

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

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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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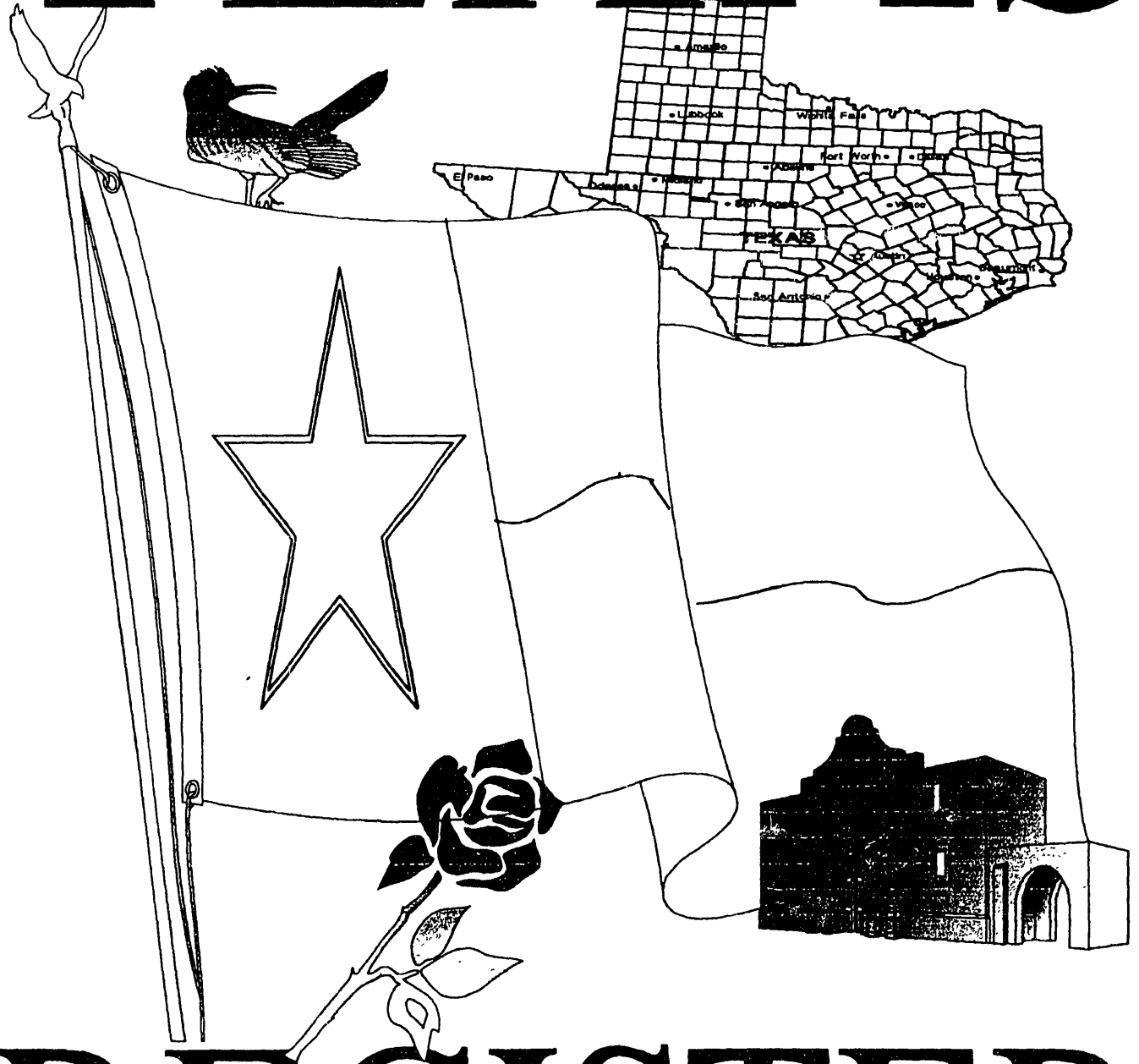
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Grade: 10

