. After training has been completed, the primary EBT contractor visits the site to determine whether a retailer's equipment, whether supplied by the primary EBT contractor, a third-party processor, or the retailer has passed system

testing. When system testing has been approved, access to the EBT system is granted.

(f) Nondiscrimination. A retailer must not, on the grounds of race, color, national origin, age, sex, disability, religious belief, or political belief, refuse to process a client's EBT program transaction, or otherwise subject any client, employee, or applicant to actions which are discriminatory in nature.

(g) Sufficient cash. A retailer redeeming Aid to Families with Dependent Children (AFDC) program benefits by providing cash-back on a no-purchase-required basis must maintain a sufficient amount of cash on hand to accommodate cash-back transaction volumes.

(h) Certifications. A retailer must complete and agree to comply with the terms of:

(1) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts; and

(2) Texas Corporate Franchise Tax Certification (if applicable).

(i) Compliance Audits. A retailer and third-party processor must conduct audits of itself and its processing agents at least annually to ensure compliance with the terms of the Retailer or Third-Party Processor Agreement and the processor interface specifications. These audits may be conducted by either the retailer's or third-party processor's internal auditing staff or by their external auditors, at their option. The resulting letter of compliance must be filed annually with the primary EBT contractor.

##### §3.5006. Off-Line (Manual) Transactions.

(a) Maximum authorization. The maximum authorized off-line (manual) transaction and benefit account encumbrance is \$50 per purchase. The primary Electronic Benefit Transfer (EBT) contractor, and not the Texas Department of Human Services (DHS), is liable to a retailer in the amount of the difference between the \$50 maximum and the actual authorized transaction amount when the authorized amount is higher.

(b) Manual vouchers with delayed telephone verification. The following procedures apply when a retailer uses manual vouchers with delayed telephone verification.

(1) A retailer who does not have immediate access to telephones at the time of purchase must use a manual voucher system with delayed telephone verification when selling food to eligible Food Stamp customers. These retailers include stationary food stores which make home deliveries to

Food Stamp households, house-to-house trade routes which operate on standing orders from customers (such as milk and bread delivery routes), food-buying cooperatives, and other food retailers authorized under 7 Code of Federal Regulations §278.1.

(2) The retailer must telephone the primary EBT contractor before redeeming the manual voucher in order to log the transaction and obtain an authorization number.

(c) Manual vouchers with preliminary telephone verification. The following procedures apply when a retailer uses manual vouchers with preliminary telephone verification:

(1) A retailer must process off-line (manual) Food Stamp program redemptions accounts when he is able to contact the primary EBT contractor by telephone. A retailer may, at his option, process off-line (manual) Aid to Families with Dependent Children (AFDC) program cash-back redemptions when he is able to contact the primary EBT contractor by telephone.

(2) An authorization number for the amount of purchase must be received by the retailer from the primary EBT contractor via telephone before completing the sale.

(d) Manual voucher submission and processing. This subsection applies to manual vouchers with delayed telephone verification and preliminary telephone verification.

(1) The following information must be entered properly and legibly on the manual voucher form:

(A) full names of the client and the sales clerk;

(B) client's primary account number (PAN) (this is the embossed number on the client's EBT debit card);

(C) total purchase amount;

(D) date of purchase; and

(E) telephone authorization number.

(2) The manual voucher must be submitted to the primary EBT contractor for processing within seven calendar days following the date of purchase.

(3) The primary EBT contractor must process submitted manual vouchers within two banking business days of receipt.

(4) A manual voucher found to be incomplete or otherwise improperly prepared and submitted must be returned to the retailer for correction and/or completion within four banking business days of the date the primary EBT contractor received it.

(e) Electronic voucher transaction (store-and-forward). When the link to the EBT System is down, a retailer may use off-line processing of EBT transactions if the retailer's system, or that of its designated third-party processor, has the capability to electronically store-and-forward an EBT program transaction. Store-and-forward transactions cannot be completed if the point-of-sale (POS) terminal system malfunctions. The following procedures apply to electronic voucher transactions:

(1) A retailer must complete a manual voucher as specified in subsection (d)(1) of this section.

(2) A retailer must obtain voice authorization from the primary EBT contractor prior to completing the manual voucher transaction. The authorization code must be entered on the manual voucher and in the advice.

(3) The period within which a retailer or third-party processor may submit the electronic voucher (advice) transaction to the primary EBT contractor shall not exceed seven calendar days from the date of the original EBT program transaction.

(f) Liability for off-line transactions. Liability is assessed as follows.

(1) DHS may be held liable only for those off-line (manual) transactions performed in accordance with the provisions set forth in the federal EBT regulations under 7 Code of Federal Regulations §274.12(g)(6)(iv) and the processing standards specified under 7 Code of Federal Regulations §274.12(h).

(2) The primary EBT contractor, and not DHS, is liable to the retailer for off-line (manual) transactions that are conducted in accordance with terms and conditions of the Retailer Agreement but for which an insufficient amount of benefits remain in the client's account at the time the manual voucher is presented for processing and payment.

(3) A retailer is not required to process off-line (manual) transactions except when he is able to contact the primary EBT contractor by telephone for authorization. If authorization cannot be obtained before or at the time of purchase, a retailer assumes the risk of insufficient benefits being available in the client's account.

(4) A retailer is liable for EBT program transactions completed using voice authorization and electronic voucher store-and-forward capabilities of a retailer's or

third-party processor's system which are rejected by the primary EBT contractor upon electronic submission because the retailer and/or third-party processor failed to follow the procedures in subsection (e) of this section.

(g) Re-presentation of manual voucher. Neither the primary EBT contractor nor the retailer may "re-present", as described in 7 Code of Federal Regulations §274.12(1), a manual voucher for payment if insufficient funds exist when the voucher is submitted for processing and payment.

§3.5010. *Administrative Remedies Regarding Disputes.* The following procedures concern contract-related complaints between a retailer or third-party processor and the primary Electronic Benefit Transfer (EBT) contractor.

(1) All complaints must be referred to the primary EBT contractor for investigation and resolution.

(2) A retailer or third-party processor has the right to request an informal review of any decision of the primary EBT contractor. A written request for an informal review must be filed with the Texas Department of Human Services (DHS) so that DHS receives it within 15 days after the retailer or third-party processor receives the official notice of action from the primary EBT contractor. The request for an informal review must be addressed to the Texas Department of Human Services; Electronic Benefit Transfer Contract Management Unit, Mail Code E-304; P.O. Box 149030; Austin, Texas 78714-9030.

(3) Any retailer, third-party processor, or the primary EBT contractor who is dissatisfied with the results of an informal review may obtain an administrative hearing by written request submitted to the Texas Department of Human Services, Hearings Department (Mail Code W-613), P.O. Box 149030, Austin, Texas, 78714-9030.

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 September 8, 1994.

TRD-9447810

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: October 1, 1994

Proposal publication date: July 8, 1994

For further information, please call: (512) 450-3765

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## Chapter 10. Self-support Services

### Employment Services

#### • 40 TAC §§10.2312, 10.2313, 10.2314

The Texas Department of Human Services (DHS) adopts new §§10.2312, 10.2313, and 10.2314, concerning employment services in its Self-support Services rule chapter, without changes to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5346).

The justification for the new sections is to establish rules regarding employment services contracting to include administrative requirements, audits, and basis of payment.

The new sections will function by ensuring that employment services contracting will be conducted based on federal and state regulations and policies.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new sections implement the Human Resources Code §§22.001-22.024.

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 September 7, 1994.

TRD-9447710 Nancy Murphy  
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and Policy Services  
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For further information, please call: (512) 450-3765

## Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

### Subchapter D. Admission, Transfer, and Discharge Rights

#### • 40 TAC §19.302

The Texas Department of Human Services (DHS) adopts an amendment to §19.302, concerning transfer and discharge, in its Long Term Care Nursing Facility Requirements rule chapter, without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3141).

The justification for the amendment is to avoid inappropriate discharges of individuals from nursing facilities. Under normal discharge procedures, individuals being discharged have the right to appeal and remain in the facility during the appeal period. However, if a nursing facility discharges an individual as a danger to the health and/or safety of other residents, the individual loses his right to appeal before being discharged and is discharged as soon as practicable without being allowed to remain in the facility during the appeal period.

The amendment will function by providing additional protection of the right of nursing facility residents to remain in the facility by requiring the facility to notify DHS when it contemplates discharging a resident as a danger to the health and/or safety of other residents.

During the public comment period, DHS received written comments from the Texas Health Care Association. Comments were also received at a public hearing held on July 15, 1994, from a nursing facility owner and administrator, a representative of a nursing facility provider organization, two employees of nursing facility corporations, who spoke against adoption of the amendment; and the Texas State Long Term Care Ombudsman, who spoke in favor of the amendment. A summary of the comments and DHS's response follows:

Comments: Inappropriate discharges are already addressed by the federal regulations; this rule would impose an unnecessary bureaucratic burden.

Nursing facilities are required to post the toll-free numbers of the complaint hotline where residents can complain about a discharge.

The rule would add costs to nursing facility care, including staff time away from residents while they collected and copied documentation, telephoned the department, and mailed or faxed information, and copying, faxing, or postage costs.

The economic reality is that such discharges rarely occur because of the high vacancy rate in Texas nursing facilities.

The health and safety hazard to other residents outweighs any benefit to be gained from the rule.

Response: Based on reports DHS receives at the regional and state level, the rule provides needed oversight for abuse involving removal of residents for reasons other than emergencies. Although this involves a minority of nursing facilities, DHS believes the rule will cause all nursing facilities to review and document their attempts to care for difficult residents before discharge decisions are made.

With regard to additional costs to facilities resulting from the rule, DHS believes requiring a single telephone call and providing a copy of a physician's discharge order is not an undue hardship in light of the trauma an inappropriate discharge causes a resident. The actual cost would be minimal. The number of discharges which fall into this category is small, but for the individual concerned, the effect is great. The rule does not apply to

discharges to hospitals, where the majority of true emergencies are sent. DHS is not attempting to interfere with the medical treatment of emergencies.

DHS favors adoption of the rule as proposed however, because of the opposition, DHS will monitor its effect. If the rule is ineffective, DHS will take action to correct or repeal it.

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 §2.001-32.042.

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 authority.

Issued in Austin, Texas, on September 7, 1994.

TRD-9447709 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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Proposal publication date: April 26, 1994

For further information, please call: (512) 450-3765

## Subchapter G. Resident Assessment

#### • 40 TAC §19.604

The Texas Department of Human Services (DHS) adopts an amendment to §19.604, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter, with changes to the proposed text as published in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4737).

The justification for the amendment is to comply with a directive of the Health Care Financing Administration (HCFA) that DHS consider individuals with a medical necessity determination eligible for nursing facility services. DHS is streamlining the PASARR process by placing most of the assessment and determination functions under DHS. In addition, the amendment establishes a single point of entry and comprehensive assessment system for individuals who seek nursing facility admission. To achieve this, and to ensure that individuals and their legal guardians are in-

formed of alternate placement options, DHS is conducting a Long-Term Care Assessment Pilot Project. Under the direction of the Health and Human Services Commission (HHSC), DHS, with assistance from the Texas Department on Aging (TDOA), and the Texas Department of Mental Health and Mental Retardation (TXMHMR), has developed a preadmission screening process that is being pilot tested in Lubbock, Tarrant, Wise, Smith, Gregg, Bell, Cameron, Hidalgo, Lamar, Bowie, Potter, Randall, and Harrison counties. DHS initially proposed subsection (b)(5), concerning the Long-Term Care Assessment Pilot Project, in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3142).

The amendment will function by making nursing facility services available to more needy individuals, by implementing a more streamlined process for making PASARR determinations, and by providing persons seeking nursing facility admission a comprehensive assessment by a registered nurse and notification of available services.

During the public comment period, DHS received comments from the Texas Health Care Association.

A summary of the comments received regarding the PASARR amendments and DHS's responses follow:

Comment: The commenter stated that the state should conduct Level II assessments after the consumer is admitted into the nursing facility.

Response: Federal regulation §483.106(a) states that individuals with mental illness, mental retardation, or a related condition must have a preadmission screening.

Comment: The commenter suggested that the last sentence in subsection (d)(1) (C) be deleted because the statement is too broad.

Response: DHS believes that all individuals, regardless of age, infirmity, and/or disability have a right to specialized services. If individuals choose not to participate in specialized services, they have the right to decline these services.

Comment: The commenter suggested the words "and alternate placement" in subsection (e)(1) be deleted.

Response: DHS believes that all individuals have a right to choose to move to another setting; therefore, DHS is adopting the subsection without the recommended change.

Comment: The commenter suggested deleting from subsection (f)(7) the phrase "or to be inappropriately placed in a nursing facility."

Response: DHS agrees and has deleted the phrase as suggested.

Comment: The commenter suggested deleting from subsection (g) the phrase "for whom nursing facility placement has been found to be inappropriate" and rephrasing the subsection.

Response: DHS is adopting the subsection with changes to include the statement "or who admit or retain individuals who do not need nursing facility services and who require specialized services."

A summary of the comments received regarding subsection (b)(5), Long-Term Care Assessment Pilot Project, and DHS's responses follow:

Comment: The commenter stated that nursing facilities are not equipped to make advance determinations about financial eligibility for the Medicaid program and recommended rule language be changed to reflect "Medicaid recipients" only.

Response: Most individuals seeking first-time nursing facility admission are not Medicaid recipients. Many are borderline private pay and/or are on Medicare and are in the process of applying for Medicaid eligibility. Nevertheless, many nursing facilities regularly admit those individuals into the facility, even though their Medicaid eligibility is pending. Most nursing facilities, through experience or via self-created screening processes of their own, are able to make an assessment of the individual's probable Medicaid eligibility.

Comment: The commenter stated that long-term care assessment is time consuming and expensive, and DHS should focus its resources on funding, identifying, and developing community resources instead.

Response: DHS agrees that the development of community resources is important and to that end is also implementing the Nursing Facility Waiver in the same pilot sites. Long-term care assessment is important because it provides consumers with information regarding the nursing facility waiver and other community options, so that they make an informed choice regarding their long-term care placement. In providing long-term care options, DHS does not pressure or coerce consumers into making a specific choice. All individuals, as mandated by Medicaid, have freedom of choice regarding both placement option and provider.

DHS is using current resources to staff long-term care assessments. Regional staff are taking intakes while PASARR nurses, in addition to Community Care nurses, are conducting the assessments. No additional staff have been hired specifically for this project. More importantly, DHS has streamlined previous roles and responsibilities in order to develop a more efficient system with regard to the assessment. Also, as additional counties are brought into the pilot, process changes are being made to accommodate local resources and needs.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§32.001-32.042.

§19.604. Preadmission Screening and Annual Resident Review (PASARR).

(a) Definitions. The following words and terms, when used in this section,

shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acute inpatient care—An acute institutional setting that provides medical care, such as a hospital, but does not include inpatient psychiatric care.

(2)-(13) (No change.)

(14) Mental illness—A current primary or secondary diagnosis of a major mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, third edition, revised in 1987 (DSM-III-R)). This mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate to the individual's developmental stage. The individual typically has at least one of the following characteristics on a continuing or intermittent basis: serious difficulty in the areas of interpersonal functioning; and/or concentration, persistence, and/or pace; and/or adaption. Within the past two years, the disorder has required psychiatric treatment more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment or which resulted in intervention by housing or law enforcement officials.

(15) Mental retardation—A diagnosis of mental retardation (mild, moderate, severe, and profound) and significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(16)-(20) (No change.)

(21) QMHP—Qualified Mental Health Professional. An individual who has at least one year of experience working with persons with mental illness.

(22) QMRP—Qualified Mental Retardation Professional. An individual who has at least one year experience working with persons with mental retardation and/or a related condition.

(23) Parkinson's Disease—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the Classification of Diseases Ninth Revision Clinical Modification (ICD-9-CM).

(24) PASARR—Preadmission screening and annual resident review.

(25) PASARR determination—A decision made by Texas Department of Human Services (DHS) PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility as contrasted with other settings and if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment.

(26) Readmission—An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for acute care hospitalization or for therapeutic leave.

(27) Related condition—A severe, chronic disability as defined in 42 Code of Federal Regulations §435.1009, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons;

(B) it is manifested before the person reaches age 22;

(C) it is likely to continue indefinitely;

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(28) Specialized services for individuals with mental illness—The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental

illness, which necessitates supervision by trained mental health personnel.

(29) Specialized services for individuals with mental retardation or a related condition—A continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services do not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous specialized services program.

(30) Substantial risk of serious harm to self and/or others—Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(31) Ventilator dependent—Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) Preadmission Screenings.

(1) Purpose. All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must have a Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form (Purpose Code I or P) and be screened prior to admission to a nursing facility to determine if:

(A) (No change.)

(B) the individual needs nursing facility services, as defined by medical necessity; and

(C) (No change.)

(2) Readmissions. The following individuals are not subject to preadmission screenings:

(A) readmissions following hospitalizations; and

(B) individuals who:

(i) are admitted to the nursing facility directly from a hospital after

receiving acute inpatient care at the hospital;

(ii) require nursing facility services for the condition for which the individual received care in the hospital; and

(iii) have been certified by their attending physician prior to admission to the nursing facility that they are likely to require less than 30 days of nursing facility services.

(C) residents who:

(i) transfer from their current nursing facility residence to a new nursing facility residence;

(ii) have not had any interruption in continuous nursing facility residence other than for acute care hospitalization;

(iii) have not had any change in their mental condition; and

(iv) have met the PASARR requirements as:

(I) stipulated in this section in their current nursing facility residence; and

(II) documented in their DHS CARE form and PASARR determination notification letter.

(3) Level I Identification Screening. Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34.

(A) The attending physician makes a positive response to CARE form Item 34 for the presence of MI if the individual meets two of the three following criteria:

(i) has a diagnosis of MI (excluding a primary diagnosis of Alzheimer's disease or dementia);

(ii) has a level of impairment that results in functional limitations in major life activities within the past three to six months in the areas of interpersonal functioning, concentration, persistence, pace and/or adaptation to change; or

(iii) within the last two years, due to the mental disorder, has had psychiatric treatment more intensive than outpatient care more than once and/or experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.



(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past;

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC; or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC.

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility.

(D) An individual, who has medical necessity, may be immediately admitted to or continue residing in a nursing facility if:

(i) Item 34 of DHS's CARE form is marked no;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, functioning at the brain stem level, ventilator dependent, terminally ill, or has a serious medical condition such as chronic obstructive pulmonary disease, anencephaly, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in an impairment so severe that the individual could not be expected to benefit from specialized services;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC;

(v) an individual has Alzheimer's disease and no other diagnosis of MR and/or RC; or

(vi) an individual is determined by DHS during the Level II Assessment process not to have MI/MR/RC.

(4) Level II Assessment. DHS staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. The physician contact sheet will be used by the assessors to allow the resident's treating physician to have input into the assessment.

(A) The assessment process consists of a:

(i) PASARR nursing facility assessment;

(ii) PASARR mental illness assessment (as appropriate);

(iii) PASARR mental retardation and related conditions assessment (as appropriate).

(B) Depending on the mental and/or physical condition, DHS sends either a:

(i) MI assessment team consisting of:

(I) a registered nurse who is a qualified mental health professional; and

(II) other qualified mental health professionals.

(ii) MR Assessment team consisting of:

(I) a registered nurse who is a qualified mental retardation professional; and

(II) a psychologist who is also a qualified mental retardation professional with at least a Master's degree.

(C) DHS will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

(D) If Item 34 indicates "No" on the CARE form, or Item 34 is blank, but Items 16-20 indicate a diagnosis of MI, MR, or RC, it is the responsibility of the nursing facility to contact the PASARR unit of DHS and request screening by an assessment team.

(5) Long-Term Care Assessment Pilot Project. Beginning March 1994, DHS is conducting the Long-Term Care Assessment Pilot Project in counties approved by the Texas Board of Human Services. All Medicaid eligible/Medicaid applicants in pilot-site locations who seek admission to a nursing facility must contact the local DHS office to arrange for a long-term care assessment. This assessment meets PASARR requirements stated in this section and meets medical necessity requirements stated in §19.1601 of this title (relating to Medical Necessity (MN) and Utilization Review (UR)). Nursing facilities located in the pilot-project locations may not admit new residents until a final PASARR determination and/or medical necessity has been made by the long-term care assessor.

(c) Annual Resident Reviews.

(1) All current nursing facility residents with an indication of MI/MR/RC must be identified by DHS through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist DHS in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available.

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

(5) If an individual who enters a nursing facility as an exempted hospital discharge and is later found to need more than 30 days of nursing facility care, the NF must request DHS to conduct an annual resident review within 40 calendar days of admission.

(d) Determination Process.

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional in order to determine whether:

(A) Nursing facility services are needed, as described in §19.1609 and §19.1610 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination).

(B) An individual requires specialized services for mental illness. The presence of verbalizations or behaviors which indicate a person may pose a substantial risk of serious harm to self or others is evidence that the person requires specialized services.

(C) An individual requires specialized services for mental retardation or a related condition. The presence of response by a person to the environment is evidence that the person requires specialized services.

(2) One of the following determinations is made:

(A) -(C) (No change.)

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.302 of this title (relating to Transfer and Discharge).

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive specialized services in the nursing facility, or seek alternate placement.

(4) If during the determination process DHS ascertains that a person does not have MI/MR/RC, the PASARR determination process will be discontinued and the individual may be admitted to the nursing facility.

(5) DHS will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department on Aging (TDOA), and the local Medicaid eligibility unit. Individuals who have undergone a preadmission screening will be notified within ten calendar days of the determination and for individuals who have undergone an annual review, they will be notified within 30 calendar days of the determination.

(6) Any individual, or his legal representative or responsible party, not in agreement with the PASARR determination may file an appeal with DHS to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(A) When the hearing officer reverses DHS's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) When the hearing officer sustains DHS's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may be alternately placed.

(e) Specialized Services.

(1) TXMHMR contracts with the local MHMR authority to purchase case management, specialized services, and alternate placement for persons determined by DHS as requiring specialized services.

(2) A case manager will be assigned for those residents who require specialized services.

(3) DHS provides specialized rehabilitative services, as stated under §19.1103(a) of this title (relating to Specialized Services).

(4) An interdisciplinary team will be constituted by the case manager in order to develop a plan for specialized services. This team will identify those additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. The following persons must be invited to participate on the team:

(A) the Director of Nurses or another appropriate nursing facility representative;

(B) primary physician;

(C) other professionals deemed appropriate, such as, but not limited to, an occupational therapist, physical therapist, or speech-language pathologist;

(D) the individual and/or his guardian, legal representative, or responsible party; and

(E) family members, if the individual or legal representative agrees.

(5) The case manager will determine how TXMHMR specialized services will be provided by the MHMR authority and will facilitate provision of those services. Those services provided by TXMHMR must meet the relevant portions of TXMHMR's community service standards.

(6) The case manager will report monthly to the primary or attending physician and to the nursing facility regarding the delivery of specialized services.

(7) (No change.)

(8) Specialized services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes:

(A)-(C) (No change.)

(D) a provision allowing the nursing facility staff to participate in or

provide information to the MHMR authority case manager during each resident's specialized services planning; and

(E) (No change.)

(9)-(11) (No change.)

(12) If the individual requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation.

(f) Alternate Placement.

(1) (No change.)

(2) The local MHMR authority assigns a case manager for those residents who request alternate placement.

(3) An interdisciplinary team as described in subsection (e)(4) of this section will be constituted.

(4)-(5) (No change.)

(6) For those residents who have been determined to not need nursing facility services and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident chooses alternate placement, the following alternate placement activities occur:

(A)-(C) (No change.)

(7) For those residents determined to not need nursing facility services and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.302 of this title (relating to Transfer and Discharge).

(g) Nursing facilities which admit or retain individuals that have not been screened by DHS or who admit or retain individuals who do not need nursing facility services and who require specialized services will not be reimbursed for that individual, as described in §19.1708 of this title (relating to Limitations on Provider Charges to Patients).

(h) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447809

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: October 15, 1994

Proposal publication date: June 17, 1994

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Part X. Texas  
Employment Commission**  
**Chapter 305. Interagency  
Matters**

• 40 TAC §305.3

The Texas Employment Commission adopts new §305.3, concerning a memorandum of understanding with the Texas Department of Commerce concerning program planning and budget relating to workforce development programs as required by the Government Code, §481.028, without changes to the proposed text as published in the July 26, 1994 issue of the *Texas Register* (19 TexReg 5698).

Section 481.028 requires the Texas Department of Commerce and the Texas Employment Commission to enter into a memorandum of understanding regarding workforce development efforts, and requires each agency to adopt the memorandum of understanding as a rule. This rule is adopted by the Texas Employment Commission to meet these requirements.

This rule formalizes the agencies' agreement to cooperate on regional economic planning, coordinate workforce development programs, share information, and cooperate to encourage economic development and employment in Texas.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provides the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this 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 September 9, 1994.

TRD-9447888

J. Ferris Duhon  
Legal Counsel  
Texas Employment  
Commission

Effective date: September 30, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512) 463-2291

◆ ◆ ◆  
**Chapter 307. Charges for  
Copies of Public Records**

• 40 TAC §§307.1-307.5

The Texas Employment Commission adopts new §§307.1-307.5, concerning charges for providing copies of, or access to, public records, without changes to the proposed text as published in the July 26, 1994 issue of the *Texas Register* (19 TexReg 5698).

The new rule establishes the charges the agency will make for providing copies of, or access to, public records. These rules are adopted to comply with Chapter 428, Acts, 73rd Legislature, Regular Session, (1993), which requires agencies to adopt rules establishing charges for copies of public records.

Except as otherwise set forth in these rules, the Texas Employment Commission adopts the definitions, methods and procedures, and the charges set out in 1 TAC §§111.62-111.70 of the General Services Commission rules, concerning charges for public records.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provides the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this 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 September 9, 1994.

TRD-9447889

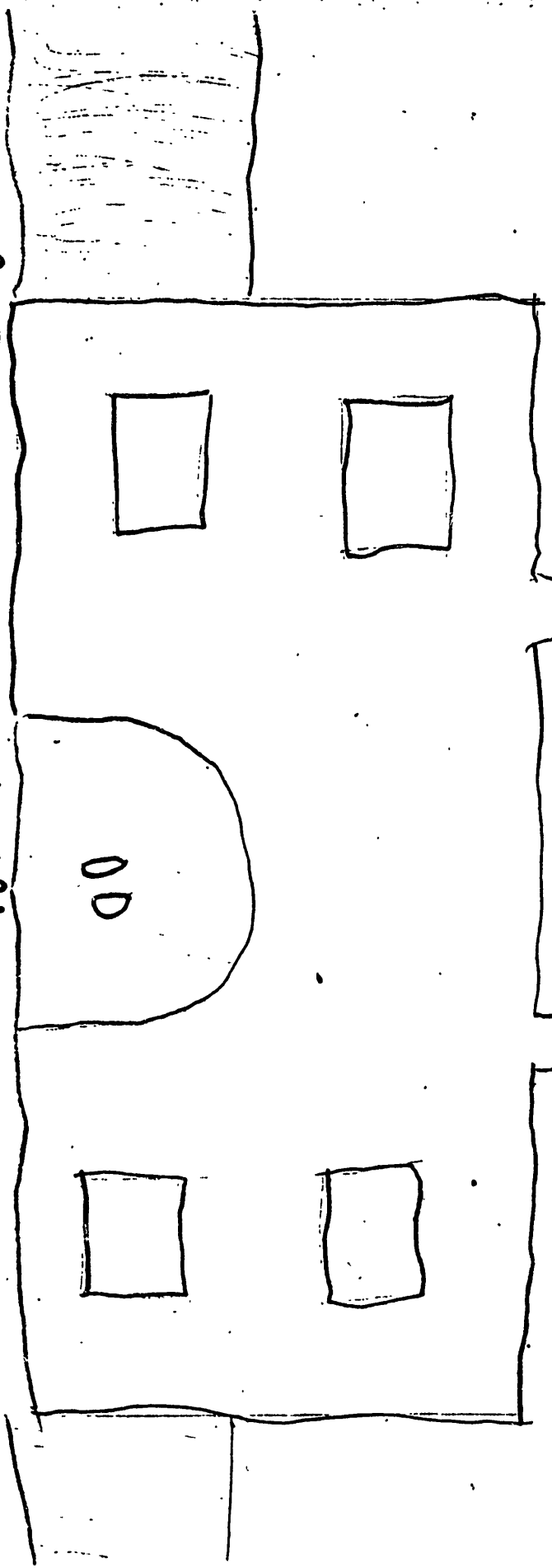
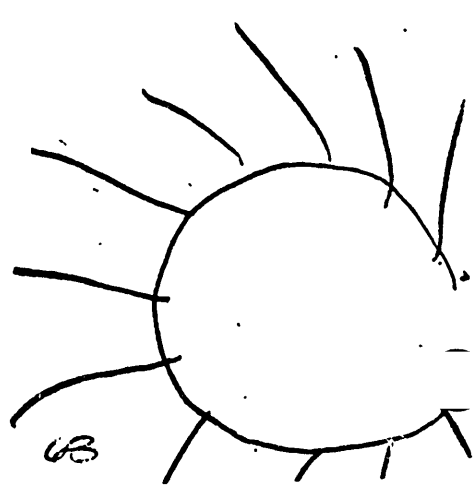
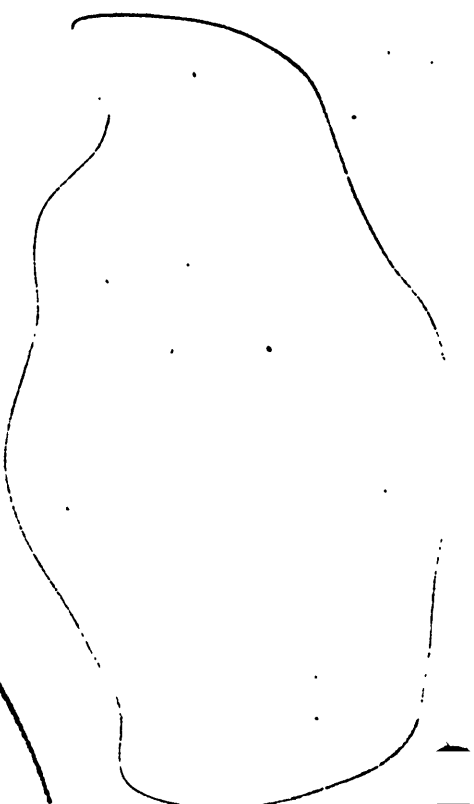
C. Ed Davis  
Deputy Administrator for  
Legal Affairs  
Texas Employment  
Commission

Effective date: September 30, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512) 463-2291

◆ ◆ ◆



NAME: Ali Byers  
GRADE: 2<sup>nd</sup>  
SCHOOL: Bloomburg Elementary Bloomburg I.S.D.

The Alamo

# 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: 28 TAC 5.12000 preamble**

<b>TABLE A</b>					
	<b>FY '95</b>	<b>FY '96</b>	<b>FY '97</b>	<b>FY '98</b>	<b>FY '99</b>
<b>TDI Costs for Commercial Property Inspections and Rating</b>	\$2,619,630	\$2,619,630	\$2,619,630	\$2,619,630	\$2,619,630
<b>TDI Costs for Oversight of Commercial Property Inspections and Rating</b>	967,120*	912,034	912,034	717,355	717,355
<b>Overall Savings to State</b>	\$1,652,510	\$1,707,596	\$1,707,596	\$1,902,275	\$1,902,275

\*This amount includes costs for office lease commitments; FY '96-FY '99 figures do not include such costs.

**FIGURE 2: 28 TAC 5.12000 preamble**

<b>TABLE B</b>					
	<b>FY '95</b>	<b>FY '96</b>	<b>FY '97</b>	<b>FY '98</b>	<b>FY '99</b>
<b>ISO Costs for Commercial Property Inspections &amp; Rating Services</b>	\$3,692,000	\$2,605,000	\$2,177,000	\$2,021,000	\$1,900,000
<b>Less TDI Costs for Commercial Property Inspections and Rating</b>	(\$2,619,630)	(\$2,619,630)	(\$2,619,630)	(\$2,619,630)	(\$2,619,630)
<b>Plus TDI Oversight Costs</b>	\$ 967,120*	\$ 912,034	\$ 912,034	\$ 717,355	\$ 717,355
<b>Total Increased or Decreased Costs to Commercial Property Insurers as Result of Privatization</b>	\$2,039,490	\$ 897,405	\$ 469,405	\$ 118,725	(\$2,275)

\*This amount includes costs for office lease commitments; FY '96-FY '99 figures do not include such costs.

# 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, September 20, 1994, 1:00 p.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Produce Recovery Fund Board

### AGENDA:

Discussion and action on the following dockets:

Thomas E. Wiseman vs. Javi Farms, TDA Docket Number 01-93-APA;

Kay-Dee Produce vs. Tender Care, TDA Docket Number 39-93-APA;

Jose Luis Vargas vs. Kay-Dee Produce, TDA Docket Number 45-93-APA;

Rudy Longoria vs. Chaparral Farms, TDA Docket Number 62-92-APA.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: September 12, 1994, 2:23 p.m.

TRD-9447941

Tuesday, September 20, 1994, 7:30 p.m.