School: Gainesville High School, Gainesville ISD

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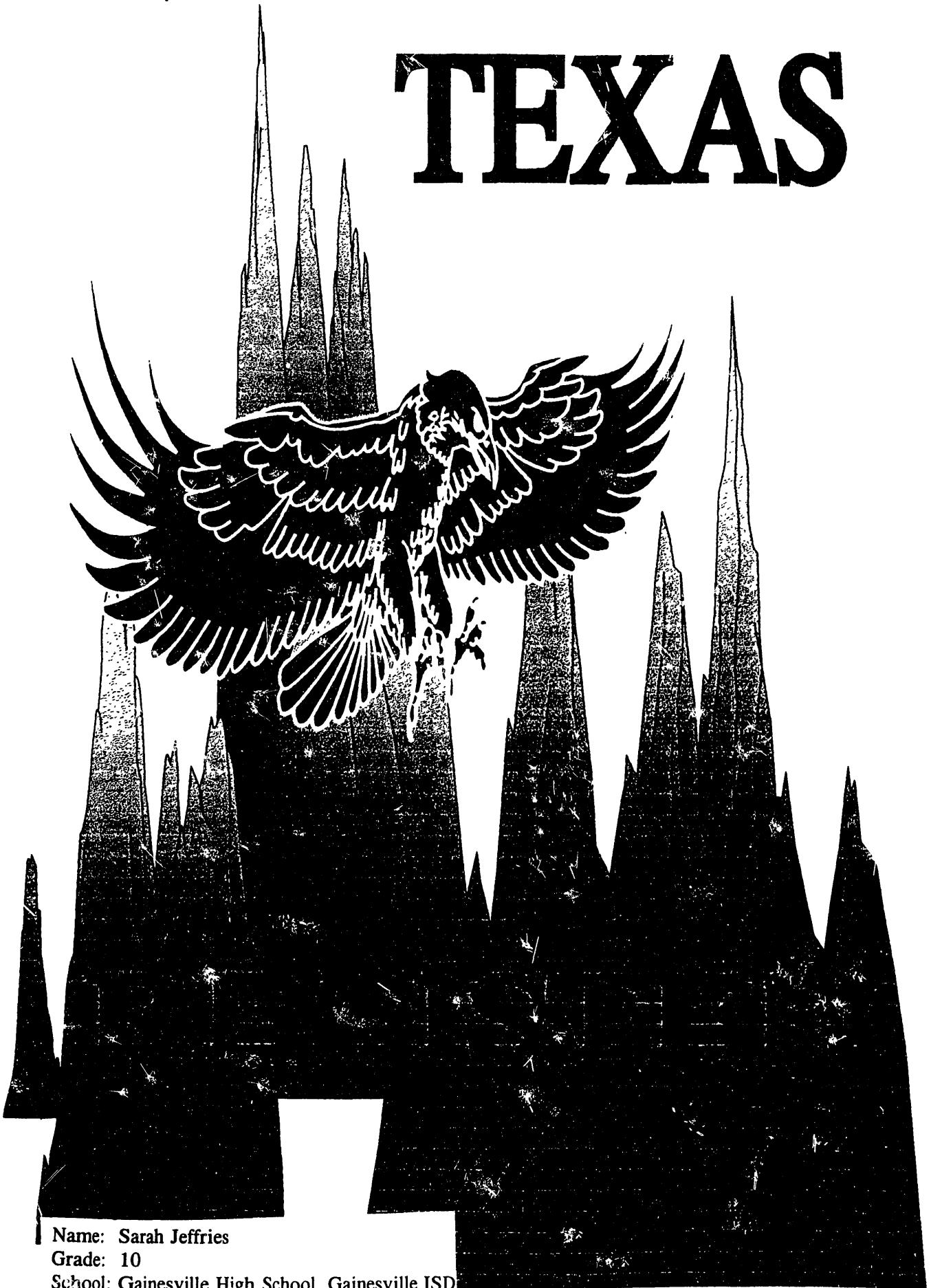
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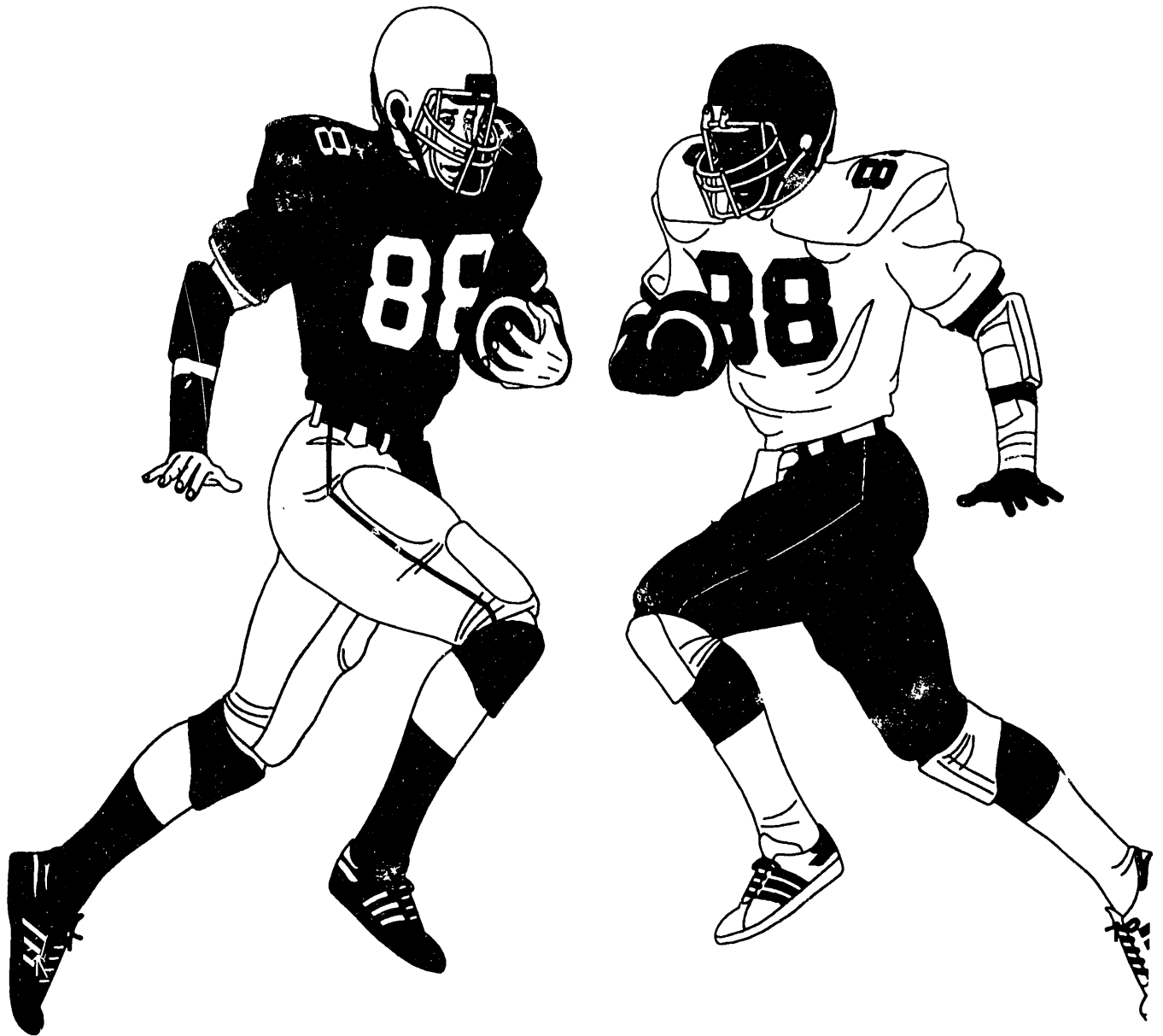
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Name: Sarah Jeffries

Grade: 10

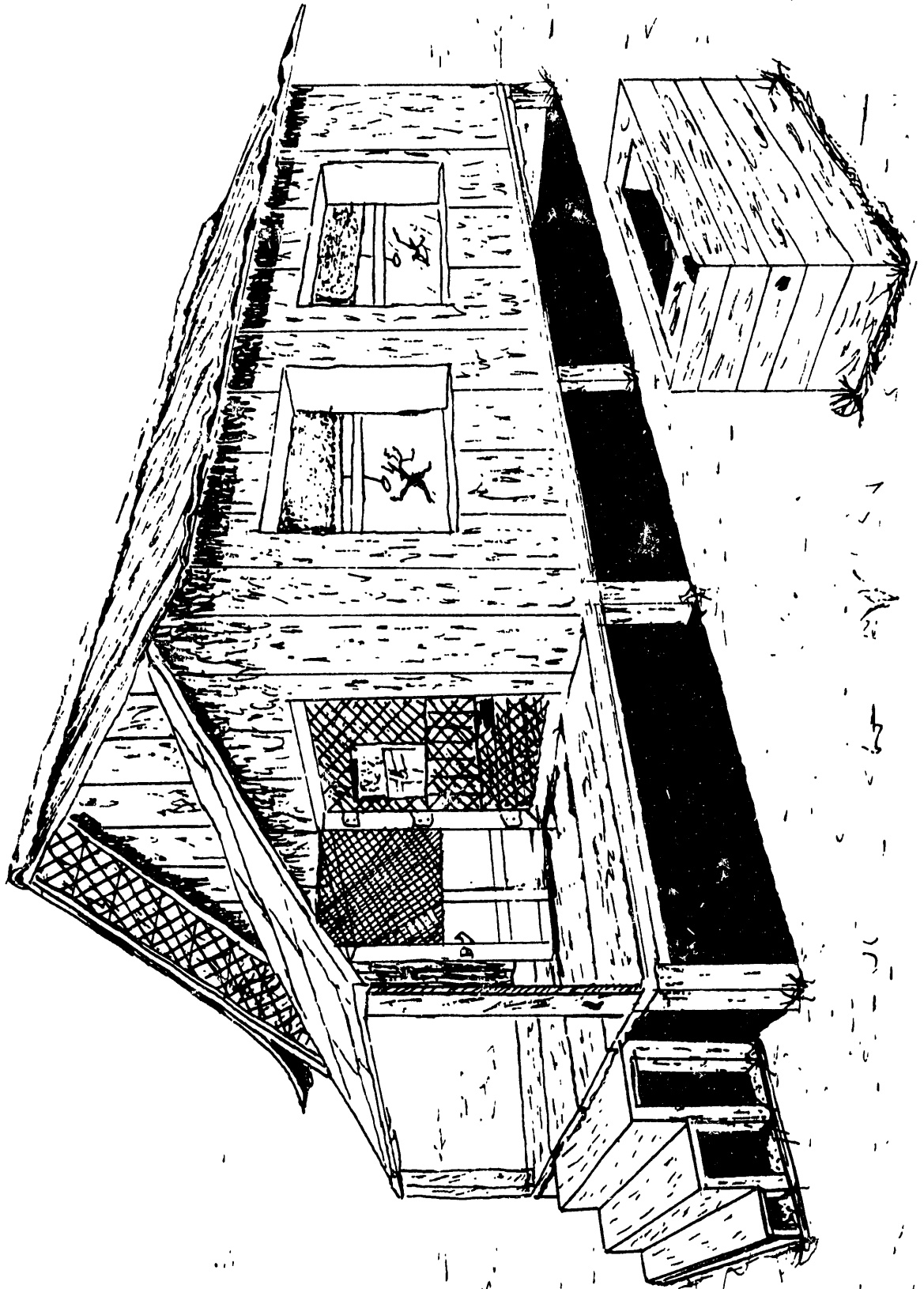
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EMERGENCY RULES