Board Room, Snyder Chamber of Commerce

Snyder

Curry County Cotton Producers Board

### AGENDA:

Review and approval: minutes from previous financial statements

Discuss, set and approve: 1994 assessment rate

Discussion: Upcoming boll weevil referendum, other business

Contact: John Derouen, P.O. Drawer 840, Snyder, Texas 79550, (915) 573-3558.

Filed: September 9, 1994, 2:24 p.m.

TRD-9447864

Monday, September 26, 1994, 10:30 a.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

### AGENDA:

Opening remarks

Review and approval: minutes of August 16 meeting, fiscal affairs

Reports of officers and directors

Discussion and action: new business—review of telephone messages and contacts with the office; unfinished business—review proposals from three associations; review status of Mason County, Coleman County, Southwest Crockett County, and Sterling County Wildlife Association programs, rancher's supply, Philip Jacoby-Ernest Woodward—status of transfer of 1080 col-lars; status of Casleberry situations and the

Young County Referendum for addition; and Gary Nunley—animal damage control; scheduling of the next meeting.

Discussion: other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: September 12, 1994, 12:01 p.m.

TRD-9447932

## Texas Commission on Alcohol and Drug Abuse

Wednesday, September 21, 1994, 10:00 a.m. (Teleconference.)

710 Brazos, Eighth Floor, Perry Brooks Building

Austin

Grant and Contract Review Committee

### AGENDA:

Call to order; fiscal year 1995 HIV early intervention award criteria; fiscal year 1995 court committed services contracts; fiscal year 1994 and 1995 council initiatives; fiscal year 1995 prevention services; fiscal year 1995 treatment services; information items; new business; next meeting; and adjourn.

Contact: Steve Casillas or Lynn Brunn-Shank, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8265.

Filed: September 12, 1994, 2:23 p.m.

TRD-9447940

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**Texas Appraiser Licensing  
and Certification Board**

**Wednesday, September 21, 1994, 8:00  
a.m.**

Executive Conference Room 235-A, 1101  
Camino La Costa

Austin

Education Committee

AGENDA:

Call to order; consideration of the minutes of the June 23, 1994, Education Committee meeting; discussion and possible recommendation to the Texas Appraiser Licensing and Certification Board concerning approval of courses for meeting qualifying (pre-licensure) education and appraiser continuing education (ACE) requirements; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board on other educational matters; and adjourn.

Contact: Renil C. Liner, P.O. Box 12188,  
Austin, Texas 78711-2188, (512) 465-3950.

Filed: September 9, 1994, 4:39 p.m.

TRD-9447895

**Wednesday-Friday, September 21-23,  
10:00 a.m. (Wednesday) and 9:00 a.m.  
(Thursday-Friday).**

Conference Room 235, 1101 Camino La  
Costa

Austin

AGENDA:

**Wednesday, September 21, 1994**

Call to order; consideration of the July 20, 1994, TALCB minutes; discussion and possible action in response to the Appraisal Subcommittee's letter dated August 11, 1994, including possible legislative changes to the TALC Act (Article 6573a.2, V.T.C.S.); discussion and possible action concerning "peer review" of complaints; comments and presentations from visitors; consideration of the petition from Jim Richards concerning amendments to the TALCB rules and TALC Act; discussion and possible action concerning licensure and certification by reciprocity; discussion and possible action concerning the application, certification/licensing or other board procedures; policies and interpretations; report from the Education Committee regarding approval of courses and other educational matters; discussion and possible action concerning the operating budget and fiscal matters; executive session for briefings concerning filed complaints and for

consultation with, and advice from, legal counsel with respect to pending or contemplated litigation or settlement offers pursuant to Texas Government Code, §551.071; discussion and possible action concerning filed complaints; staff reports; selection of date of subsequent meetings; and adjourn.

**Thursday, September 22 and Friday, Sep-  
tember 23, 1994**

Call to order; discussion and possible action on agenda items from previous day still requiring action; and adjourn.

Contact: Renil C. Liner, P.O. Box 12188,  
Austin, Texas 78711-2188, (512) 465-3950.

Filed: September 9, 1994, 4:39 p.m.

TRD-9447894

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**The State Bar of Texas**

**Friday, September 16, 1994, 9:00 a.m.**

Radisson Inn-Airport, Central Ballroom,  
7909 I-40E

Amarillo

Board of Directors

AGENDA:

Call to order/roll call/consent agenda/reports from: president; Office of General Counsel-grievance system; acting executive director; Texas Equal Access to Justice Foundation (I.O.L.T.A.); Board Legislative Policy Committee-State Bar of Texas Legislative Program; Texas Lawyers' Insurance Exchange; Board Grant Review Committee-grant application; Office of General Counsel; Client Security Fund; immediate past president/endorsement of judicial candidates/reports from president-elect; Texas Young Lawyers Association president/disqualification of law firm members in grievance proceedings/report from Court of Criminal Appeals liaison/appeals from decisions of Board of Legal Specialization-report from Board of Appeals Committee/reports from: Supreme Court liaison; Board Policy Manual Committee; Judicial Section liaison; Board Administrative Advisory Committee; Board Facilities and Equipment Committee; Federal Judicial liaison; State Bar committees/sections/divisions/remarks from general public/adjourn

Contact: Pat Hiller, P.O. Box 12487,  
Austin, Texas 78711, 1-800-204-2222.

Filed: September 8, 1994, 3:39 p.m.

TRD-9447799

**Texas Catastrophe Property  
Insurance Association**

**Tuesday, September 20, 1994, 8:30 a.m.**

Corpus Christi Marriott Bayfront, 900  
North Shoreline Boulevard

Corpus Christi

Board of Directors

AGENDA:

I. Call to order-reminder of antitrust state-  
ment

II. Approval of the minutes of June 21,  
1994 meeting

III. Report of the chairman

IV. Report of the underwriting manager

V. Report of the claims manager

VI. Report of the operations manager

VII. Report of the general manager

VIII. Investment strategy recommendation

IX. Mobile home limits hearing

X. Any other business that may come be-  
fore the Board

XI. Adjourn

Contact: Charles F. McCullough, 2801  
South Interregional, Austin, Texas 78768.

Filed: September 8, 1994, 11:25 a.m.

TRD-9447771

◆ ◆ ◆  
**Texas Department of Crimi-  
nal Justice**

**Friday, September 16, 1994, 8:00 a.m.**

Sam Houston State University, Upper and  
Lower Auditorium, Criminal Justice Center

Huntsville

Board of Criminal Justice

AGENDA:

Executive session: A. Discussion with attor-  
neys concerning litigation, B. Discussion of  
matters made confidential under State Bar  
Disciplinary Rules of Professional Conduct.  
Regular session: A. Recognition, B. Con-  
sent item, C. Board committee reports, D.  
Judicial Advisory Council report, E. Con-  
struction briefing, F. Finance, G. Commu-  
nity Justice Assistance Division-rules, H.  
State Jail issues, I. Attorney General opin-  
ion request on status of inmates under Open  
Records Act, J. Site selection-discussion of  
process, K. Designation of unit names, L.  
Admissions report, M. Easement requests,  
N. Federal Crime Bill briefing, O. Inmate  
disciplinary rule change: sanctions for re-  
fusal to submit to urinalysis, P. Update on  
Texas Performance Review action items.



Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1994, 4:26 p.m.

TRD-9447806

### Texas Employment Commission

Tuesday, September 20, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

#### AGENDA:

Prior meeting notes; consideration and possible approval of bid for interior renovations at the Greenville agency-owned building; consideration and possible approval of bid for interior and exterior renovations at the Mt. Pleasant agency-owned building; consideration and possible adoption of repeal of 40 TAC §302.1 concerning valid registration for work; staff reports; internal procedures of Commission Appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Dockets 37 and 38; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: September 12, 1994, 4:07 p.m.

TRD-9447947

### General Land Office

Tuesday, September 20, 1994, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

#### AGENDA:

Approval of previous board meeting minutes; pooling applications, Rancho Viejo (Lobo 6), Webb County; New Taiton (Meek) Field, Wharton County; Giddings (Austin Chalk-3), Fayette County; Magoun, South (Morrow Lower), Lipscomb County; Harris (Wilcox-Luling), Live Oak County; direct land sale, tax foreclosure property, Bexar County; coastal public lands, commercial lease applications and renewals, Arroyo Colorado, Cameron County; Old Brazos River, Brazoria County; easement applications, West Bay, Galveston County, and Dickinson Bay, Galveston County; structure (cabin) permit renewals, rebuilding requests, amendments, terminations and requests, Bastrop Bay, Brazoria County;

Laguna Madre, Cameron County; Laguna Madre, Kenedy County; Laguna Madre, Kleberg County; Titlum Titlum Bayou, Brazoria County; executive session, pending and proposed litigation; executive session-acquisition (escrow or trade) of land in El Paso County; open session-consideration of acquisition (escrow or trade), El Paso County; executive session-lease/purchase of land, El Paso County; open session-consideration of lease/purchase of land, El Paso County; consideration of placing all monies received from direct land sale, Dallas/Denton Counties in escrow account as authorized by Texas Natural Resources Code, §51.401.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 12, 1994, 4:22 p.m.

TRD-9447949

### Office of the Governor

Friday-Saturday, October 7-8, 1994, 1:00 p.m. and 9:00 a.m. respectively.

400 North Olive, Dallas Southland Hotel

Dallas

Texas Governor's Committee on People with Disabilities

#### AGENDA:

Regular Quarterly Meeting

1. Full committee meeting. Call to order, introductions, and approval of minutes.
  2. Organization reports
  3. Report from ADA Coordinator of Six Flags Over Texas.
  4. Subcommittee meetings
  5. Public comment.
  6. Executive director's report.
  7. Subcommittee reports and action items.
  8. Date setting for future GCPD meetings and suggestions for possible future agenda items.
  9. Adjournment.
  10. GCPD Employment Awards Banquet
- Contact: Virginia Roberts, 201 East 14th Street, Austin, Texas 78711, (512) 463-5739.

Filed: September 9, 1994, 10:03 a.m.

TRD-9447844

### Office of the Governor-Criminal Justice Division

Tuesday, September 20, 1994, 9:00 a.m.

111 East Cesar Chavez Street, Ballroom

Austin

Texas Crime Stoppers Advisory Council, Education Committee

#### AGENDA:

I. Call to order. II Introduction III. Review Education Committee duties/responsibilities. IV. Discuss and plan curriculum for Interview Techniques School in December V. Discuss and plan curriculum and speakers for State Conference. VI Discuss and plan curriculum for Regional Basic Schools Training. VII. Discuss and plan topics for additional training. VIII Discuss and plan training for Carpus Crime Stoppers Programs. IX. Adjournment

Contact: Paula Alvarez-Crampton, P O Box 12428, Austin, Texas 78701, (512) 463-1784

Filed: September 9, 1994, 10:16 a.m.

TRD-9447847

### Texas Historical Commission

Friday-Saturday, September 23-24, 1994, 2:00 p.m. and 9:00 a.m. respectively.

Central Services Building, 1711 San Jacinto, Room 402

Austin

State Board of Review

#### AGENDA:

I Announcements  
II Approval of minutes from June 18, 1994  
III Review of nominations (postponed and new) to the National Register

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6006

Filed: September 8, 1994, 2:33 p.m.

TRD-9447798

### Texas Hospital Equipment Financing Council

Tuesday, September 20, 1994, 10:00 a.m.

200 East Tenth Street, Room 212

Austin

#### AGENDA:

1 Call to order

2. Approval of minutes
3. Financial report—Mike Irwin, Trustee
4. Discussion and authorization for payment of 1993 state audit costs for the Texas Hospital Equipment Financing Council
5. Discussion of the pending 1994 state audit of the Texas Hospital Equipment Financing Council
6. New business
7. Adjournment

Contact: Kathy Mayberry, 200 East Tenth Street, Suite 309, Austin, Texas 78701, (512) 463-5971.

Filed: September 12, 1994, 12:43 p.m.

TRD-9447933

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### Texas Commission on Human Rights

Friday, September 23, 1994, 9:00 a.m.

105 West 15th Street, Room 106

Austin

AGENDA:

Discussion and vote on agenda item(s) covered in executive session as necessary or required; welcoming of guests; training on the Commission's selection procedures and staff evaluations; minutes; administrative reports; Administrative Enforcement Project; new FHIP proposal for Administrative Enforcement Initiative; IAOHRA presidency; 1996-1997 legislative appropriations request; authority of the executive director to fill newly created staff positions when sufficient funds are available; new investigative position; fiscal 1995 projected contracts with HUD and EEOC; approval of a request from the Fort Worth Human Relations Commission to have deferral standing; EEO compliance training; commissioner issues; unfinished business.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: September 12, 1994, 1:45 p.m.

TRD-9447938

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### Texas Department of Insurance

Tuesday, September 20, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

Agenda: 454-94-1435.E

Request by Abe J. Brilling Insurance Agency for a hearing regarding premiums payable as a result of classification changes applicable to workers' compensation insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: September 8, 1994, 2:31 p.m.

TRD-9447789

Thursday, September 22, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fifth Floor, Suite 502

Austin

AGENDA:

Agenda: 454-94-1358.H

To consider whether Paradigm Insurance Company's request for exemption to \$12 million minimum capital and surplus for surplus lines insurers should be granted.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: September 8, 1994, 2:31 p.m.

TRD-9447788

Thursday, September 29, 1994, 2:00 p.m.

Dallas Independent School District Auditorium, 3700 Ross Avenue

Dallas

Commissioner of Insurance

AGENDA:

Under Docket Number 2113, the Commissioner of Insurance will hold a public hearing in the Dallas area to discuss problems faced by residents and small businesses in the inner city in trying to purchase insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 8, 1994, 4:27 p.m.

TRD-9447807

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### Texas Juvenile Probation Commission

Friday, September 16, 1994, 9:00 a.m.

2015 South IH-35

Austin

Board Meeting

AGENDA:

Call to order; excused absences; approval of July 25, 1994 Board meeting minutes; Program Committee report—reduction in com-

mitments to TYC for fiscal year 1995, community corrections contract for fiscal year 1995 emergency funding; Budget Committee report—allocation of community corrections emergency funding for fiscal year 1995, fiscal year 1994 administrative budget adjustment, Innovative and Creative Grant continuation funding; adoption of amendment to the community corrections rule; interagency planning with the Department of Protective and Regulatory Services; director's report; public comments; schedule next meeting; and adjourn.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: September 8, 1994, 2:32 p.m.

TRD-9447792

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### Texas Department of Licensing and Regulation

Tuesday, September 20, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider a claim filed against the Auctioneer Recovery Fund by Jim and Kim Holten according to the Texas Revised Civil Statutes, Annotated Article 8700, §5C, Article 9100, 16 TAC, Chapter 67, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 9, 1994, 2:52 p.m.

TRD-9447866

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### Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Monday, September 19, 1994, 10:00 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin

Audit Committee Meeting

AGENDA:

Consideration and possible action on: 1) Approval of the June 27, 1994 minutes; 2) The selection of accounting firm to perform

an audit of the Association's system of internal controls; 3) Next meeting date.

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.

Contact: C. S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: September 9, 1994, 3:01 p.m.

TRD-9447868

Monday, September 19, 1994, Noon.

301 Congress Avenue, Suite 500, Board Room

Austin

Executive Committee

AGENDA:

Consideration and possible action on: 1) The results of the mediation session with Arkansas Blue Cross/Blue Shield scheduled for September 16, 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.

Contact: C. S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: September 12, 1994, 12:57 p.m.

TRD-9447934

### Texas State Board of Medical Examiners

Monday, September 19, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Education Committee

AGENDA:

1. Call to order

2. Roll call

3. Discussion and possible action on:

A. Modification of proposed rule developed by Acupuncture Board (and rejected by the Medical Board) relating to the 60 semester hour college requirement.

B. Proposed rule on registration of acupuncture schools or alternate methods of dealing with correspondence schools.

4. Citizen communication

5. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 9, 1994, 5:03 p.m.

TRD-9447897

Monday, September 19, 1994, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Grandfathering, Reciprocity, and Application Committee

AGENDA:

The agenda includes review of application referred to the committee by the executive director, review of licensure files and recommendations to full board for automatic licensure, executive session to review licensure files, and citizen communication.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 9, 1994, 5:03 p.m.

TRD-9447898

Monday, September 19, 1994, 1:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Examination, Licensure, and Fees Committee

AGENDA:

1. Call to order

2. Roll call

3. Discussion of status of December NCCA Examination

4. Formulation of committee objectives

5. Citizen communication

6. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 9, 1994, 5:04 p.m.

TRD-9447899

Monday, September 19, 1994, 2:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners

AGENDA:

The agenda includes approval of minutes, committee reports, citizen communication, report from the executive director, and discussion, with possible action, on the follow-

ing: proposal on defining the 60 semester hour college requirement, proposal for defining the use of titles by persons licensed to practice acupuncture, proposal to eliminate the practice of medical doctors supervising acupuncture licensees, proposal to eliminate the advertisement by licensees that they are under the supervision of a medical doctor, and billing practices used by acupuncturists.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 9, 1994, 5:04 p.m.

TRD-9447900

### Texas Council on Offenders with Mental Impairments

Monday, September 19, 1994, 3:30 p.m.

TDCJ, Pardons and Parole Building, Board Room, 8610 Shoal Creek Boulevard

Austin

Emergency Meeting

Program Committee

AGENDA:

Monday, September 19, 1994, the Program Committee of the Texas Council on Offenders with Mental Impairments will meet at the Texas Department of Criminal Justice, Pardons and Parole Division, Board Room, 8610 Shoal Creek Boulevard, Austin, Texas. According to the complete agenda, the committee will call the meeting to order; hear introductions, approve minutes; hear year end report/statistics; discuss fiscal year 1995 contracts/budget; discuss juvenile offender issues; discuss substance abuse strategies and adjourn.

Reason for emergency: Due to scheduling conflicts, this is the only time Committee can meet.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: September 12, 1994, 8:44 a.m.

TRD-9447907

### Texas Natural Resource Conservation Commission

Wednesday, September 21, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

AGENDA:

The Commission will consider approving the following matters on the contested agenda: water quality enforcement; petroleum storage tank enforcements; authorization to construct; water utility enforcement; water utility interim rate; state implementation plans; rules; Superfund; Advisory Committees; examiner's proposal for decision; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:30 a.m. until 9:00 a.m.)

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3317.

Filed: September 12, 1994, 11:16 a.m.

TRD-9447927

Wednesday, September 21, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

AGENDA:

The Commission will consider approving the following matters on the uncontested agenda: amendment to water quality permit; minor amendment to water quality permit; Class 2 modification to solid waste permit; Class 2 modification to WDW permit; Class 3 modification to compliance plan; water district matters; settled hearings; in addition the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:30 a.m. until 9:00 a.m.)

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3317.

Filed: September 12, 1994, 11:16 a.m.

TRD-9447928

Thursday, September 22, 1994, 3:00 p.m.

4309 Jacksboro Highway, Nortex Regular Planning Center, #200

Wichita Falls

AGENDA:

On an application by Bell Processing, Inc., Proposed Registration Number MSW40048, to construct and operate a Type V municipal solid waste transfer station. The site

contains approximately 3.46 acres of land and will be located at 1326 Burkburnett Road in Wichita Falls, Wichita County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: September 9, 1994, 3:02 p.m.

TRD-9447872

Monday, October 3, 1994, 9:00 a.m.

501 Avenue G, Levelland City Hall, Council Chambers

Levelland

AGENDA:

On an application by the City of Levelland, Proposed Registration Number MSW40051, to construct and operate a Type V municipal solid waste transfer station. The proposed site covers approximately 3.25 acres of land, and will be located 1.5 miles south and 0.3 miles west of the intersection of State Highway 114 and Alamo Road in Levelland, Hockley County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: September 9, 1994, 3:02 p.m.

TRD-9447874

Monday, October 3, 1994, 1:00 p.m.

505 North Avenue Q, Sheraton Inn, Pueblo Room

Lubbock

AGENDA:

On an application by Browning-Ferris, Inc., Proposed Registration Number MSW40049, to construct and operate a Type V municipal solid waste transfer station. The proposed site contains approximately ten acres and will be located at 2200 Keuka Street, four miles north of Loop 289 on North University and 0.8 miles east of North University, near the City of Lubbock, Lubbock County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: September 9, 1994, 3:02 p.m.

TRD-9447873

Thursday, October 6, 1994, 5:30 p.m.

100 South Monroe, Eagle Pass City Hall, Council Chambers

Eagle Pass

AGENDA:

On an application by the City of Eagle Pass, Proposed Registration Number MSW40042, to construct and operate a Type V municipal solid waste transfer station. The pro-

posed site contains approximately 2.29 acres of land, and is to be located on U.S. Highway 57 approximately 3,695 feet northeast of the intersection with U.S. Highway 277 in Eagle Pass, Maverick County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: September 9, 1994, 3:03 p.m.

TRD-9447875

Friday, October 7, 1994, 3:30 p.m.

State Highway 281 South, Burnet Municipal Airport, Council Chambers

Burnet

AGENDA:

On an application by the City of Burnet, Proposed Registration Number MSW40046, to construct and operate a Type V municipal solid waste transfer station. The proposed site covers approximately 0.664 acres of land, and will be located at the City Warehouse on State Highway 281 South approximately 1.5 miles south of the intersection with State Highway 29 in the City of Burnet, Burnet County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: September 9, 1994, 3:03 p.m.

TRD-9447876

## Texas Board of Nursing Facility Administrators

Thursday, September 22, 1994, 8:30 a.m.

Room S-400, the Exchange Building, 8407 Wall Street

Austin

Examination Ad Hoc Committee

AGENDA:

The Texas Board of Nursing Facility Administrators will open the meeting with introduction of the Ad Hoc Committee members, Board staff, and Texas Department of Health staff, and the committee will discuss and possibly act on: overview of the Ad Hoc Committee Task; goals, objectives, and time lines for the Ad Hoc committee; guidelines of reference materials; role delineation survey; and other business not requiring committee action.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: September 12, 1994, 3:39 p.m.

TRD-9447946

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**On-Site Wastewater Treatment Research Council**

Thursday, September 22, 1994, 1:00 p.m.

Wyndham Hotel, 4140 Governor's Row

Austin

**AGENDA:**

The Council will convene, call roll of members and hear and act on previous meetings minutes. Reports will be made by chairman and executive secretary. Other items on the agenda will be discussion of deliverables for previous contracts, discussion and action on University of Texas at El Paso project; action on fiscal year 1995 budget; action on revised Texas Water Resources Institute proposal for publishing a newsletter; action on responses to RFP for annual symposia; action on proposed revision to administrative rules; action on fiscal year 1995 contracts; discuss disposition of equipment purchased under past contracts; receive public comments; and schedule future meetings.

Contact: Theodore H. Johns, P.O. Box 13087, Austin, Texas 78711, (512) 239-4776.

Filed: September 8, 1994, 10:18 a.m.

TRD-9447766

Thursday, September 22, 1994, 1:00 p.m.

City of Austin Waller Creek Center, 625 East Tenth Street

Austin

Revised Agenda

**AGENDA:**

The Council will convene, call roll of members and hear and act on previous meetings minutes. Reports will be made by Chairman and Executive Secretary. Other items on the agenda will be discussion of deliverables for previous contracts, discussion and action on University of Texas at El Paso project; action of fiscal year 1995 budget; action on revised Texas Water Resources Institute proposal for publishing a newsletter; action on responses to RFP for annual symposium, action on proposed revision to administrative rules; action on fiscal year 1995 contracts; discussion disposition of equipment purchased under past contracts; receive public comments; and schedule future meetings.

Contact: Theodore H. Johns, P.O. Box 13087, Austin, Texas 78711, (512) 239-4776.

Filed: September 12, 1994, 3:37 p.m.

TRD-9447945

**Texas State Board of Pharmacy**

Friday, September 23, 1994, 9:00 a.m.

One Capitol Square, 300 West 15th Street, Fifth Floor, Room 502

Austin

Disciplinary Hearing

**AGENDA:**

The Office of Administrative Hearings will conduct a disciplinary hearing in the matter of Texas State Board of Pharmacy vs. Adetokunboh Adebamboh Adegbenro, Applicant Case #: J-94-024.

Contact: Carol Fisher, 8505 Cross Park Drive #110, Austin, Texas 78754-4594, (512) 832-0661.

Filed: September 9, 1994, 2:24 p.m.

TRD-9447865

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**Texas State Board of Physical Therapy Examiners**

Wednesday, September 28, 1994, 6:00 p.m.

555 South Alamo Street

San Antonio

Applications Review Committee

**AGENDA:**

I. Call to order

II. Consideration and possible committee recommendation re: Docket Number 522-94-137 in the matter of Chiara L. Siazon.

III. Consideration and possible committee recommendation re: Docket Number 522-94-138 in the matter of Jennifer Da Silva.

IV. Review application: Mustafa Sakerwalla

V. Adjourn

Contact: Gerard Swain, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: September 9, 1994, 10:03 a.m.

TRD-9447846

Wednesday, September 28, 1994, 7:00 p.m.

555 South Alamo Street

San Antonio

Investigations Committee

**AGENDA**

I Call to order

II Consideration and possible committee recommendation regarding complaint processing

**III. Adjourn**

Contact: Gerard Swain, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: September 9, 1994, 10:03 a.m.

TRD-9447845

Thursday, September 29, 1994, 10:00 a.m.

555 South Alamo Street

San Antonio

Board Meeting

**AGENDA:**

I. Public comment

II. Approval of minutes of April 19, 1994 Board meeting

III. Presentation and discussion of proposal for decision in Docket Number 522-94-137.

IV. Presentation and discussion of proposal for decision in Docket Number 522-94-138.

V. Consideration and possible action by Board on the proposal for decision in Docket Number 522-93-906.

VI. Review rule requiring foreign-trained applicants to be licensed in the country where they received their education.

VII. Review and discussion with Assistant Attorney General on requests for exemption from facility registration requirements.

VIII. Susan Donley Garrett, request waiver of continuing education units.

IX. Review and possible final adoption of proposed rules.

X. Committee reports

A. Applications Review Committee

B. Education Committee

C. Rules Committee

D. Investigation Committee

XI. PT Coordinator's report

XII Executive Director's report

XIII. Presiding Officer's report

XIV. Adjournment

Contact: Gerard Swain, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: September 9, 1994, 11:18 a.m.

TRD-9447852

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**Public Utility Commission of Texas**

Tuesday, October 11, 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 11014; application of Pedemales Electric Cooperative, Inc. to amend certificate of convenience and necessity for proposed transmission line within Hays County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 12, 1994, 12:01 p.m.

TRD-9447930

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**Railroad Commission of Texas**

Monday, September 13, 1994, 2:00 p.m.

1701 North Congress Avenue

Austin

Emergency Revised Agenda

**AGENDA:**

The Railroad Commission of Texas will meet to consider and take action on a request to the United States Environmental Protection Agency, Region 6, to delay final action on General NPDES permits for the oil and gas extraction point source Category, produced water, produced sand, coastal subcategory, states of Louisiana and Texas (LAG290000 and TXG290000).

Reason for emergency: The Railroad Commission of Texas was notified after 3:00 p.m., on Friday, September 9, 1994, that the Environmental Protection Agency Region 6 plans to take final action on this matter on Wednesday, September 14, 1994.

Contact: Terri Eaton, 1700 North Congress, Austin, Texas 78701, (512) 463-6977.

Filed: September 12, 1994, 11:44 a.m.

TRD-9447929

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**Texas Real Estate Commission**

Friday, September 23, 1994, 10:00 a.m.

Charolais Room, Camino Real Paso Del Norte Hotel, 101 South El Paso Street

El Paso

**AGENDA:**

The Commission will consider and possibly act on: staff reports; committee reports; request by Lawrence Max Bower to be relicensed as a real estate broker, action to propose amendments to 22 TAC §537.11 and new §537.40-537.42 concerning stan-

dard contract forms; action to withdraw approval of unimproved property commercial earnest money contract form and option addendum; adoption of new 22 TAC §534.1 concerning charges for copies of public records and §534.2 concerning processing fees for dishonored checks; adoption of proposed amendment to §535.51 concerning general requirements for licensing; discussion of proposed amendments to 22 TAC §535.164 concerning disclosure of agency; review of Spanish language version of Agency Disclosure Form 3; approval of MCE providers and MCE courses or other providers and courses; discussion of possible amendments to 22 TAC §§535.71-535.73 concerning mandatory continuing education or to 22 TAC §535.66 concerning proprietary schools; action to approve consumer notice relating to recognized hazards; discussion and possible action to approve internal audit report and plan; recommendation to Funds Review Advisory Committee concerning elimination or continuation of dedicated accounts; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; authorization of payments from recovery funds; possible action to contract for legal services from the Office of the Attorney General; entry of orders in contested cases.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: September 12, 1994, 1:31 p.m.

TRD-9447935

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**Red River Authority of Texas**

Wednesday, September 21, 1994, 9:30 a.m.

805 Eighth Street, Fifth Floor, City National Building

Wichita Falls

Board of Directors Meeting

**AGENDA:**

Item 1. Read and approve minutes of July 20, 1994 Board meeting

Item 2. Election and appointment of officers to the Board for the ensuing fiscal year

Item 3. Consider acceptance of vehicle bid for units 311, 314, 315, and 319

Item 4. Consider acceptance of bid to construct 68,242 gallon water storage tank in the Arrowhead Ranch Estates water system, Clay County

Item 5. Consider approval of proposed operating budget for fiscal year 1994-1995

Item 6. Other business as the Board may deem appropriate

A. Quarterly operations report

B. Quarterly financial report

Contact: Ronald J. Glenn, 520 Hamilton Building, 900 Eighth, Wichita Falls, Texas 76301-6394, (817) 723-8697.

Filed: September 9, 1994, 4:16 p.m.

TRD-9447890

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**Texas Rehabilitation Commission**

Thursday, September 22, 1994, 9:30 a.m.

Brown-Heatly Building, Public Hearing Room, First Floor, 4900 North Lamar Boulevard

Austin

The Board of the Texas Rehabilitation Commission

**AGENDA:**

Roll call-Introduction of guests

Invocation

Approval of minutes: June 16, 1994 Board meeting

Commissioner's comments

Re-engineering the Rehabilitation Process

TRC budget update to include discussion on consolidated budget of Human Services Commission

Rehabilitation programs: End of year report

Update on disability determination services

Management audit update

Executive session: Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, disability determination services and management audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code Annotated §551).

Adjournment

If all agenda items have been completed, the Board will adjourn. If all agenda items have not been completed, the Board will recess until 9:30 a.m., Friday, September 23, 1994, to reconvene in the Public Hearing Room, First Floor, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas.

Contact: Charles Schlessler, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or TDD (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: September 13, 1994, 9:17 a.m.

TRD-9447956

Friday, September 23, 1994, 9:30 a.m.

Down-Healy Building, Public Hearing Room, First Floor, 4900 North Lamar Boulevard

Austin

The Board of the Texas Rehabilitation Commission

AGENDA:

Roll call

Introduction of guests

Continuation of Board agenda from September 22, 1994

Executive session: Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, disability determination services and management audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code Annotated §551).

Adjournment

Contact: Charles Schlessler, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or TDD (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: September 13, 1994, 9:17 a.m.

TRD-9447955

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**Office of the Secretary of State**

Wednesday, September 14, 1994, 11:00 a.m.

Capitol Extension, Room E1.030

Austin

Election Advisory Committee

AGENDA:

Welcoming remarks; roll call and introduction of members; introductory remarks; overview of Secretary of State Election Night Returns System; overview of process/introduction of key personnel, programming, system configuration, features of the system, charges for election night returns services; observer's report from March 1994 primary elections; designation of one or more of Elections Advisory Committee members to be present on election night; and closing remarks.

Contact: Kim Sutton, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: September 9, 1994, 3:33 p.m.

TRD-9447877

**Texas Senate**

Thursday, September 22, 1994, 10:00 a.m.

1400 Congress Avenue, Capitol Extension, Room E1.012

Austin

Joint Interim Committee on the Family Code

AGENDA:

The Committee will review recommendations for Titles 1, 2, 3, and 4 of the Texas Family Code.

Contact: Becki Gregg, P.O. Box 12068, Austin, Texas 78711, (512) 463-0395.

Filed: September 8, 1994, 2:32 p.m.

TRD-9447790

Monday, September 26, 1994, 10:00 a.m.

1100 Congress Avenue, Room 3.55A, State Capitol

Austin

Senate Administration Committee

AGENDA:

I. Call to order

II. Consideration of committee budgets

III. Adjourn

Contact: Johanna Whitsett, P.O. Box 12068, Austin, Texas 78711, (512) 463-0108.

Filed: September 9, 1994, 12:39 p.m.

TRD-9447859

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**State Soil and Water Conservation Board**

Wednesday, September 21, 1994, 8:00 a.m.