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

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV and Medication Program

General Provisions

• 25 TAC §98.104, §98.105

The Texas Department of Health (department) adopts on an emergency basis amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program. The amended sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85.063, Subchapter C, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the Texas Board of Health (board) that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include Stavudine, Clarithromycin, and Ethambutol for eligible participants.

The amendments are adopted on an emergency basis in order to provide medications to HIV infected individuals expeditiously. It is imperative to address this serious and imminent peril to public health by providing approved medications as soon as possible.

The amendments are adopted on an emergency basis under the Health and Safety Code, §85.063, which provides the board with the authority to adopt rules concerning the Texas HIV Medication Program; under Health and Safety Code, §12.001, which provides the board 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; and under Government Code, §2001.034, which provides the board with the authority to adopt rules on an emergency basis.

§98.104. Medication Coverage. The following medications will be provided to each eligible participant.

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

(17) Stavudine must be provided in increments of 60 not to exceed 60 capsules per month.

(18) Clarithromycin must be provided in increments of 60 not to exceed 60 tablets per month.

(19) Ethambutol must be provided in increments of 100 not to exceed 100 tablets per month.

§98.105. Drug Specific Eligibility Criteria. A person is eligible for:

(1)-(13) (No change.)

(14) Stavudine for the treatment of adults with advanced HIV infection who are unable to tolerate Zidovudine, Didanosine, or Zalcitabine or who have experienced significant clinical or immunologic deterioration while receiving these antiretrovirals or for whom such antiretrovirals are contraindicated;

(15) Clarithromycin and Ethambutol for the treatment and prophylaxis of Disseminated Mycobacterium Avium Complex (MAC).

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

TRD-9448668

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

Effective date: September 27, 1994

Expiration date: January 25, 1995

For further information, please call: (512) 458-7236

◆ ◆ ◆



Name: Michael Sitzman
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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resources Technologies

• 1 TAC §201.15

The Department of Information Resources proposes new §201.15, concerning charges for copies of public records. The section defines and details the charges for copies of public records maintained by the Department. The section is proposed to comply with the provisions of Chapter 428, Acts, 73rd Legislature, Regular Session (1993), which requires agencies to adopt rules establishing charges for copies of public records. Except as otherwise provided in these rules, the Department adopts the charges, definitions, and procedures set out in the General Services Commission Rules at 1 TAC §§111.62-111.70

Bill Peek, director of support services, has determined that for each year of the first five years the proposed section will be in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section. The charges authorized under this proposed rule, when taken as a whole, are substantially the same as those currently being assessed by the Department, thus it is not anticipated that the rule will have a perceptible impact on revenues collected for this activity.

Mr. Peek also has determined that for each year of the first five years the proposed section will be in effect, there will be a benefit to the public in that the charges for copies of public records will be consistent with those recommended by the General Services Commission, providing greater consistency among state agencies in assessing charges for access to public records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed, since the costs of obtaining copies of public records should be substantially the same as the current cost of obtaining copies of public records from the Department.

Comments on the proposal may be submitted to John Hawkins, Department of Information

Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5:00 p.m., October 26, 1994. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The new section is proposed under Government Code, §2054.052(a), which authorizes the Department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

The Government Code, Chapter 2054, §2054.052 is affected by this proposed section.

§201.15 Charges for Copies of Public Records.

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

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

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

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

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

(b) The following is a summary of the charges for copies of public information on file in the Department of Information Resources.

(1) Standard-size paper copy—\$.10 per page;

(2) Nonstandard-size copy:

(A) Diskette—\$1.00 each;

(B) Computer magnetic tape—\$10 each;

(C) VHS video cassette—\$2.50 each;

(D) Audio cassette—\$1.00 each;

(E) Paper copy—\$.50 each;

(F) Other—Actual cost;

(3) Personnel charge—\$15 per hour;

(4) Overhead charge—20% of personnel charge;

(5) Microfiche or microfilm charge:

(A) Paper copy—\$.10;

(B) Fiche or film copy—Actual cost;

(6) Remote document retrieval charge—Actual cost;

(7) Computer resource charge:

(A) Mainframe—\$17.50 per minute;

(B) Midsized—\$3.38 per minute;

(C) Client/Server—\$1.00 per minute;

(D) PC or LAN—\$.50 per minute;

(8) Programming time charge—\$.26 per hour;

(9) Miscellaneous supplies—Actual cost;

(10) Postage and shipping charge—Actual cost;

(11) Fax charge:

(A) local—\$.10 per page;

(B) long distance, same area code—\$.50 per page;

(C) long distance, different area code—\$1.00 per page;

(12) Other costs—Actual cost.

(c) The Department of Information Resources shall furnish public records without charge or at a reduced charge if it is determined that waiver or reduction of the fees is in the public interest. Certification Statement:

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 18, 1994.

TRD-9448832

Edward Sema
Deputy Director
Department of Information
Resources

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 475-4714

TITLE 4. AGRICULTURE Part II. Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.6

The Texas Animal Health Commission proposes an amendment to §35.6, General Requirements, regarding payment of indemnity for brucellosis-exposed cattle.

The proposed amendment is necessary to encourage more owners of brucellosis infected herds of cattle to select the depopulation option by offering to add state indemnity funds to those paid by the USDA. By removing language limiting the total funds paid, the amended language would allow USDA to increase the amount of their indemnity.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to provide incentives for depopulation of cattle herds infected with brucellosis within a shorter timeframe from the offer of indemnity. 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 Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12986, Austin, Texas 78711-2986.

The amendment is proposed under the Texas Agriculture Code, which provides the Commission to promulgate rules regarding indemnity payments to owners for brucellosis exposed cattle.

The amendment implements the Texas Agriculture Code, §163.068.

§35.6. Indemnity Payments to Owners of Cattle Exposed to Brucellosis.

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

(c) General Requirements.

(1) [Depopulation]. The Commission, through its Executive Director, will determine the amount and number of animals for which indemnity will be paid. The owner of a herd selected for indemnity may be reimbursed from [a combination of] TAHC [and/or Veterinary Services] funds for depopulation at a total rate not to exceed:

(A) \$100 per head for not more than 100 negative exposed, test-eligible females and not more than five negative exposed, test-eligible males; and [- \$250 per head for not more than 100 females;]

(B) actual cost of spaying not to exceed \$10 per head. A spaying certificate and the proof of payment for cost of spaying must be submitted simultaneously with the indemnity claim.