311 North Fifth Street, Hearings Room

Temple

AGENDA:

Review and take appropriate action on the following:

Minutes from July 20 and August 8, 1994 board meetings; district director appointments; National Conservation Tillage Digest Affiliated Association Agreement; Conservation Awards Program; Lynn County Soil and Water Conservation District Number 119 Subdivision Boundary Change; transfer of territory between Garza Soil and Water Conservation District Number 158 and Lynn County Soil and Water Conservation District Number 119; Highland Soil and Water Conservation District Number 210 subdivision boundary change;

1994 annual state meeting of Soil and Water Conservation District directors; future state meeting sites; public information/education report; Final Fiscal Year 1994 Expenditure report; Fiscal Year 1994 Technical Assistance Funds report; 1996-1997 biennium legislative appropriations request; Board member travel; fiscal year 1994 Conservation Assistance Payment for North Concho River Soil and Water Conservation District Number 252; status report of statewide nonpoint source activities; recruiting update; status report of implementation of Senate Bill 503; identification of areas for implementation of Senate Bill 503; allocation of fiscal year 1995 cost share funds; Corpus Christi Bay National Estuary Program; Coastal Zone Management Program; reports from agencies and guests; reauthorization of the Clean Water Act; USDA reorganization; Soil Conservation Service 1995 funding levels; next regularly scheduled Board meeting—November 16, 1994.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, or TEX-AN-820-1250.

Filed: September 9, 1994, 3:01 p.m.

TRD-9447867

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**Texas Guaranteed Student Loan Corporation**

Friday, September 16, 1994, 9:30 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors Meeting

AGENDA:

1. Approval of minutes of August 25, 1994  
2. Chair's report including discussion of future meeting dates

3. President's report

4. Nominating Committee report

Election of fiscal year 1995 officers of the Board

5. Executive session

Discussion of compensation of president in fiscal year 1995

Discussion of real estate transaction

Attorney's report on pending and potential litigation

6. Budget/Finance/Audit Committee report

Discussion and action on fiscal year 1995 budget

Discussion and action on internal audit plan

7. Adjourn

Contact: Peggy Irby, 13809 North Highway 183, Austin, Texas 78750, (512) 219-5700.

Filed: September 8, 1994, 2:32 p.m.

TRD-9447791

## University of Houston

Monday, September 19, 1994, 2:00 p.m.

SRII Building, Room 201, University of Houston, 4800 Calhoun Boulevard

Houston

Animal Care Committee

AGENDA:

To discuss and/or act upon the following:

Approval of August minutes

Renewal protocols

Review of revised protocol forms

Review of emergency power supply to animal facilities

Contact: Rosemary Grimmet, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: September 9, 1994, 2:22 p.m.

TRD-9447863

## University Interscholastic League

Wednesday, September 14, 1994, 1:00 p.m.

Holiday Inn Town Lake, IH-35

Austin

Waiver Review Board

AGENDA:

AA. Appeal of Hirohito Williams, Jersey Village High School, of Parent Residence Rule.

BB. Appeal of Steven Rainer, Galena Park High School, of Four Year Rule.

CC. Appeal of Justin King, Mullin High School, of Four Year Rule.

DD. Appeal of Kyle Robinson, Medina High School, of Four Year Rule.

EE. Appeal of Steve Gomez, Harlandale High School, of Four Year Rule.

FF. Request for retroactive waiver of Jaimie Varela, Odessa Permian High School, of Four Year Rule.

Contact: Charles Breithaupt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: September 9, 1994, 4:16 p.m.

TRD-9447891

## Texas Workers' Compensation Commission

Friday, September 16, 1994, 9:30 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Medical Advisory Committee Meeting

AGENDA:

1. Call to order;
2. Review and approval of July 22, 1994 minutes;
3. Discussion on update of rules presented to the commissioners;
4. Discussion on status of Upper Extremity Guideline Workgroup;
5. Discussion and approval on Preauthorization Rule and process;
6. Discussion and approval on Lost Time Guideline;
7. Discussion on Medical Fee Guideline Ground Rules;
8. Discussion on response from General Counsel on Mental Health Treatment Guideline;
9. Discussion on Acute Care Hospital Fee Guideline;
10. Establish draft agenda;
11. Establish next meeting date;
12. Adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: September 9, 1994, 3:41 p.m.

TRD-9447878

## Texas Council on Workforce and Economic Competitiveness

Thursday, September 22, 1994, 10:00 a.m.

Doubletree Hotel, 6505 North IH-35, DeZavala Room

Austin

Worker Transition/Local Systems Committee

AGENDA:

10:00 a.m.-Call to order. Announcements. Public comment; 10:15 a.m.-Briefing item: performance standards profiling of entered employment rate by SSA; 10:30 a.m.-Brief-

ing item: TAA/EDWAA coordination using National Reserve funds; 10:45 a.m.-Briefing item: Update on RFP for JTPA Title III statewide projects; 11:00 a.m.-Action item: Rules for waivers on independent staffing and direct service provisions; 11:30 a.m.-Action item: Rules for the certification of local workforce development boards; Noon-Lunch break; 1:30 p.m.-Briefing item: OIG review of Texas JTPA SSAs; 1:45 p.m.-Briefing item: JTPA Title III PY93 fourth quarter fiscal reports; 2:00 p.m.-Briefing item: JTPA Title III PY93 fourth quarter performance reports; 2:15 p.m.-adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994, 9:20 a.m.

TRD-9447961

Thursday, September 22, 1994, 10:00 a.m.

Doubletree Hotel, 6505 North IH-35, Fifth Floor, Board Room

Austin

Career Foundation Committee

AGENDA:

10:00 a.m.-Call to order, announcements, public comment; 10:15 a.m.-Policy briefing item: TCWEC rule regarding the National and Community Service Trust Act of 1993; 10:45 a.m.-Action item: School-To-Work Implementation Plan; 11:15 a.m.-Action item: Tech Prep recommendations; 11:45 a.m.-Briefing item: NAVE report; Noon-Lunch break; 1:30 p.m.-Briefing item: Goals 2000 update; 1:45 p.m.-Briefing item: state school-to-work conference/grants update; 2:00 p.m.-Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994 9:20 a.m.

TRD-9447960



Thursday, September 22, 1994, 10:00 a.m.

Doubletree Hotel, 6505 North IH-35, Fourth Floor, Capitol Room

Austin

Intervention Committee

**AGENDA:**

10:00 a.m.—Call to order, announcements, public comment; 10:15 a.m.—Briefing item: Update on the Job Opportunities and Basic Skills Program recommendations and the Food Stamp Employment and Training Plan; 10:45 a.m.—Briefing item: JTPA IIB Summer Program Report; 11:00 a.m.—Action item: JTPA SDA defined categories for the hard-to-serve; 11:30 a.m.—Briefing item: PY94 Veterans Program; 11:45 a.m.—Briefing item: JTPA Older Individual Program; Noon—Lunch; 1:30 p.m.—Briefing item: Plan for PY94 Texas Literacy Resource Center; 1:45 p.m.—Briefing item: Achieving National Education Goal on Adult Literacy: A Policy Forum; 2:00 a.m.—Briefing item: Statewide goals, model programs, and information dissemination for non-traditional employment for women; 2:15 p.m.—Briefing item: JTPA fiscal reports; 2:30 p.m.—Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994, 9:20 a.m.

TRD-9447959

Thursday, September 22, 1994, 10:30 a.m.

Doubletree Hotel, 6505 North IH-35, DeWitt Room

Austin

Evaluation and Performance Committee

**AGENDA:**

10:30 a.m.—Call to order, announcements, public comment; 10:45 a.m.—Briefing item: Status of Alamo audit; 11:00 a.m.—Briefing item: Fourth quarter/program year performance reports for JTPA Titles IIA/IIC and Employment Service; 11:45 a.m.—Briefing item: Adult Education Performance Management Subgroup; Noon—Lunch break; 1:30 p.m.—Action item: Service Delivery Area (SDA) and Substate Area (SSA) technical assistance and reorganization policy; 2:00 p.m.—Briefing item: Process for establishing definitions and standards for core

measures; 2:15 p.m.—Briefing item: National Assessment of Vocational Education; 2:30 p.m.—Briefing item: JTPA Technical Assistance Plan status report; 2:45 p.m.—Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994, 9:20 a.m.

TRD-9447962

Thursday, September 22, 1994, 3:00 p.m.

Doubletree Hotel, 6505 North IH-35, Phoenix Central Ballroom

Austin

Full Council

**AGENDA:**

3:00 p.m.—Call to order, announcements, public comment; 3:15 p.m.—Briefing item: School-to-Work Implementation Plan; 4:00 p.m.—Briefing item: Consolidation Plan; 5:00 p.m.—Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994, 9:20 a.m.

TRD-9447958

Friday, September 23, 1994, 8:30 a.m.

Doubletree Hotel, 6505 North IH-35, Phoenix Ballroom

Austin

Full Council

**AGENDA:**

8:30 a.m.—Call to order, announcements, approval of minutes; 8:45 a.m.—Public comment; 9:15 a.m.—Action item: Legislative appropriations request for the 1996-1997 biennium; 9:30 a.m.—Consent agenda action items: Service Delivery Area (SDA) and Substate Area (SSA) technical assistance and reorganization policy, rules for waivers on independent staffing and direct service provisions, rules for the certification of local workforce development

boards, Tech Prep recommendations, JTPA SDA defined categories for the hard-to-serve, rules for charges for public records; 9:45 a.m.—Action item: School-to-Work Transition Plan; 10:15 a.m.—Break; 10:45 a.m.—Action item: Consolidation Plan; 12:30 p.m.—Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 707-8222 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 707-8901.

Filed: September 13, 1994, 9:19 a.m.

TRD-9447957

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**Regional Meetings**

**Meetings Filed September 8, 1994**

The Bandera County Appraisal District Board of Directors met at 1116 Main Street, Bandera, September 15, 1994, at 9:00 a.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax: (210) 796-3672. TRD-9447796.

The Bi-County WSC met at the Office, FM Road #2254, Pittsburg, September 13, 1994, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9447759.

The El Oso Water Supply Corporation Board of Directors met at FM Road 99, at their Office, Karnes City, September 13, 1994, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9447795.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, September 15, 1994, at 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9447767.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, September 12, 1994, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9447793.

The Lower Colorado River Authority Planning and Public Policy Committee met in the Board Conference Room, 3701 Lake

Austin Boulevard, Hancock Building, Austin, September 13, 1994, at 1:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9447827.

The Central Appraisal District of Rockwall County Board of Directors met at 106 North San Jacinto, Rockwall, September 13, 1994, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9947839.

The Tarrant Appraisal District Board of Directors will meet at 2301 Gravel Road, Fort Worth, September 16, 1994, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76120, (817) 284-0024. TRD-9447770.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway, Abilene, September 14, 1994, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9447838.

The Wise County Appraisal District Board of Directors met at 206 South State Street, Decatur, September 13, 1994, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9447794.

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**Meetings Filed September 9,  
1994**

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, September 15, 1994, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9447841.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, September 15, 1994, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9447893.

The Cass County Appraisal District (Revised Agenda) Board of Directors met at 502 North Main Street, Linden, September 12, 1994, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9447886.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, September 14, 1994, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9447840.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, September 13, 1994, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9447880.

The Dallas Area Rapid Transit Board of Directors met in the Board Room, First Floor, 1401 Pacific Avenue, Dallas, September 13, 1994, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9447879.

The Deep East Texas Council of Governments Board of Directors and Grants Application Review Meeting met at 201 North Magnolia, Woodville, September 15, 1994, at 1:00 p.m. Information may be obtained from Walter Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9447861.

The East Texas Council of Governments Private Industry Council met at the ETCOG Office, 3800 Stone Road, Kilgore, September 15, 1994, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9447856.

The Gulf Bend MHMR Center Local Interagency Community Management Team met at 1404 Village Drive, Victoria, September 14, 1994, at Noon. Information may be obtained from David Hensley, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9447854.

The Lower Colorado River Authority Board of Trustees and Board of Trustees Investment Subcommittee met in the Board Room, Hancock Building, 3701 Lake Austin Boulevard, Austin, September 13, 1994, at 1:00 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-9447892.

The Texas Municipal Asset Pool Board of Directors met in the Board Room, Second Floor, Riverway Bank, Five Riverway, Houston, September 14, 1994, at 8:00 a.m. Information may be obtained from Jamie D. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9447842.

The North Texas Municipal Water District Board of Directors will meet at 505 East Brown Street, Wylie, September 22, 1994, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9447862.

The Sulphur River Basin Authority Board of Directors met at 1604 North Jefferson Street, Mt. Pleasant, September 13, 1994, at 3:00 p.m. Information may be obtained from David Baucom, P.O. Box 274,

Sulphur Springs, Texas 75483, (903) 885-9557. TRD-9447849.

The Swisher County Appraisal District Board of Directors met at the Conestoga Restaurant, North Highway 87, Tulia, September 15, 1994, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9447853.

The Tyler County Appraisal District Board of Directors met at 806 West Bluff, Woodville, September 13, 1994, at 5:00 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9447843.

The West Central Texas Council of Governments Criminal Justice Advisory Committee will meet at 1125 East North Tenth Street, Abilene, September 16, 1994, at 11:00 a.m. Information may be obtained from Les Willerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9447881.

The Wise County Appraisal District (Revised Agenda) Board of Directors met at 206 South State Street, Decatur, September 13, 1994, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9447857.

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**Meetings Filed September 12,  
1994**

The Austin-Travis County MHMR Center Planning and Operations Committee will meet in the Board Room, 1430 Collier Street, Austin, September 16, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9447905.

The Central Texas Council of Governments Killeen-Temple Transportation Study will meet at 302 East Central, Belton, September 16, 1994, at 9:00 a.m. Information may be obtained from Mike Morgan, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9447931.

The Coryell City Water Supply District Board of Directors met at F.M. 929, Coryell City, September 15, 1994, at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9447953.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, September 20, 1994, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9447906.

The Falls County Appraisal District Appraisal Review Board will meet at the Falls County Courthouse, First Floor, Intersection of Highways 6 and 7, Marlin, September 10, 1994, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9447924.

The Fort Bend Parkway Association Board will meet at 11111 Brooklet Drive, Suite 100, Houston, September 29, 1994, at 6:00 p.m. Information may be obtained from Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 758-2380. TRD-9447926.

The Hockley County Appraisal District Board of Directors met at 1103 Houston, Levelland, September 12, 1994, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9447902.

The Houston-Galveston Area Council Projects Review will meet in Conference Room A, 3555 Timmons Lane, Houston, September 20, 1994, at 9:15 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027-2777, (713) 627-3200. TRD-9447950.

The Kempner Water Supply Corporation (Emergency Meeting,) Board of Directors met at Highway 190, Kempner, September 12, 1994, at 10:00 a.m. (Reason for emergency: Several items require immediate action.) Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9447901.

The Kendall Appraisal District Board of Directors will meet at 121 South Main Street, Boerne, September 22, 1994, at 5:30 p.m. Information may be obtained from Mick Mikulenka or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9447925.

The Lamb County Appraisal District Appraisal Review Board will meet at 331 LFD Drive, Littlefield, October 4, 1994, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9447904.

The Laredo Urban Transportation Study Metropolitan Planning Organization will meet at 1110 Houston Street, Laredo, September 22 and 29, 1994, at 4:00 p.m. Information may be obtained from Audrey Alonso, P.O. Box 579, Laredo, Texas 78040-0579, (210) 791-7441. TRD-9447939.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, September 19, 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-9447923.

The Palo Pinto Appraisal District Board of Directors will meet at Highway 180, Palo Pinto Courthouse, Palo Pinto, September 21, 1994, at 3:00 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9447922.

The Rio Grande Council of Governments (Annual Meeting,) Board of Directors will meet at the Camino Real Paso del Norte Hotel, 101 South El Paso, El Paso, September 21, 1994, at 11:30 a.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0098. TRD-9447951.

The San Antonio River Authority Audit Committee will meet in the Boardroom, 100 East Guenther Street, San Antonio, September 21, 1994, at 1:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9447920.

The San Antonio River Authority Board of Directors will meet in the Boardroom, 100 East Guenther Street, San Antonio, September 21, 1994, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9447921.