[(B) negative exposed, test-eligible males; - \$300 for not more than five per herd;

[(C) test-eligible reactor animals—\$50 per head;

[(D) females under test age:

[(i) unspayed and less than 500 pounds—\$200 per head;

[(ii) over 500 pounds—not eligible for depopulation funds. Actual cost up to ten dollars per head may be reimbursed for spaying, or these cattle may be "S" branded and sent to slaughter, quarantined feedlot, or market for sale to slaughter or quarantined feedlot. A spaying certificate and the proof of payment for cost of spaying must be submitted simultaneously with the indemnity claim.]

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

(4) To receive TAHC indemnity funds, all sexually intact cattle approved for depopulation must be removed from the premise within 45 days after the offer for indemnity payment is made to the herd owner. The offer date will be documented on the form TAHC 93-14.

(5)[(4)] Depopulated cattle shall be branded with the letter "B" on the left jaw and identified with a reactor eartag within the specified time intervals according to applicable state/federal requirements and prior to movement from the premise.

(6)[(5)] Cattle shall be moved from the premise accompanied with a VS 1-27. They shall either be moved directly to slaughter or through an approved livestock market for sale directly to slaughter and accompanied with a VS 1-27 from the market. In either case the cattle shall be slaughtered within the specified time intervals according to applicable state/federal regulations following identification. Steers and spayed heifers may be retained on the premise or move without restrictions.

(7)[(6)] The owner of a herd approved for depopulation must agree to complete a herd test of eligible animals no later than six months after repopulation with test-eligible breeding replacements.

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 28, 1994.

TRD-9448709

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 4, 1994

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

Chapter 36. Exotic Livestock and Exotic Fowl

• 4 TAC §36.1, §36.2

The Texas Animal Health Commission proposes amendments to §36.1, Definitions, and §36.2, General, to define Exotic Bovidae.

The proposed amendments are necessary to define Exotic Bovidae to include, among oth-

ers, water buffalo, gnu (wildebeast), addax, antelope and nilgai. The amended language would require a negative brucellosis and tuberculosis test prior to entry.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to insure that those animals considered to be exotic bovidae are negative to a brucellosis and a tuberculosis test before they enter Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendments are proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to adopt rules and set forth the duties of this commission to control disease.

The amendment implements the Texas Agriculture Code, §161.041 and §161.046.

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

Exotic Bovidae-Non-indigenous members of the family of animals which includes water buffalo, gnu (wildebeast), addax, antelope and nilgai (among others).

§36.2. General.

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

(c) The following named species shall meet the specific requirements stated and this information recorded on the certificate:

(1) (No change.)

(2) Exotic Bovidae [Water buffalo]-Negative to a brucellosis and tuberculosis test within 30 days prior to entry.

(3) (No change.)

(d) (No change.)

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

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

TRD-9448712

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 4, 1994

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

◆ ◆ ◆
**Chapter 59. General Practice
and Procedures**

Open Records

• 4 TAC §59.5

The Texas Animal Health Commission proposes new §59.5, General Practice and Procedures, to establish rules of procedure for inspection of public records and to set the charges for reproduction of public records. Charges for records will be the charges set by the General Services Commission unless TAHC determines it would be in the public interest to waive those charges. Records may be requested by sending a written request to the Texas Animal Health Commission.

The proposed new section is necessary to establish a uniform system for inspection of public records and to set uniform charges for copies of public records.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to have a uniform procedure for access to public records. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be the reproduction cost of requested records.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The new section is proposed under the Texas Government Code, Texas Civil Statutes, Chapter 552, which provides state agencies with the authority to adopt rules regarding inspection of and reproduction costs for public records.

The section implements the Government Code, §552.230 and §552.261.

§59.5. Open Records.

(a) Charges for Copies of Public Records. The charge to any person requesting copies of any public record of the Texas Animal Health Commission (TAHC) will be the charge established by the General Services Commission at 1 TAC §§111.62-111.72. TAHC shall furnish public records without charge if it determines that waiver of the fees is in the public interest. Examples of records that may be furnished without charge are:

(1) records provided in response to requests from government agencies, and

(2) records that relate directly to the requester, such as the requester's own test or employment records.

(b) Requests for Public Records. Members of the public may request public records by sending a written request to the Texas Animal Health Commission, Attention: General Counsel, P.O. Box 12966, Austin, Texas 78711-2966.

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 26, 1994.

TRD-9448707

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 4, 1994

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

◆ ◆ ◆
**Petition For Rules or Changes
to Rules**

• 4 TAC §59.6

The Texas Animal Health Commission proposes new §59.6, General Practice and Procedures, to establish rules of procedure for petitions for rules or changes to rules. The section allows a written petition for rule or rule change to be submitted to the agency's executive director and presented to the commission. A petition that does not comply with form or content requirements will be returned to the petitioner with an explanation of how the petition fails to meet the specified requirements.

The proposed section is necessary to prescribe the form for a petition for rules or rule change and to set out a uniform procedure for the petition's submission, consideration, and disposition.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to establish a uniform system for submission, consideration, and disposition of petitions for rules and rule changes.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The new section is proposed under the Texas Government Code, Texas Civil Statutes, Chapter 2001, which provides the Commission with the authority to adopt rules regarding petitions for rulemaking.

The amendment implements the Government Code, §2001.021.

§59.6. Petitions for Rules or Changes to Rules.

(a) Any person may petition for a rule or rule change by submitting a request to the commission's executive director that complies with the following requirements.

(1) The petition shall be typed or legibly printed and shall be signed by the petitioner or the petitioner's authorized agent.

(2) The petition shall:

(A) state its purpose;

(B) contain a concise statement of facts in support of the petition; and

(C) include the text of the proposed rule or revision and the proposed effective date.

(b) Upon receipt of the petition, the executive director shall take the following action.

(1) If the petition does not comply with the form or content requirements of this section, or if there are statutory requirements preventing the promulgation of the rule or rule change, the executive director shall return to the petitioner by certified mail, return receipt requested, the petition and a statement describing how the petition fails to comply with the requirements of this section.

(2) If the petition complies with the requirements of this section, the executive director shall prepare the document for presentation to the commission.

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

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

TRD-9448708

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 4, 1994

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



TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

• 16 TAC §5.217

The Railroad Commission of Texas proposes an amendment to §5.217, concerning insurance. The amendment is proposed in order to clarify that motor bus companies are required to maintain worker's compensation insurance coverage, as required by the Texas Motor Bus Act, and may not secure accidental insurance coverage as an alternative to worker's compensation coverage.

Jackye Greenlee, assistant director-central operations, has determined that for the first five-year period the rule as proposed will be in effect, there will be no fiscal implications for state or local governments or small businesses as a result of the proposed amendment.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of the proposed amendment will be the clarification of insurance coverage requirements for motor bus companies. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Gary W. Elkins, hearings examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Capitol Station, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911a, §4(a) and §11, which authorize the commission to prescribe rules and regulations for the operations of motor bus companies, and which require workers' compensation insurance coverage either as provided by the workers' compensation laws of the State of Texas or in a reliable insurance company approved by the commission.

The following article is affected by this rule: Texas Civil Statutes, Article 911a, §11.