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Meetings Filed September 13,  
1994

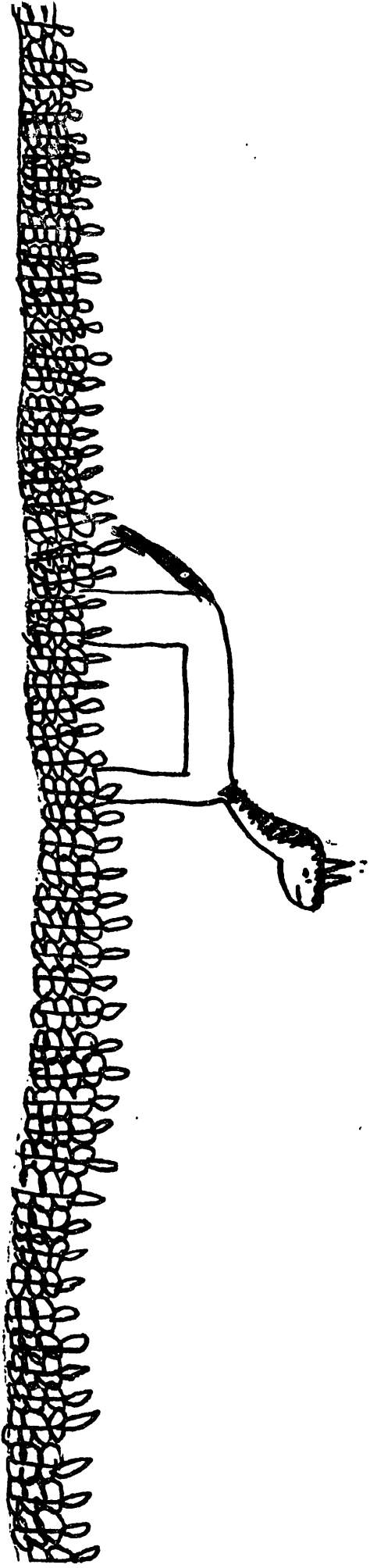
The TML Group Benefits Risk Pool Board of Trustees will meet at the Marriott Courtyard, 1151 West Walnut Hill Lane, Irving, September 16, 1994, at 8:00 a.m. Information may be obtained from Suzanne Steindorf, 1821 Rutherford Lane, Suite 300, Austin, (512) 719-6521. TRD-9447954.

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# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Commission on Alcohol and Drug Abuse

### Multicultural Affairs Advisory Council Meeting

The Multicultural Affairs Advisory Council of the Texas Commission on Alcohol and Drug Abuse will meet Thursday, September 29, 1994, 1:00 p.m. to 5:00 p.m. and Friday, September 30, 1994, 10:00 a.m. to 4:00 p.m. The meeting will be held at the Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas.

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

TRD-9447903

J. Ben Byrum  
Executive Director  
Texas Commission on Alcohol and Drug Abuse

Filed: September 12, 1994

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	09/12/94-09/18/94	18.00%	18.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on September 6, 1994.

TRD-9447758

Leslie L. Pettjohn  
Acting Commissioner  
Office of Consumer Credit Commissioner

Filed: September 8, 1994

## Texas Department of Insurance Company License Applications

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for admission in Texas for The Connecticut Surety Company, a foreign fire and casualty company. The home office is in Hartford, Connecticut.
2. Application for name change by Minnehoma Insurance Company, a foreign fire and casualty company. The proposed new name is Old Republic Minnehoma Insurance Company. The home office is in Tulsa, Oklahoma.

3. Application for a name reservation in Texas for Orthopedic Institute of Texas, Inc., a domestic health maintenance organization. The home office is in Hurst, Texas.

4. Application for incorporation in Texas for Church and School Association Members Employee Group Benefit Plan, a domestic multiple employer welfare arrangement. The home office is in Houston, Texas. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447850

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

Filed: September 9, 1994

## Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2114, on October 3, 1994, at 9:00

a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider four appointments to the Building Code Advisory Committee (Committee). Two of the appointments are replacements for current members, and two of the appointments are additional members.

The Commissioner is considering for the replacement appointments Don R. Turner, Claims Manager of the Texas Catastrophe Property Insurance Association (TCPIA), Austin, as a representative of the TCPIA, replacing James C. Flanagan, P.E., Corpus Christi; and Donald L. Burrell, Assistant Building Official, City of Beaumont, as a representative of the municipal building officials in the catastrophe area, replacing Mr. Roy Saatzer, former Chief Building Official, City of Port Arthur, who has retired. The Commissioner is considering for the additional member appointments Lytle D. (Bob) Burns III, a member of the Lumbermans Association of Texas, Houston, as a representative of the building trades; and James C. Flanagan, P.E., Corpus Christi, who has most recently served as the TCPIA representative, as a registered professional engineer representative.

Article 21.49, §6A(f) of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building specifications in the plan of operation of the TCPIA. Article 21.49, §6A(f), also provides for the membership of the Committee, including at least one representative of the TCPIA, a registered professional engineer who is a resident of the catastrophe area with knowledge of building codes, a representative of the municipal building officials in the catastrophe area, and other persons as may be deemed appropriate by the Commissioner. Pursuant to 28 TAC §5.4002 subsection (f), the members of the Committee shall serve on the Committee at the discretion of the Commissioner of Insurance, and any appointee resigning from the Committee shall be replaced by the Commissioner with another appointee representing the same constituency as the resigning appointee.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointments.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447805  
D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 8, 1994

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for admission to Texas for Rogers, Atkins, Gunter, Associates Insurance, Inc., a foreign third party administrator. The home office is in Tallahassee, Florida.

2. Application for admission to Texas for PacificCare Administrative Services, Inc., a foreign third party administrator. The home office is in Cypress, California.

3. Application for admission to Texas for Cole Vision Services, Inc., a foreign third party administrator. The home office is in Warrensville Heights, Ohio.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447851  
D. J. Powers  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 9, 1994

### Legislative Budget Board

Executive and Legislative Budget Office  
Joint Budget Hearing Schedule  
Appropriations Requests for the  
1996-1997 Biennium (For the period  
of September 19-23, 1994)

Agency Date/Time Place:

Department of Public Safety, September 19, 9:00 a.m.,  
Department of Public Safety, 5805 North Lamar Boulevard, Board Room, First Floor, Austin; Department of Transportation, September 19, 1:30 p.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Commission on Alcohol and Drug Abuse, September 19, 1:30 p.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin; Water Development Board, September 20, 9:00 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin; Worker's Compensation Commission, September 21, 9:30 a.m., Room 104, John H. Reagan Building, 105 West 15th Street, Austin; Office of State-Federal Relations, September 21, 2:00 p.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447848  
Don Green  
Special Assistant  
Legislative Budget Board

Filed: September 9, 1994

### Texas Natural Resource Conservation Commission

Notices of Application for Permits to  
Appropriate Public Waters of the State  
of Texas

Notices of Applications for permits to appropriate public water of the State of Texas issued during the period of August 23-September 6, 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.

American Chrome and Chemicals, Inc.; a chromium chemicals manufacturing plant; the plant is 0.7 miles north of Interstate 37 on Buddy Lawrence Drive in the City of Corpus Christi, Nueces County, Texas; renewal; 00349.

Beazer West, Inc.; the Perch Hill limestone mining and processing plant; the plant site is approximately four miles north of the City of Bridgeport, Wise County, Texas; renewal; 01214.

Gulf Coast Waste Disposal Authority; the Candlelight Hills Wastewater Treatment Facilities; the facilities are north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and FM Road 1960 in Harris County, Texas; renewal; 11314-01.

City of Houston; in order to combine two permits. The Sims Bayou North Wastewater Treatment Facilities are located at 9500 La Porte Road, adjacent to the confluence of Plum Creek with Sims Bayou in the City of Houston, Harris County, Texas; amendment; 10495-02; and the Sims Bayou South Wastewater Treatment Facilities are located adjacent to and east of the intersection of Central Street and Old Galveston Road in the City of Houston, Harris County, Texas; amendment; 10495-120 into one permit (10495-02).

Hunterwood Municipal Utility District; the wastewater treatment plant; is approximately 1,400 feet east of the intersection of Barnesworth Drive and South Lake Houston Parkway on the south bank of Little Gulch Creek in Harris County, Texas; renewal; 11355-01.

Jamie C. Tiampo, Trust of 1980 and James John Tiampo; the applicant proposes to build a restaurant and office building complex; the facility is to be approximately 5,000 feet west of the intersection of U.S. Highway 59 and FM Road 1960 on the north side of FM Road 1960, Harris County, Texas; renewal; 02685.

City of Nome; the wastewater treatment plant; is adjacent to Cotton Creek and at the intersection of 3rd Street and Cotton Creek, and approximately 0.5 mile north of the City of Nome in Jefferson County, Texas; renewal; 11564-01.

Pilar Tiampo; the applicant proposes to build a restaurant and office building complex; the facility is to be on the south side of FM Road 1960, approximately 7,500 feet west of the intersection of FM Road 1960 and U.S. Highway 59, Harris County, Texas; renewal; 02685.

Plantation Municipal Utility District; the Plantation Municipal Utility District Wastewater Treatment Facilities. The facilities are at 802 Tara Plantation Drive, along the north bank of Rabbs Bayou, approximately 4,000 feet north of Booth-Richmond Road (FM Road 2759) and approximately 3,250 feet east of Crabb River Road in Fort Bend County, Texas; renewal; 11971-01.

Wayne Duddleston, Inc.; the wastewater treatment facilities are south of Cypress Creek, approximately 4,000 feet west and 1,300 feet south of the intersection of U.S. Highway 290 and Barker-Cypress Road in Harris County, Texas; renewal; 12328-01.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447871

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 9, 1994

## Notices of Application for Waste Disposal Permits

Notices of Applications for waste disposal permits issued during the period of August 29-September 2, 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 Natural Resource Conservation 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.

City of Bryan; the Burton Creek Wastewater Treatment Facilities; are approximately 3,800 feet northeast of the intersection of East 29th Street and FM Road 60 (University Drive) and approximately 3,400 feet southwest of the intersection of State Highway 6 and FM Road 60 in Brazos County, Texas; minor amendment; 10426-01.

ISP Technologies, Inc.; the plant manufactures industrial organic chemicals; is south of Industrial Avenue and west of State Highway Number 146, across from the Galveston County Industrial Water Reservoir and extending south to Moses Bayou in the City of Texas City, Galveston County, Texas; minor amendment; 01263.

Issued in Austin, Texas, on September 2, 1994.

Filed: September 7, 1994

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Notices of Applications for waste disposal permits issued during the period of September 5-9, 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.

Bill Elliott and wife, Carol A. Elliott; Application Number 14-1209A to amend Certificate of Adjudication Number 14-1209, which authorizes the diversion and use of four acre-feet of water per annum from Spring Creek, tributary of the Middle Concho River, tributary of the South Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin. The water is authorized to be used for irrigation of two acres of land out of a 3.815 acre tract in Irion County, Texas. Applicants seek to amend their certificate by moving the diversion point to the North Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin, and by moving the place of use to a location south of US 87, just southeast of Carlsbad, and approximately 15 miles northwest of San Angelo in Tom Green County, Texas. The applicants propose to irrigate four acres of land out of a total of 93.76 acres.

Tom J. Moore, et al; Application Number 4283C to amend Permit Number 4016, as amended. Permit Number 4016 (Application Number 4283) was issued September 9, 1983, and authorized the maintenance of three existing reservoirs on Big Creek, tributary to Navasota River, tributary to Brazos River, Brazos River Basin, with a total capacity of 43 acre-feet of water, and the diversion and use of 4450 acre-feet of water per year directly to the fields or into the reservoirs (including a maximum of 43 acre-feet per year of water captured from Big Creek by the reservoirs). The water is authorized to be used to irrigate 2,967 acres of land out of 3942.82 acres in Brazos County, Texas. The permit authorized three diversion points and rates and included flow restrictions. Permit Number 4016 was amended June 7, 1984 by Permit Number 4016A to

authorize diversion of an additional 990 acre-feet of water per year, irrigation of an additional 660 acres of land out of 681.224 acres in Brazos County, modification of location of Point Number 1, and increase of the diversion rate by 31.1 cfs, to a total of 86.9 cfs (39,000 gpm). As a Special Condition of the resulting amended Permit Number 4016A, the amendment would expire and become null and void on December 31, 1994, unless amended further. The priority date of the amendment and all extensions thereof is March 13, 1984. An additional Special Condition set the flow restriction (excluding any releases dedicated by the Brazos River Authority from its conservation storage for subsequent downstream use) for the additional annual amount of water. Permit Number 4016A was amended December 3, 1987 by Permit Number 4016B upon petition of the Executive Director of the Commission, to decrease the flow restrictions as follows: flow restrictions for the 2,967 acre-feet per annum authorized by Permit Number 4016 were changed to 1,270 cfs (570,015 gpm) for the months of April through August, and 410 cfs (184,020 gpm) for September through March, and flow restricts for the 990 acre-feet per year authorized by Permit Number 4016A were changed to 1,440 cfs (646,275 gpm) for April through August and 420 cfs (188,500 gpm) for September through March. Applicants presently seek this amendment to extend the expiration date on the additional authorizations for Permit Numbers 4016A and 4016B from December 31, 1994 to "as far into the future as possible".

Bernabe P. Vargas; Application Number 5493 for a permit to divert and use ten acre-feet of water per annum from San Diego Creek, tributary of San Fernando Creek, tributary of Cayo del Grulla, tributary of Baffin Bay, tributary of Laguna Madre, Nueces-Rio Grande Coastal Basin. The water will be used to irrigate ten acres of land out of an 11-acre tract located approximately 4 1/2 miles west of Alice, Texas, in Jim Wells County.

Concan Water Supply Corporation; Application Number 5497 for a permit to divert and use not to exceed 150 acre-feet of water per annum from the Frio River, tributary of the Nueces River, Nueces River Basin, for municipal use. The proposed diversion point is in Uvalde County, approximately 0.5 miles northeast of Concan, Texas and 22 miles north of Uvalde, Texas. Water is to be diverted at a maximum rate of 200 gallons per minute.

Brae-Burn Country Club; Application Number 5311B to amend Permit Number 5311, as amended. Permit Number 5311 was issued January 3, 1991 to Brae-Burn Country Club and authorized diversion of up to 200 acre-feet of water per annum from Brays Bayou, tributary of Buffalo Bayou, tributary of San Jacinto River, San Jacinto River Basin, into three existing off-channel reservoirs, with a total capacity of 13.2 acre-feet. The water is authorized to be used for irrigation of 132 acres of golf course land out of 151.064 acres located approximately 11.6 miles southwest of the Harris County Courthouse in Houston, Texas. Diversion was authorized by Permit Number 5311 from a point on the left, or north bank of Brays Bayou at a maximum diversion rate of 2.7 cfs (1200 gpm). Permit Number 5311 was amended July 16, 1991 by Permit Number 5311A authorizing the diversion point be moved 1,240 feet downstream. Applicant is presently seeking amendment to the permit to increase the annual diversion by 20 acre-feet, to a total of 220 acre-feet per year.

Louisiana-Pacific Corporation; Application Number 5498 for a permit to withdraw ten acre-feet of water per annum from the East Fork San Jacinto River, San Jacinto River



Basin in Liberty County, Texas. Water will be withdrawn at a maximum rate of 2.23 cubic feet per second (1,000 gallons per minute) for industrial use (fire suppression and control) at the applicant's Cleveland Sawmill Complex, located approximately four miles south of Cleveland, Texas.

Obbco Ranch Corporation; Application Number 12-3508B to amend Certificate of Adjudication Number 12-3508, as amended. Certificate of Adjudication Number 12-3508 authorized the diversion and use of 45 acre-feet of water per annum out of an existing, exempt 45 acre-foot reservoir on Flat Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin (above Proctor Lake Reservoir) to irrigate 53 acres of land out of a 110-acre tract located in Comanche County, approximately 20 miles north-northeast of Comanche, Texas. A Special Condition states that the authorizations would expire on December 31, 1990, unless the owners applied for and were granted a renewal. Certificate of Adjudication Number 12-3508 was amended March 19, 1991 by Certificate Number 12-3508A, extending the expiration date to December 31, 1993. Applicant seeks to extend the term of Certificate Number 12-3508, as amended, for an additional term of years.

Harold Lee Morris and wife, Darlene Morris; Application Number 4263A to amend Permit Number 3934, which authorizes diversion of up to 25 acre-feet of water per annum from an existing, exempt 25 acre-foot reservoir on an unnamed tributary of the Leon River, Brazos River Basin. Diversion is authorized from the perimeter of the aforesaid reservoir at a maximum diversion rate of 0.45 cfs (200 gpm) to irrigate 50 acres of land out of a 120-acre tract located approximately 18 3/4 miles north-northeast of Comanche. Permit Number 3934 includes a Special Condition stating that the permit will expire and become null and void on December 31, 1992, unless one year prior to such date permittee applies for an extension and such application is subsequently granted. The time priority of this permit is November 8, 1982. Applicants presently seek to extend the term of Permit Number 3934 for as long as possible.

Harold Lee Morris and wife, Darlene Morris; Application Number 12-3503B to amend Certificate of Adjudication Number 12-3503, as amended. Certificate of Adjudication Number 12-3503 authorized the diversion of up to 45 acre-feet of water per annum from an existing, exempt five acre-foot reservoir on an unnamed tributary of the Leon River, Brazos River Basin, and from an existing, exempt 40 acre-foot reservoir on another unnamed tributary of the Leon River, Brazos River Basin. The water is authorized to be used for irrigation of 60 acres of land out of a 160-acre tract located in Comanche County, Texas, approximately 19 miles north-northeast of Comanche. Diversion is authorized from the perimeters of the aforesaid reservoirs at a maximum combined diversion rate of 0.89 cfs (400 gpm). The time priority of this right is February 28, 1977. The Certificate included a Special Condition stating that the authorizations would expire and become null and void on December 31, 1990 unless the owner applied for and was granted a renewal. Certificate of Adjudication Number 12-3503 was amended March 19, 1991 by Certificate Number 12-3503A, which extended the expiration date to December 31, 1993. Applicants presently seek amendment to extend the term of Certificate 12-3503 for as long as possible.