§5.217. Insurance. All motor bus companies shall be subject to and governed by the insurance requirements of Subchapter L of this chapter (relating to insurance requirements), with the exception of §5.181(c) of this title (relating to Evidence of Insurance Required), which does not apply to motor bus companies. The minimum amounts for each motor vehicle as referred to in §5.181 of this title (relating to Evidence of Insurance Required) are hereby

prescribed as follows for motor bus companies:

(1) -(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 27, 1994.

TRD-9448750

Mary Rose McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-6969

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 183. Acupuncture

• 22 TAC §183.2, §183.3

The Texas State board of Medical Examiners proposes amendments to §183.2 and §183.3, concerning the practice of acupuncture. The proposed amendments will further define what criteria constitutes an acceptable acupuncture school and will define the responsibilities of the Education Committee of the Texas State Board of Acupuncture Examiners.

Tim Weitz, General Counsel, has determined there will be no fiscal implications as a result of enforcing or administering the sections.

Mr. Weitz also has determined that for each year of the first five years the sections as proposed is in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be to eliminate those schools of acupuncture which do not meet the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM); and to give direction to the members of the Education Committee. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Cross Index to Statute-Article 4495b, §§6.01-6.14.

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

[Approved acupuncture school—A school or college of acupuncture located in the United States or Canada that was a candidate for accreditation or had accreditation through the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM) at the time of applicant's graduation.]

§183.3. Meetings.

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

(g) The following are standing and permanent committees of the acupuncture board. The responsibilities and authority of these committees shall include those duties and powers as set forth below and such other responsibilities and authority which the acupuncture board may from time to time delegate to these committees.

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

(4) Education Committee:

(A) draft and propose rules regarding educational requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(B) draft and propose rules regarding training required for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(C) draft and propose rules regarding tutorial program requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(D) draft and propose rules regarding continuing education requirements for renewal of a Texas license and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(E) draft and propose rules regarding educational requirements for degrees granted upon graduation in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(F) consult with the Texas Higher Education Coordinating Board regarding educational requirements for schools of acupuncture, oversight respon-

sibilities of each entity, degrees which may be offered by schools of acupuncture;

(G) maintain communication with acupuncture schools;

(H) plan and make visits to acupuncture schools at specified intervals, with the goal of promoting opportunities to meet with the students so they may become aware of the board and its functions;

(I) develop information regarding foreign acupuncture schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(J) draft and propose rules which would set the requirements for degree programs in acupuncture;

(K) be available for assistance with problems relating to acupuncture school issues which may arise within the purview of the board;

(L) offer assistance to the Examination and Endorsement Committees in determining eligibility of graduates of foreign acupuncture schools for licensure by endorsement or examination;

(M) study and make recommendations regarding documentation and verification of records from foreign acupuncture schools;

(N) make recommendations to the acupuncture board regarding matters brought to the attention of the Education Committee.

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 26, 1994.

TRD-9448627
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 834-7728



Chapter 187. Procedure

Subchapter C. Posthearing

• 22 TAC §187.40

The Texas State Board of Medical Examiners proposes an amendment to §187.40, concerning temporary suspensions. The proposed amendment will clarify the persons who may convene a meeting of the Disciplinary Panel to conduct temporary suspension hearings.

Tim Weitz, General Counsel, has determined there will be no fiscal implications as a result of enforcing or administering the section.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be creation of a more orderly system of the meetings of the Disciplinary Panel. There will be no effect on small businesses.

There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Cross Index to Statute—Article 4495b, §4.13.

§187.40. Temporary Suspensions.

(a)-(h) (No change.)

(i) The Disciplinary Panel of the board may be convened at the direction of or with the approval of any committee chairman, any member of the Executive Committee, or any Informal Settlement Conference/Show Compliance Proceeding panel conveyed either verbally or in writing to the Executive Director, Director of Hearings, Director of Investigations, or General Counsel of the board.

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

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

TRD-9448628
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 834-7728

◆ ◆ ◆
**Part XXII. Texas State
Board of Public
Accountancy**

**Chapter 519. Practice and
Procedure**

**Failure to Attend; Default
Judgment**

• **22 TAC §519.47**

The Texas State Board of Public Accountancy proposes new §519.47, concerning Failure to Attend; Default Judgment.

The proposed rule declares the penalty for failure to attend a hearing as being a default judgment against the non-appearing party.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be shorter more inexpensive administrative hearings when one party does not attend the hearing. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §22 which contains the hearing procedure.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §22.

§510.47. Failure to Attend; Default Judgment.

(a) If a respondent fails to appear in person or by legal representative on the day and at the time set for public hearing, the administrative law judge, upon motion by the petitioner, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the public hearing. For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the allegations against the respondent in the notice of public hearing are deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.

(b) Any default judgment granted under this section will be entered on the basis of the allegations contained in the notice of public hearing, and upon the proof of proper notice to the defaulting party opponent. For purposes of this section, proper notice means sufficient to meet the provisions of the Government Code, §§2001.051, 2001.052 and 2001.054, and §519.6 of this title (relating to Service in Nonrulemaking Proceedings); such notice also shall include the following language in capital letters in 12-point boldface type: **FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET IN THIS NOTICE BEING ADMITTED AS TRUE, REGARDLESS OF WHETHER ADDITIONAL PROOF IS SUBMITTED.**

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 19, 1994.

TRD-9448719

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 505-5566

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

**Part I. Texas Department
of Health**

**Chapter 14. County Indigent
Health Care Program**

Subchapter B. Determining Eligibility

• **25 TAC §14.105**

The Texas Department of Health (department) proposes an amendment to §14.105, concerning resources in the County Indigent Health Care Program. The amendment will comply with the Indigent Health Care and Treatment Act, Chapter 61, Health and Safety Code, which requires that the standards and procedures used to determine eligibility must be consistent with the standards and procedures used to determine eligibility in the Aid to Families with Dependent Children (AFDC) program.

Section 14.105 is amended to exempt income-producing property and income-producing vehicles. This amendment is in compliance with the AFDC program. However, most clients in this program do not own property or income-producing vehicles.

Gary Bego, health care financing budget director, has determined that for the first five-

year period that the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed section.

Mr. Bego also has determined that for each year of the first five years that the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with state law. There will be no costs to small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section and no impact on local employment.

Comments on the proposed amendment may be submitted to Bonnie Magers, Program Specialist, Indigent Health Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 338-6458, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 61 and the Human Resources Code, Chapters 22 and 32. The authority to administer the County Indigent Health Care Program was transferred to the Texas Department of Health under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This section affects the Health and Safety Code, Chapter 61 and the Human Resources Code, Chapters 22 and 32.

§14.105. Resources.

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

(c) Types of resources. The following resources are countable or exempt. Eligibility staff must count the equity value of any resource not specifically exempted in this subsection.

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

(6) Income-producing property (except real property) is exempt [counted] if it is essential to a household member's employment or self-employment and annually produces income consistent with its fair market value, even if used only on a seasonal basis. Such property will continue to be exempt during temporary periods of unemployment if the client expects to return to work. Property essential to self-employment is not exempt if earnings result from an illegal activity.

(7)-(17) (No change.)

(18) The total value of all licensed vehicles is exempt if used more than 50% of the time for income-producing purposes or produce annual income consistent with their fair market value, even if only used on a seasonal basis. [Vehicles (one per household) are exempted] Also one vehicle per household is exempt if the vehicle is owned and used by the household for transportation and the equity value of the vehicle is less than \$1,500 [\$1,500]. If the equity value exceeds \$1,500 [\$1,500], the excess equity is

counted as a resource. The equity value of all other vehicles is counted.

(d)-(f) (No change.)

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

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

TRD-8448674

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

Proposed date of adoption: December 16, 1994

For further information, please call: (512) 458-7238

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV and Medication Program

General Provisions

• 25 TAC §98.104, §98.105

(Editor's Note: The Texas Department of Health proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is in the Emergency Rules section of this issue.)

The Texas Department of Health (department) proposes amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program. The amended sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85.063, Subchapter C, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the Texas Board of Health (board) that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include Stavudine, Clarithromycin, and Ethambutol for eligible participants.

Anita Martinez, Chief of Staff Services for the Disease Control and Prevention Association, Texas Department of Health, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Martinez also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to include Stavudine, Clarithromycin, and Eth-

ambutol for eligible participants. There is no anticipated economic cost to small or large businesses to comply with the sections as proposed. No costs for persons affected by this proposal are anticipated, and no effect on local employment is anticipated.

Comments on the proposed amendments may be submitted to Charles E. Bell, M. D., Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Telephone inquiries also may be made to Sheral Skinner at (512) 458-7357. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §85.063, which provides the board with the authority to adopt rules concerning the Texas HIV Medication Program; under Health and Safety Code, §12.001, which provides the board 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.

The amendments effect the Health and Safety Code, Chapter 85.

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 26, 1994.

TRD-8448667

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

Proposed date of adoption: November 18, 1994

For further information, please call: (512) 458-7238

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

• 25 TAC §401.59

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §401.59 of Chapter 401, Subchapter B, concerning Interagency Agreements. This section will affect the Texas Health and Safety Code, §614.013.

The proposed new section would adopt by reference as Exhibit P a memorandum of understanding (MOU) concerning Continuity of Care for Offenders with Mental Impairments. The MOU between TDMHMR, the Texas Department of Criminal Justice, and representatives of local mental health and/or mental retardation authorities is required by Senate Bill 252, 73rd Legislature, as codified

in the Texas Health and Safety Code, §614.013.

Leilani Rose, director, Financial Services Department, has determined that for the first five-year period the section is in effect there will be no significant fiscal impact for state government as a result of implementing the section as proposed. All actions taken in accordance with the provisions of the section will be within existing agency funding.

Steven Shon, M.D., deputy commissioner, Mental Health Services, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be compliance with state law and the continuity in provision of services to offenders with mental impairments. 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 sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12868, Austin, Texas 78711-2868, within 30 days of publication.

A public hearing will be held at 1:30 p.m. on Wednesday, October 26, 1994, in the TDMHMR Central Office Auditorium at 909 West 45th Street in Austin to accept oral and written testimony on the proposed new section and the MOU. If interpreters for the hearing impaired are required, please notify Ms. Logan at least 72 hours prior to the hearing by calling (512) 206-4516.

The new section is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

Section 614.013 of the code, which requires the MOU to be adopted by rule, is affected by this new section.

§401.59. Continuity of Care System for Offenders with Mental Impairments.

(a) The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference as Exhibit P a memorandum of understanding (MOU) with the Texas Department of Criminal Justice and local local mental health and/or mental retardation authorities concerning a continuity of care system for offenders with mental impairments.

(b) The MOU is required by the Texas Health and Safety Code, §614.013.

(c) Copies of the MOU are filed in the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, 4405 North Lamar, Austin, Texas 78756, and may be reviewed during regular business hours.

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 23, 1994.

TRD-8448764

Ann K. Utley
Chairman
Texas Mental Health and
Mental Retardation
Board

Earliest possible date of adoption: November 4, 1994

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permit

• 36 TAC §305.71

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes new §305.71, concerning a program for the evaluation of renewal applications for wastewater discharge permits within the same basin. This section is proposed to implement portions of Senate Bill 818, 72nd Legislature, 1991, known as the Texas Clean Rivers Act. Accordingly, this section is established as part of a program for the comprehensive evaluation of the combined effects of permitted discharges on water quality within each watershed.

The new §305.71(a) provides that the commission, to the greatest extent practicable, will evaluate all renewal applications for discharges into or adjacent to waters in the state within a single basin within the same year.

Subsection (b) establishes termination dates for future wastewater discharge permits issued by the commission.

Subsection (c) provides that renewal applications for permits expiring on or after January 1, 1996 shall be submitted six months prior to the designated expiration date in the existing permit and may be renewed in accordance with the schedule in §305.71(b).

Subsection (d) provides that the executive director may require submission of a renewal application sooner than the dates set out in §305.71(b) and (c) upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

Subsection (e) provides that the permit renewals generally will be issued to maintain a five-year cycle of the expiration date schedule in §305.71(b), although the commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary. The term placed upon a renewal permit will

usually match the termination date found in §305.71(b). However, some permit expiration dates may vary from the schedule in order to prevent permit terms of less than two years. It may, therefore, be necessary to require two renewal cycles for some permits before they are on the basin renewal cycle.

This section establishes new expiration dates for all future permits. To determine the new termination date, permittees should review the list in §305.71(b) to locate the basin into which their discharge flows, and then locate the segment as it appears on the first page of their commission discharge permit. The expiration date for permits which authorize a discharge to multiple basins and/or segments shall be the earliest date listed for the basins or segments.

The commission reviewed the expiration dates of TNRCC permits and National Pollutant Discharge Elimination System (NPDES) permits issued by the U.S. Environmental Protection Agency. An attempt was made to group basins to match the state and federal permits. Basins which have a large number of water quality permits will be evaluated over a two-year period in order to address both public concerns and the commission's resources required to properly evaluate these basins. This schedule of expiration dates set out in this section has been designed to provide a constant and even inflow of permit applications into the commission. This regulated schedule will level out the workload for commission staff and thus expedite the processing of applications at the commission.

Stephen Minick, Division of Budget and Planning has determined that for the first five years this section as proposed is in effect, there will be fiscal implications as a result of enforcement and administration of the section. There will be no direct costs to state government. There will be no costs to local governments that are not permittees directly affected by this section. Local governments holding wastewater permits under the Texas Water Code, Chapter 26 are affected to the extent any permit holder is affected. All holders of wastewater permits are potentially affected by this rule. The actual costs of preparing renewal permit applications may not be increased under this section, but the timing and schedule constraints may have fiscal implications. As a result of changing permit expiration dates, costs associated with renewal applications may be incurred at a time when funds are not immediately available or have not been budgeted. The costs of preparing a renewal application vary significantly, but the average cost is estimated to be approximately \$3,000. Some of the permittees affected are small businesses, however, there are no differential impacts to small businesses anticipated.

Mr. Minick also has determined that for the first five years this section as proposed is in effect, the public benefit anticipated as a result of enforcement and administration of this section will be improvements in the evaluation of the cumulative effects of permitted discharges on water quality, the regulation of permitted discharges and the opportunity for public input in the permitting process. There are no anticipated costs to persons who are

required to comply with this section, other than those costs applicable to wastewater permittees.

Comments on the proposal may be submitted to Eugene Clayborn, Staff Attorney, Legal Services Division, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*.

A public hearing has been scheduled for the receipt of comments on Monday, November 14, 1994, 1:30 p.m., Room 201 A, Building B, TNRCC Park 35 Office Complex 12124 Park 35 Circle, Austin, Texas.