Properties of the Southwest, Inc.; Application Number 5471A to amend Permit Number 5471 which authorized

the applicant to construct and maintain a dam creating a lake (referred to as Indigo Lake) on Log Gully, tributary of Walnut Creek, tributary of Spring Creek, tributary of the West Fork of the San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin, and to impound therein not to exceed 563 acre-feet of water at a normal pool elevation of 205.0 feet above mean sea level. The dam and lake are authorized to be used for in-place recreational purposes. The lake is located in Montgomery County, approximately 20 miles southwest of Conroe, Texas and two miles south of Magnolia, Texas. Applicant seeks to amend the permit by increasing the impoundment to 1,164 acre-feet and by changing the normal pool elevation from 205.0 feet above mean sea level to 210 feet above mean sea level. The applicant has indicated that this change is needed to assure that the lake will have no significant impact on the 100-year floodplain, in accordance with Montgomery County and FEMA regulations.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447870

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 9, 1994

### ◆ ◆ ◆ Notice of Opportunity to Comment on Administrative Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Clean Air Act, §382.096, Health and Safety Code, Chapter 382. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 15, 1994. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-0600 and at the following applicable Regional Office listed. Written comments about these AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087, and must be received by 5: 00 p.m. on October 15, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606 or (512) 239-0626. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) Company: Arrow Industries, Location: Farmers Branch, Dallas County, Type of Facility: flexographic printing facility, Rule Violated: TNRCC Rule 30 TAC

§101.4, nuisance-level odor emissions; and Agreed Board Order Number 91-05(b), paragraph 12(d), Penalty: \$27,000, Staff Attorney: Peter Gregg, (512) 239-0450, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(2) Company: Austin Countertops, Inc., Location: Austin, Travis County, Type of Facility: cultured marble manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.115 and §116.116, exceeding permitted gelcoat and resin annual usage limits, Penalty: \$500, Staff Attorney: Randall D. Terrell, (512) 239-0577, Regional Office: 1700 South Lamar Boulevard, Building One, Number 101, Austin, Texas 78704-3360, (512) 463-7803.

(3) Company: Bell Helicopter Textron Inc., Location: Fort Worth, Tarrant County, Type of Facility: helicopter manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §115.421(a)(9)(A)(iii), by exceeding the adhesive prime surface and coating emission limit of 6.7 pounds volatile organic compound (VOC) /gallon of solids, Penalty: \$8,725, Staff Attorney: Lisa Uselton, (512) 239-5692, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732 5531.

(4) Company: Cars Plus, Location: Odessa, Ector County, Type of Facility used car lot, Rule Violated: TNRCC Rule 30 TAC §114.1(c)(1), offering for sale a motor vehicle which was not equipped with all of the emission control systems or devices that were originally a part of the motor vehicle or its engine; and TNRCC Rule 30 TAC §114.1(c)(3), failing to display on property a copy of the notice setting forth the prohibition and requirements of 30 TAC §114.1(c)(3), Penalty: \$0.00, Staff Attorney: Terry G. Salem, (512) 239-0469, Regional Office: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871.

(5) Company DFW Redi-Mix Environmental Consultants, Inc., Location: Grapevine, Tarrant County, Type of Facility: portable rock crusher plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of a portable rock crusher, Penalty: \$0.00, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(6) Company: Doane Products Company, Location: Temple, Bell County, Type of Facility: pet food manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of a pet food manufacturer, Penalty: \$18,275, Staff Attorney: Peter Gregg, (512) 239-0450, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

(7) Company: Louis Dreyfus Corporation, Location: Houston, Harris County, Type of Facility: grain storage facility, Rule Violated: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos); and failure to provide required notification prior to demolition of twenty-one steel grain storage tanks and a number of small structures; and failing to maintain compliance with TNRCC Rule 30 TAC §101.20(2), Penalty: \$1,000, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900

(8) Company Exxon Company, U.S.A., Location: Sugarland, Fort Bend County, Type of Facility: oil and gas production facility, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance-level odor emissions; and TNRCC Rule 30 TAC §101.6, failing to report major upset conditions,

Penalty: \$14,000, Staff Attorney: Peter Gregg, (512) 239-0450, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(9) Company: Flint Crushing, Inc., Location: Webb County (Phelps Plant), Type of Facility: rock crushing equipment and a sand and gravel plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation, Penalty: \$675, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: Matz Building, Room 204, 513 East Jackson, Harlingen, Texas 78550, (210) 425-6010.

(10) Company: Flint Crushing, Inc., Location: Webb County (Benavides Plant), Type of Facility: rock crushing equipment and a sand and gravel plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation, Penalty: \$1,200, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: Matz Building, Room 204, 513 East Jackson, Harlingen, Texas 78550, (210) 425-6010.

(11) Company: Gardner/Culler Industries, Location: Huntsville, Walker County, Type of Facility: mirror manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.115 and Agreed Order Number 88-07(ii), failing to comply with special provisions contained in TNRCC Permit Number C-18495, Penalty: \$14,000, Staff Attorney: Larry Persky, (512) 239-0474, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(12) Company: Himont U.S.A., Incorporated, Location: Pasadena, Harris County, Type of Facility: polymer manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.116(a), investigation found discrepancies between actual plant conditions and representations made in application for TNRCC permits as to numbers of valves and flanges; TNRCC Rule 30 TAC §101.20(1) and Agreed Order Number 93-0(j) by violating applicable federal New Source Performance Standards by failure to conduct required flare tests within 180 days of initial start-up, Penalty: \$30,000, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(13) Company: H.L. Merrill and Son Construction Company, Location: Saginaw, Tarrant County, Type of Facility: trench burner unit, Rule Violated: TNRCC Rule 30 TAC §116.115, by violating conditions of Special Permit Number T-9742, Penalty: \$1,000, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(14) Company: Leonard Holdridge, Location: Belton, Bell County, Type of Facility: owns property, Rule Violated: TNRCC Rule 30 TAC §111.101, unauthorized outdoor burning of brush, Penalty: \$0.00, Staff Attorney: Janis Boyd Hudson, (512) 239-0466, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

(15) Company: Inland Container Corporation, Location: Orange, Orange County, Type of Facility: a paper mill, Rule Violated: TNRCC Rule 30 TAC §112.51(b), by exceeding the total reduced sulfur emissions limit of 20 parts per million (ppm) for old design recovery furnaces; and TNRCC Rule 30 TAC §116.115, by violating special provisions of Permit Number 9654, Penalty: \$30,000, Staff Attorney: Rachael Rawlins, 239-0673, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77003-1830, (409) 898-3838.

(16) Company: Interturbine Dallas, Location: Grand Prairie, Tarrant County, Type of Facility: aircraft parts renovation facility, Rule Violated: TNRCC Rule 30 TAC §116.110(a), owning and operating three vapor degreasers, a plasma spray booth, and a fluorocarbon cleaner without first obtaining a permit or qualifying for a standard exemption, Penalty: \$15,200, Staff Attorney: Angela Stepherson, (512) 239-0585, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(17) Company: Letsos Company Mechanical Contractors, Location: Houston, Harris County, Type of Facility: renovation project, Rule Violated: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos); failure to submit a complete notification and conduct an asbestos study at least ten working days before any demolition activity begins, Penalty: \$0.00, Staff Attorney: Ronnie Jones, (512) 239-0584, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(18) Company: The May Department Stores, Location: Houston, Harris County, Type of Facility: retail store, Rule Violated: TNRCC Rule 30 TAC §101.20(2), violating National Emissions Standards for Hazardous Air Pollutants (NESHAP) as follows: 40 Code of Federal Regulations, §61.145(c), failing to adequately wet regulated asbestos containing material (RACM); and 40 Code of Federal Regulations, §61.150, failing to properly label bags containing RACM to be transported off site, Penalty: \$0.00, Staff Attorney: Peter Gregg, (512) 239-0450, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(19) Company: Miller Brewing Company, Location: Fort Worth, Tarrant County, Type of Facility: brewery, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of five can/bottle filling lines, Penalty: \$0.00, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(20) Company: St. Edward's University, Location: Austin, Travis County, Type of Facility: renovation activity, Rule Violated: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos), failing to submit a complete notification of asbestos-containing material (ACM) removal at least ten working days before any demolition or renovation activity begins, failing to start ACM renovation on the start date listed on the notification submitted, failing to submit a revision of the start date listed on the original notification submitted for renovation activity, Penalty: \$0.00, Staff Attorney: Terry G. Salem, (512) 239-0469, Regional Office: 1700 South Lamar Boulevard, Building One, Number 101, Austin, Texas 78704-3360, (512) 463-7803.

(21) Company: Southern Iron and Metal Company, Location: Houston, Harris County, Type of Facility: grain storage facility, Rule Violated: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos); and failing to maintain compliance with TNRCC Rule 30 TAC §101.20(2), Penalty: \$1,000, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(22) Company: Star Enterprise, Location: Port Arthur, Jefferson County, Type of Facility: petroleum refinery, Rule Violated: TNRCC Rule 30 TAC §101.20(1), by violating federal NESHAP regulations: by failing to conduct required visual or physical inspection of drains in volatile organic compound (VOC) service; failing to conduct required semiannual inspection of junction boxes in VOC service; failing to submit required initial and subsequent semi-annual compliance reports; failing to test emergency flares as required on two units to determine compliance with 40 Code of Federal Regulations, §60.18, in accordance with the criteria in 40 Code of Federal Regulations, §60.485(g); failing to provide timely fugitive monitoring reports, on 69 occasions, required under 40 Code of Federal Regulations, §60.487(a) for seven units subject to NSPS Subpart GGG. TNRCC Rule 30 TAC §116.115 by failing to comply with special provisions-dealing with permitted charge rate limits, monitoring an emergency flare, control equipment installation schedules, and recordkeeping-of four TNRCC permits. TNRCC Rule 30 TAC §116.116(a) by exceeding the charge rate limits, for two units, represented in two permit applications, Penalty: \$263,375, with \$30,720 deferred pending full completion of a Supplemental Environmental Project involving installation of additional control equipment at the plant not currently required by law, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77003-1830, (409) 898-3838.

(23) Company: Texas Industries, Inc., Location: Bridgeport, Wise County, Type of Facility: rock crushing plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), installing enlarged primary and secondary screens and by replacing a cone crusher with an impact crusher, Penalty: \$1,450, Staff Attorney: Lisa Uselton, (512) 239-5692, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(24) Company: Thermonetics, Inc., Location: Richardson, Dallas County, Type of Facility: thermal energy plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of a generator and two steam boilers, Penalty: \$1,950, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(25) Company: Thermonetics, Inc., Location: San Antonio, Bexar County, Type of Facility: thermal energy plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of the thermal energy plant, Penalty: \$0.00, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(26) Company: Tri B Industries, Location: Lewisville, Denton County, Type of Facility: fiberglass reinforced plastic manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.116, by operating without maintaining required negative pressure in the manufacturing building as represented in the Company's application for permit exemption S-3828, Penalty: \$2,000, Staff Attorney: Lisa Uselton, (512) 239-5692, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(27) Company: Trinity Industries, Inc., Location: Vidor, Orange County, Type of Facility: railcar repair and refinishing plant, Rule Violated: TNRCC Rule 30 TAC §115.421(9)(A)(ii), exceeding 3.5 lb/gal limit in paint

volatile organic compound (VOC) content. Penalty: \$9,000, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77003-1830, (409) 898-3838.

(28) Company: Ultra Custom Manufacturing Company, Inc., Location: Crowley, Johnson County, Type of Facility: fiberglass boat manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of the fiberglass boat manufacturing plant, Penalty: \$0.00, Staff Attorney: Kerri Rowland, (512) 239-5693, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(29) Company: Union Pacific Railroad Company, Location: Orange, Orange County, Type of Facility: railroad switching yard, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance-level air emissions, Penalty: \$30,000, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

(30) Company: United Coatings, Inc., Location: Ennis, Ellis County, Type of Facility: paint manufacturing facility, Rule Violated: TNRCC Rule 30 TAC §116.115, by exceeding annual allowable emission levels for methylene chloride as contained in Permit T-16994, Penalty: \$60,750, Staff Attorney: Lisa Uselton, (512) 239-5692, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(31) Company: United Collision Experts, Location: Austin, Travis County, Type of Facility: spray painting body shop, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level, odor emissions, Penalty: \$5,000, Staff Attorney: Scott A. Humphrey, (512) 239-0574, Regional Office: 1700 South Lamar Boulevard, Building One, #101, Austin, Texas 78704-3360, (512) 463-7803.

(32) Company: Wilco Peanut Company, Location: Pleasanton, Atascosa County, Type of Facility: peanut shelling plant, Rule Violated: TNRCC Rule 30 TAC §116.110, failing to obtain a permit or to satisfy the requirements of a standard exemption prior to constructing an additional receiving pit and conveyors, Penalty: \$750, Staff Attorney: Lisa Uselton, (512) 239-5692, Regional Office: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(33) Company: Wilco Peanut Company, Location: Pearsall, Frio County, Type of Facility: peanut shelling plant, Rule Violated: TNRCC Rule 30 TAC §116.110, failing to obtain a permit or to satisfy the requirements of a standard exemption prior to constructing its peanut receiving facility, Penalty: \$500, Staff Attorney: Rachael Rawlins, (512) 239-0673, Regional Office: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

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

TRD-9447919      Mary Ruth Holder  
Director, Legal Services Division  
Texas Natural Resources Conservation  
Commission

Filed: September 12, 1994



## Notices of Opportunity to Comment on Permitting Actions

Notices of Opportunity to comment on permitting actions are issued for the week ending September 2, 1994.

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 Number 18-2036A by G. W. Worth, Jr., and Wife, Darolyn Worth for an amendment to Certificate of Adjudication Number 18-2036, pursuant to Texas Water Code, §11.122. Certificate Number 18-2036 was issued July 17, 1981, to August Pankratz, Jr., and authorized the diversion and use of not-to-exceed 125 acre-feet of water per annum from the Guadalupe River to irrigate 100 acres of land out of a tract on the north side of the Guadalupe River, in the Jose N. Regalado Survey Number 27, Abstract Number 393, Kendall County, Texas. Diversion was authorized from two points on the north bank of the Guadalupe River, at a maximum combined rate of 2.2 cfs (1,000 gpm). The applicants have purchased the water right from August Pankratz, Jr., and seek amendment to: (1) change the diversion points; (2) increase the irrigated area to 200 acres; and (3) change the place of use to irrigate 200 acres of land out of a 646.495-acre group of tracts on the south side of the Guadalupe River, in the following surveys: (a) L. T. Pease Survey Number 387, Abstract Number 384; (b) the William Davis Survey Number 385, Abstract Number 141; (c) the B. B. B. & C. R. R. Co. Survey Number 386, Abstract Number 68; (d) the Ernst Schilling Survey Number 341, Abstract Number 829; and (e) the Julius Holekamp Survey Number 2, Abstract Number 821. The new diversion points will be: (a) point number 1 on the south, or right bank of the Guadalupe River adjacent to their property, at Latitude 29.955 degrees North, Longitude 98.908 degrees West, the same point bearing North 23 degrees West, approximately 9,600 feet from the southeast corner of the aforesaid Pease Survey; and (b) point number 2 on the perimeter of an existing, exempt, 65-acre-foot reservoir on a unnamed tributary of the river (midpoint of the dam at the stream being North 50.5 degrees West, approximately 1,800 feet from the southeast corner of the aforesaid Pease Survey). Diversion point number 1, on the river, is located approximately 15.5 miles northwest of Boerne, Kendall County, Texas. No other changes are requested.

Application Number 5421A by the Town of Refugio for a Texas Water Code, §11.145 permit application. Amendment to Permit Number 5421 to extend the time to commence and complete construction of a dam and reservoir on an unnamed tributary of Mission River (locally known as Little Creek), tributary of Copano Bay, tributary of Aransas Bay, San Antonio-Nueces Coastal Basin, Refugio County, Texas.

Application Number 08-3404B by the Trinity River Authority of Texas for an amendment to Certificate of Adjudication Number 08-3404, as amended, pursuant to Texas Water Code, §11.122. For executive director's consideration. Certificate of Adjudication Number 08-3404 was issued April 5, 1985, to the applicant and authorized the impoundment of 176,900 acre-feet of water on Mountain Creek, Trinity River Basin, now called Joe Pool Reservoir. The applicant is also authorized to divert and use 17,000 acre-feet of water per annum from Joe Pool Reservoir for municipal and domestic purposes. The certificate has been

amended once to specify two diversion points. The applicant seeks to once again amend the certificate by changing 1,121 acre-feet of water per annum authorized for municipal use to irrigation use.

Application Number 23-2699A by Maurice M. Alexander, et al. for a amendment to Certificate of Adjudication Number 23-2699, pursuant to the Texas Water Code, §11.122. For executive director's consideration. Applicant seeks authorization to change the purpose of use of 50 acre-feet of the 500 acre-feet per annum of water now authorized for Class "A" irrigation rights to mining use. Certificate Number 23-2699 currently authorizes Maurice M. Alexander, et al. to divert and use, with Class "A" priority, not to exceed 500 acre-feet of water per annum from the Rio Grande to irrigate 250 acres of land out of a 460-acre tract in the B. M. Diaz Porcion 7, Abstract Number 39 and the B. M. Diaz Porcion Number 8, Abstract Number 40 in Webb County.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447747

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 7, 1994

Approval of Earl Dungan and Gilda M. Dungan doing business as Holiday Harbor Sewer Utility for Decertification of Portion of Sewer CCN Number 20690 in San Jacinto County, Texas (Application Number 30499-Q, Vera Poe).

Application of Treetop Utilities, Inc., Application #30329-C, for a Water Certificate of Convenience and Necessity in Parker County, Texas.

Application of Travis County Water Control and Improvement District Number 17 to Amend Water Certificate of Convenience and Necessity Number 12010 by Decertification of Travis County, Texas (Application Number 30356-Q, Albert Holck).

Approval of William N. Kelley, Jr. doing business as Kelley Well Service to Transfer Water CCN Number 12674 from James T. Davis doing business as Hackberry Creek Water; Amend Water CCN Number 12143; Cancel Water CCN Number 12674 in Chambers County, Texas (Application Number 30447-S, Albert Holck).

Application Number 23-24B by James D. Russell to Amend Certificate of Adjudication Number 23-24A, pursuant to Texas Water Code, §11.122. Application 23-24B was received on August 2, 1994, from James D. Russell, and was declared administratively complete and filed on September 7, 1994. Commission records show that James D. Russell acquired 1,415 acre-feet of water rights under Certificate Number 23-24A, with accompanying authorization to irrigate 566 acres of land, to be designated in this amendment. The applicant, James D. Russell, seeks to amend Certificate Number 23-24A to change: the diversion point for the 1,415-acre-foot portion of the water right to the same diversion point specified under Certificate Number 23-288, on the north bank of the Rio Grande, approximately 7.3 miles northwest of Brownsville; and the place of use of the 1,415-acre-foot portion to irrigate 566 acres of land within two tracts totalling 847.4 acres, in the "Espiritu Santo" Heirs of Jose Salvador de la Garza Survey, Abstract Number 2, approximately 13 miles north-northwest of Brownsville. Diverted

water will be delivered to the authorized lands through the facilities of the Rio Grande Palms Water District, with final diversion from the Resaca de los Cuates watercourse and reservoir system. No other changes are requested.

Issued in Austin, Texas, on September 9, 1994.

TRD-9447869

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 9, 1994

## Permian Basin Regional Planning Commission

### Request for Proposals

The Permian Basin Regional Planning Commission (hereinafter referred to as the PBRPC), the Metropolitan Planning Organization for the Midland-Odessa Regional Transportation Study (MORTS), hereby requests proposals for planning and/or engineering consultant services to develop a transit feasibility study for the Midland-Odessa, Texas, Metropolitan Study Area. The Request for Proposal is issued for the PBRPC by authority of the MORTS Policy Advisory Committee in compliance with 23 USC 104(P), as amended by the Intermodal Surface Transportation Efficiency Act of 1991, which authorizes Metropolitan Planning (PL) Funds and Federal Transit Act Section 8 Funds to be made available to Metropolitan Planning Organizations (MPO) to support the urban transportation planning process. The consultant will develop and present alternatives that can feasibly be implemented and will address the needs of the Midland Metropolitan Area, the Odessa Metropolitan Area and/or the combined Midland-Odessa Metropolitan Study Area. Proposals received will be screened and evaluated by the MORTS Steering Committee and a minimum of three firms will be selected for interviews/presentations with a selection committee comprised of members of the MORTS Steering Committee and the Policy Advisory Committee. All proposals must be received on or before the date specified herein to be considered for selection. The PBRPC is the point of contact. Any questions that arise concerning the Request for Proposal must be in writing to Jerry Tschauner, Director of Planning, Permian Basin Regional Planning Commission, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061.

**Purpose.** This Request for Proposal provides prospective consultants with general information to assist in preparing and submitting proposals for consideration by the MORTS Steering Committee in selecting a consultant to perform a comprehensive transportation study fully exploring and providing recommendations for the implementation of a Section 9 urbanized transit system for the Midland-Odessa Metropolitan Area including full operational and management strategies. The consultant will provide specific, detailed financial options and requirements. The consultant shall provide an analysis on how existing private and non-profit sector operations would be affected and how they could be accommodated within the establishment of a local public transit system.

**Submission of Proposal.** Ten copies of the proposal must be delivered no later than 5:00 p.m. on the 21st day of October, 1994. Late proposals or faxed copies will not be accepted. Proposals should be mailed to: Ernie Crawford, Executive Director Permian Basin Regional Planning

Commission P.O. Box 60660, Midland, Texas  
79711-0660

Issued in Austin, Texas, on September 7, 1994.

TRD-9447800 Terri Moore  
Director of Personnel and Administration  
Services  
Permian Basin Regional Planning  
Commission

Filed: September 8, 1994

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**Texas Department of Protective and  
Regulatory Services**

**Notice of Awards**

The Texas Department of Protective and Regulatory Services announces the contract awards to provide Evaluation and Treatment Services to Children's Protective Services clients in Harris County, Region 06, (the Houston Region). The request for proposal was published in the May 27, 1994, issue of the *Texas Register* (19 TexReg 4222).

Needs Assessment Statement: Region 06 Children's Protective Services is responsible for protecting children who are abused and/or neglected and acting in their best interest. The program's objectives are to prevent further harm to children, to preserve the family, and to provide permanence for children in substitute care by resolving family dysfunction and returning children to their families. In order to meet these objectives, Region 06 is contracting for homemaker services to provide family life skills such as, home management and childcare.

Names of Contractors: Contracts have been awarded to Elizabeth Murillo dba Murillo Enterprises; Hope Center; Adapt for Healthy Sexuality; West Houston Psychological Associates, P.C.; Catholic Charities of the Diocese of Galveston-Houston; Dorothy Lam Wong, Ph.D.; Mark Lehman, Ph.D. and Associates, P.C.; Walker Counseling Associates; Family Enrichment Clinic; Packwood Psychotherapy; Houston Galveston Institute; Annetta Bradberry Vaughn; New Spirit, Inc.; Yoakum Psychological Associates; Cullen Bayou Place/Houston Child Guidance Center; Diane L. Bailey, Ph.D.; Harris County Children's Protective Services/The Children's Assessment Center; Teresa Pique Algaze dba Arena Counseling Center; and M. Elaine Litsey, ACSW, LMSW-ACP, LMFT.

Terms and Total Value: The scheduled term of the contract is September 1, 1994, through August 31, 1995. The total amount of \$2,146,000 has been awarded. Funding is limited to available federal and/or state appropriations.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447806 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: September 8, 1994

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**Public Notice on EPSDT Psycho-Social  
Treatment Services in Foster Care  
Settings Reimbursement**

The Texas Department of Protective and Regulatory Services (TDPRS) is submitting a Medicaid State Plan

Amendment through the Health and Human Services Commission to facilitate implementation of EPSDT Psycho-Social Treatment Services in Foster Care Settings and to initially establish a reimbursement methodology for this service. It is estimated that there will be no increase in the annual aggregate expenditures for individuals receiving services from TDPRS, however, Medicaid funds will become available for some of these services. The amount of Medicaid funds is not currently known and statistical and expenditure information to form a projection will not be available until after implementation. The reimbursement methodology is available for review at local TDPRS offices or may be requested from Juanita Carrell, MC Y-941, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-3749. Written comments will be submitted to Ms. Carrell.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447896 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: September 8, 1994

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**Public Utility Commission of Texas**  
**Notice of Application to Locate and  
Maintain Records Outside the State of  
Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application for a waiver of Public Utility Commission Substantive Rule 23.14, which requires public utilities to keep all records necessary for regulation within the State of Texas.

Docket Title and Number. Application of Border to Border Communications, Inc. for Approval of Local Exchange Rates and Tariff. Docket Number 12457.

The Application. Border to Border Communications, Inc. is requesting approval to maintain customer records and finance and accounting records in Marked Tree, Arkansas.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf on or before October 3, 1994.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447797 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: September 8, 1994

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**Railroad Commission of Texas**  
**Notice of Public Hearing on Lower Rio  
Grande Valley Commercial Zone  
Rulemaking**

The Railroad Commission of Texas will conduct a public hearing on a proposed amendment to §5.294, concerning the proposed creation of the Lower Rio Grande Valley

Commercial Zone. Texas Commerce Bank, First Bank, and Campbell's Delivery Service, Inc. have requested that a new commercial zone be created, to be known as the Lower Rio Grande Valley Commercial Zone, which would include Cameron, Hidalgo, Starr, and Willacy Counties. The text of the proposed rule is published in the August 30, 1994, issue of the *Texas Register* (19 TexReg 6819).

The purpose of the public hearing will be to receive written comments as to whether a new commercial zone should be created to be comprised of Cameron, Hidalgo, Starr, and Willacy Counties. In addition, the commission will consider the economic conditions in the proposed commercial zone, and particularly the effect that unregulated traffic has had or may have upon fully regulated motor carriers operating to, from, and within the proposed commercial zone.

The public hearing for receipt of written comments will begin at 8:30 a.m., on Monday, September 26, 1994. The hearing will be conducted at the Railroad Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Room 12-126. The examiner receiving written comments will be Carrie L. McLarty.

Any interested member of the public may appear and offer written comments. No oral comments or presentations will be accepted. Organizations, associations, and groups are encouraged to present their commonly held views and identical or similar comments through a single written submission where possible.

The comment period for this proposed rule expires on September 29, 1994. Written comments may be submitted to Carrie L. McLarty, Railroad Commission of Texas, Transportation-Legal Division, P.O. Box 12967, Austin, Texas 78711-2967.

Issued in Austin, Texas, on September 8, 1994.

TRD-9447801      Mary Ross McDonald  
Assistant Director, Legal Division-Gas  
Utilities/LP-Gas  
Railroad Commission of Texas

Filed: September 8, 1994

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**The Texas A&M University System  
Public Notice**

Pursuant to Texas Civil Statutes, Article 6252-17a, §3(a)(23), the following candidates are the finalists for the position of President of Prairie View A&M University and upon the expiration of 21 days, final action is to be taken by the Board of Regents of the Texas A&M University System: Dr. Ashland O. Brown, Dr. Charles A. Hines, Dr. William L. Lester.

Issued in College Station, Texas, on September 7, 1994.

TRD-9447701      Vickie Running  
Secretary of the Board of Regents  
The Texas A&M University System

Filed: September 7, 1994

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**Request for Information (RFI)**

The Texas A&M University System (System) requests information from law firms interested in representing the System and its component institutions in tax-exempt bond

matters. This RFI is issued for the purpose of establishing (for the Year beginning September 1, 1994) a referral list from which the System, by and through the Office of General Counsel, will select appropriate counsel for representation on specific bond matters as the need arises. These needs include the usual and necessary services of a bond counsel in connection with issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Description. The System comprises seven universities and six state agencies in Texas. Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Bonds are issued under authority granted the System in Article VII, §18 of the Texas Constitution (Permanent University Fund). A variable rate demand note program is frequently used to raise new funds in support of the capital improvement program. Bond sales are normally conducted one or twice each year. Fixed rate bond sales occur each two or three years in the amount of approximately \$100 million to refund variable rate notes. Advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Texas Education Code, Chapter 55, and Texas Civil Statutes, Articles 717k and 717q, and other applicable laws, the System issues revenue bonds for capital improvements. A tax-exempt variable rate note program is used for interim financing with long term fixed rate bonds, sold to provide more permanent financing. The variable rate note program, currently in a commercial paper mode, is presently authorized up to \$125 million. During the current fiscal year, notes outstanding should reach the maximum amount. The System employs a revenue bond program which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). Advance refunding of bonds and escrow restructures of previously defeased bonds, based on market timing, may be expected. Federal tax related matters regarding bonds issued by the System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the System over the next year. The System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the System's Office of General Counsel.

Responses. Responses to the RFI should include at least the following information: a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters, the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to the System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and costs controls) and billable expenses, disclosures of conflicts of interest (identifying each every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the System or to the State of Texas, or any of its boards, agencies, commissions, uni-

versities; or elected or appointed officials); and confirmation of willingness to comply with policies, directives and guidelines of the System and the Attorney General of the State of Texas.

**Format and Person to Contact.** Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8-1/2 by 11-inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Information," and addressed to: Melissa M. Ricard, Assistant General Counsel, Office of General Counsel, The Texas A&M University System, 301 Tarrow Drive, Sixth Floor, Campus Mail

Stop 1230, College Station, Texas 77843-1230, (Telephone (409) 845-3511 for questions).

**Deadline for Submission of Response.** All responses must be received by the Office of General Counsel of Texas A&M University System, at the address set forth previously not later than 5:00 p.m., October 3, 1994.

Issued in College Station, Texas, on September 9, 1994.

TRD-9447787

Vickie Running  
Executive Secretary to the Board of  
Regents  
The Texas A&M University System

Filed: September 8, 1994







**Statement of Ownership,  
Management and  
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*(Required by 39 U.S.C. 3685)*

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6. Full Names and Complete Mailing Address of Publisher, Editor, and Managing Editor (This form <i>NOT</i> to be filled in) Publisher (Name and Complete Mailing Address) Secretary of State of Texas, State Capitol, Austin, Texas 78711-2887														
Editor (Name and Complete Mailing Address) Dan Procter, PO Box 13824, Capitol Station, Austin, Texas 78711-3824														
Managing Editor (Name and Complete Mailing Address) Non Applicable														
7. Owner (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given. If the publication is published by a nonprofit organization, its name and address must be stated.) (Item must be completed.)														
<table border="1"> <thead> <tr> <th>Full Name</th> <th>Complete Mailing Address</th> </tr> </thead> <tbody> <tr> <td>Secretary of State</td> <td>PO Box 13824</td> </tr> <tr> <td>Texas Register</td> <td>Capitol Station</td> </tr> <tr> <td></td> <td>Austin, Texas 78711-3824</td> </tr> </tbody> </table>							Full Name	Complete Mailing Address	Secretary of State	PO Box 13824	Texas Register	Capitol Station		Austin, Texas 78711-3824
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Secretary of State	PO Box 13824													
Texas Register	Capitol Station													
	Austin, Texas 78711-3824													
Pursuant to the Gov. Code, Title 10, Chapter 2002.														
8. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities (If there are none, so state)														
<table border="1"> <thead> <tr> <th>Full Name</th> <th>Complete Mailing Address</th> </tr> </thead> <tbody> <tr> <td>Non Applicable</td> <td></td> </tr> </tbody> </table>							Full Name	Complete Mailing Address	Non Applicable					
Full Name	Complete Mailing Address													
Non Applicable														
9. For Completion by Nonprofit Organizations Authorized to Mail at Special Rates (DMM Section 424.12 only) The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes (Check one)														
<input type="checkbox"/> (1) Has Not Changed During Preceding 12 Months <input type="checkbox"/> (2) Has Changed During Preceding 12 Months <i>(If changed, publisher must submit explanation of change with this statement)</i>														
10. Extent and Nature of Circulation <i>(See instructions on reverse side)</i>		Average No. Copies Each Issue During Preceding 12 Months		Actual No. Copies of Single Issue Published Nearest to Filing Date										
A. Total No. Copies (Net Press Run)		4541		4510										
B. Paid and/or Requested Circulation		N/A		N/A										
1. Sales through dealers and carriers, street vendors and counter sales														
2. Mail Subscription (Paid and/or requested)		4148		4119										
C. Total Paid and/or Requested Circulation (Sum of 1(B) and 2(B))		4148		4119										
D. Free Distribution by Mail, Carrier or Other Means Samples, Complimentary and Other Free Copies		393		391										
E. Total Distribution (Sum of C and D)		4541		4510										
F. Copies Not Distributed														
1. Office use, left over unaccounted, spoiled after printing		100		100										
2. Return from News Agents		N/A		N/A										
G. TOTAL (Sum of E, F1 and 2—should equal net press run shown in 9)		4541		4510										
11. I certify that the statements made by me above are correct and complete		Signature and Title of Editor, Publisher, Business Manager, or Owner <i>Dan Procter, Director</i>												

## 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