The new section is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and all other laws of the State of Texas and to establish and approve all general policies of the commission.

There are no other articles, codes or statutes that are affected by this proposal.

§305.71. Basin Permitting.

(a) Upon receipt of wastewater discharge permit renewal applications, the commission, to the greatest extent practicable, will evaluate all future applications within a single river basin within the same year. The future expiration dates for all permits issued after the effective date of this section shall be in accordance with the basin schedules in subsection (b) of this section. However, no permit shall be issued for a term of less than two years. There may be instances where two renewal cycles are needed for some permits before they are on the basin renewal cycle.

(b) The expiration dates of wastewater discharge permits issued after the effective dates of this rule will be in accord with the following schedule: Figure 1: §305.71(b)

(c) Renewal applications for permits expiring on or after January 1, 1996 shall be due six months prior to the designated expiration date in the existing permit and may be renewed in accordance with the schedule in subsection (b) of this section.

(d) The executive director may require submission of a renewal application sooner than the dates set out in subsections (b) and (c) of this section upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

(e) Permit renewals generally will be issued to maintain a five-year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary.

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 28, 1994.

TRD-9448782

Mark Jordon
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 239-4640

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 503. Coastal Management Program

• 31 TAC §503.1

The Coastal Coordination Council (council) proposes an amendment to §503.1, concerning the boundary of the Texas Coastal Management Program (CMP). The amendment is proposed to remove Liberty County from the CMP boundary because Liberty County is not a coastal county.

This amendment is proposed because Liberty County is the only county within the initial CMP boundary that does not border on coastal waters. Liberty County was originally included in the CMP boundary because a segment of the Trinity River subject to tidal influence enters Liberty County. Because federal regulations do not require that the CMP boundary include all waters subject to tidal influence, the council is proposing to amend §503.1 to remove Liberty County from the CMP boundary. The Code of Federal Regulations, Title 15, Part 923, §923.31(a)(1), requires that the inland boundary of the CMP include those "areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters." The federal Coastal Zone Management Act, §304(3), 16 United States Code Annotated, §1453(3), defines "coastal waters" as "those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries." The Code of Federal Regulations, Title 15, Part 923, §923.31(a)(3), requires that the inland boundary of the CMP include all "waters under saline influence." Liberty County does not contain such "coastal waters." The inland extent of coastal waters (i.e., waters under saline influence) up the Trinity River ends near the I-10 bridge in Chambers County. Furthermore, the council has not determined that there are any areas within Liberty County which must necessarily

be included within the CMP boundary to control uses having a direct and significant impact on coastal waters. Therefore, it is not necessary to include Liberty County within the CMP boundary.

Caryn K. Cospo, deputy commissioner for Resource Management, Texas General Land Office, has determined that there will be fiscal implications for state and local governments as a result of the administration and enforcement of the proposed amendment. For the first five-year period the amendment will be in effect, state government will experience a reduction in any costs which may be associated with state agency administration and enforcement of the CMP in Liberty County. These costs are somewhat unpredictable, as state agency responsibilities will vary depending on the number of actions subject to the CMP and subject to consistency review that may occur in any particular county. For the first five-year period the amendment will be in effect, local government bodies in Liberty County will experience a reduction in the costs they may have been expected to encounter when applying for state agency permits subject to the CMP. However, local government entities in Liberty County will remain subject to existing state agency permitting processes and will not experience the advantages of the uniform CMP goals and policies, which are expected to reduce costs associated with the processing of state agency permits subject to the CMP. For the first five-year period the amendment will be in effect, state agencies and local governments are not expected to incur any losses in revenues as a result of administering or enforcing the amendment.

Ms. Cospo also has determined that for each of the first five years the amendment to §503.1 will be in effect the cost of compliance with the amendment for persons, including small businesses, will be reduced for those persons and small businesses doing business in Liberty County who may have been expected to encounter somewhat higher costs when applying for state agency permits subject to the CMP. Again, these costs are somewhat unpredictable, as costs will vary depending on the number of actions subject to the CMP and subject to consistency review that may occur in any particular county. After the proposed amendment is in effect, persons and small businesses doing business in Liberty County will no longer be subject to the CMP. However, persons and small businesses doing business in Liberty County will remain subject to existing state agency permitting processes and will not experience the advantages of the uniform CMP goals and policies, which are expected to reduce costs associated with the processing of state agency permits subject to the CMP.

The cost of compliance for small business affected by the amendment to §503.1 is not expected to be significantly different from the cost of compliance for the largest businesses, when these costs are compared on a per-employee basis. After the proposed amendment is in effect, small businesses and large businesses conducting business in Liberty County will no longer be subject to the CMP.

Ms. Cospo has determined that for each year of the first five years the amendment is

in effect the public benefit anticipated to result from the amendment will be a CMP boundary that only includes those counties that are truly coastal in nature, because they include coastal waters, and that must be included for purposes of gaining federal approval of the CMP.

Comments on the proposed amendment may be submitted to Connie Kaderka, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495, FAX (512) 463-6311. To be considered, comments on the proposed amendment must be received by Ms. Kaderka by Noon on November 10, 1994.

The amendment is proposed under the Texas Natural Resources Code, §33.204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies.

The Texas Natural Resources Code, Chapter 33, Subchapter F, is affected by this proposed amendment.

§503.1. Coastal Management Program Boundary.

(a) General Description of the Coastal Management Program Boundary. The coastal management program boundary encompasses all the area within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, [Liberty,] Jefferson, and Orange. The seaward reach of the boundary extends into the Gulf of Mexico to the limit of state title and ownership under the Submerged Lands Act (43 United States Code §1301 et seq), three marine leagues. The following map outlines the coastal management program boundary.
Figure: 31 TAC §503.1(a).

(b) Particular description of the Coastal Management Program Boundary. The boundary is more particularly described in terms of the inland boundary, the boundary with the State of Louisiana, the seaward boundary, the boundary with the Republic of Mexico, and the excluded federal lands.

(1) The inland boundary. The inland boundary begins at the westernmost intersection of Cameron County and the border with the Republic of Mexico; thence it continues in a northerly direction along the Cameron County line until it meets the Willacy County line; thence in a northerly direction along the Willacy County line until it meets the Kenedy County line; thence in a northerly direction along the Kenedy County line until it meets the Kleberg County line; thence along the Kleberg County line until it meets the Jim Wells County line; thence in a northerly direction along the Jim Wells County line until it meets the Nueces County line; thence in a northerly direction along the Nueces County line until it meets the San Patricio County

line; thence in a northerly direction along the San Patricio County line until it meets the Live Oak County line; thence in a northeasterly direction along the Live Oak County line until it meets the Bee County line; thence in an easterly direction along the Bee County line until it meets the Refugio County line; thence in a northerly direction along the Refugio County line until it meets the Goliad County line; thence in a northeasterly direction along the Goliad County line until it meets the Victoria County line; thence in a northwesterly direction along the Victoria County line until it meets the De Witt County line; thence in a northeasterly direction along the De Witt County line until it meets the Lavaca County line; thence in a southeasterly direction along the Lavaca County line until it meets the Jackson County line; thence in a northeasterly direction along the Jackson County line until it meets the Colorado County line; thence in a southeasterly direction along the Colorado County line until it meets the Wharton County line; thence in a southeasterly direction along the Wharton County line until it meets the Matagorda County line; thence in a northeasterly direction along the Matagorda County line until it meets the Brazoria County line; thence in a northeasterly direction along the Brazoria County line until it meets the Harris County line; thence in a northeasterly direction along the Harris County line until it meets the Waller County line; thence in a northerly direction along the Waller County line until it meets the Montgomery County line; thence in an easterly direction along the Montgomery County line until it meets the Liberty County line; thence in a southerly [northerly] direction along the Liberty County line until it meets the Chambers [San Jacinto] County line; thence in an easterly [a northeasterly] direction along the Chambers [San Jacinto] County line until it meets the Jefferson [Polk] County line; thence in a northerly [an easterly] direction along the Jefferson [Polk] County line until it meets the Hardin County line; [thence in a southeasterly direction along the Hardin County line until it meets the Jefferson County line;] thence in an easterly direction along the Jefferson County line until it meets the Orange County line; thence in a northerly direction along the Orange County line until it meets the Jasper County line; thence in an easterly direction along the Jasper County line until it meets the Newton County line; thence in an easterly direction along the Newton County line until it meets the adjudicated boundary with the State of Louisiana.

(2)-(5) (No change.)

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

issued in Austin, Texas, on September 28, 1994.

TRD-9448767

Garry Mauro
Chairman
Coastal Coordination
Council

Earliest possible date of adoption: December 16, 1994

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

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

**Part IX. Commission on
Jail Standards**

Chapter 251. General

• 37 TAC §§251.1-251.9

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

The Commission on Jail Standards proposes repeal of §§251.1-251.9, concerning General rules to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses.

There will be no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§251.1. Authority.

§251.2. Objective.

§251.3. Severability.

§251.4. Forms.

§251.5. Scope of Rules.

§251.6. Opinions and Advice.

§251.7. Captions of Rules.

§251.8. Precedent.

§251.9. Complaints.

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 28, 1994.

TRD-9448897

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

◆ ◆ ◆
• 37 TAC §§251.1-251.6

The Commission on Jail Standards proposes new §§251.1-251.6, concerning General rules. Adoption of these rules will revise requirements to make them current and concise.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§251.1. Authority. The Texas Legislature created the Commission on Jail Standards in 1975 to implement a declared state policy that all county jail facilities conform to minimum standards of construction, maintenance and operation. In 1983, the Texas Legislature expanded the jurisdiction of the commission to include county and municipal jails operated under vendor contract. In

1991, the Texas Legislature added the requirement for count, payment, and transfer of inmates when precipitated by crowded conditions as well as expanding the commission's role of consultation and technical assistance. In 1993, the legislative function expanded the role of the commission again by requiring that it provide consultation and technical assistance for the State Jail program. It is the duty of the commission to promulgate reasonable written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for:

(1) the construction, equipment, maintenance and operation of jail facilities under its jurisdiction;

(2) the custody, care and treatment of inmates, and

(3) programs of rehabilitation, education and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

§251.2. Severability. If any provision of these rules be held invalid, such invalidity shall not effect other provisions which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

§251.3. Opinions and Advice. Except as otherwise expressly stated herein, advice given, statements made, and opinions expressed orally or in writing by the staff of the commission in response to inquiries or otherwise shall not be considered binding upon the commission in connection with any matter requiring the approval, consent or adjudication of the commission.

§251.4. Captions of Rules. The captions of the rules are for convenience only. Should there be a conflict between the caption of a rule and the text of a rule, the text will control.

§251.5. Precedent. Because rules cannot adequately anticipate all potential specific factual situations and circumstances presented for action, determination, or adjudication by the commission, the nature of the action taken with regard to any matter or the disposition of any matter pending before the commission is not necessarily of meaningful precedential value. The commission shall not be bound by the precedent of any previous action, determination, or adjudication in the subsequent disposition of any matter pending before it.

§251.6. Complaints. All inspection reports, plan reviews and bills for services issued by the commission shall provide instructions for directing complaints to the

commission regarding commission functions and procedures.

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

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

TRD-9448675

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 253. Definitions

• 37 TAC §253.1

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

The Commission on Jail Standards proposes repeal of §253.1, concerning Definitions to allow for adoption of new definitions.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeal.

Mr. Crump also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be to allow adoption of current definitions to terms used in the jail standards manual.

There will be no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect on small businesses.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeal is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§253.1. Definitions.

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 28, 1994.

TRD-9448676

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

The Commission on Jail Standards proposes new §253.1, concerning Definitions. Adoption of this rule will revise jail standards definitions to make them concise and current.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Mr. Crump also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be to provide current definitions of terms used in the jail standards manual. There will be no effect on small businesses. There will be no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rule is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§253.1. Definitions. The following words and terms, when used in this part, shall have the following meanings.

Administrative Separation—The assignment of an inmate to a special housing unit, usually a separation or single cell, when staff determines that such close custody is needed for the safety of inmates or staff, for the security of the facility, or to promote order in the facility.

Capacity—The number of inmates a facility is authorized by the commission to house, excluding holding, detoxification, medical and violent cells.

Commission—Texas Commission on Jail Standards Control Area—the area inside the security perimeter to which inmates have only controlled access.

Control Room—A secured enclosed room which contains facility door controls, intercom panels and or fire alarm panels.

Day Room—A space within or adjacent to single cells, multiple occupancy cells and dormitories specifically for inmate day time activities.

Detoxification Cell—A cell designed for the temporary holding of intoxicated persons.

Direct Supervision—An inmate supervision management style in which corrections officer(s) are stationed inside a housing unit 24 hours per day.

Disabled—Persons who have a physical or mental impairment that substantially

limits one or more of the major life activities of such individual.

Dormitory—A cell designed to accommodate 9 to 48 inmates.

Existing Facility—A county jail, lock-up or low-risk facility that was being operated as such on December 23, 1976.

Guard Station—A designated space from which a guard performs his/her functions.

Holding Cell—A cell designed for the temporary holding of inmates. Inmate Housing Area—Cells and day rooms where inmates are assigned.

Inmate Occupied Area—Any area in the facility normally occupied by inmates.

May—Permissive or optional.

Multiple-Occupancy Cell—A cell designed to accommodate two to eight inmates.

Owner—A county commissioner's court, municipality or private vendor who holds title to a facility.

Safety Vestibule—An enclosed space, served by at least two doors, that serves as a passageway between two areas.

Sally Port—A secured space inside or abutting a facility for vehicles to deliver or pick-up inmates or goods.

Security Perimeter—The outer limits of the facility where construction prevents egress by inmates or ingress by unauthorized persons or contraband.

Separation Cell—A special purpose cell designed to accommodate one person. The cell minimally contains a bunk, toilet, lavatory, shower, floor drain, table and seat. This cell is used to house inmates requiring protection or whose behavior requires close supervision.

Shall—Mandatory and required for compliance.

Should—Recommended but not required for compliance.

Single Cell—A cell designed to accommodate one inmate.

Small Jail—A facility with a capacity of less than 50 inmates.

Special Purpose Cell—Detoxification cell, holding cell, separation cell, violent cell and medical cell. These cells are not required to be provided with day rooms or safety vestibules.

Violent Cell—A single occupancy padded cell for the temporary holding of a person harmful to themselves and/or others.

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 28, 1994.

TRD-8448677 Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 289. Inmate Work Assignments in County Jails

• 37 TAC §§289.1-289.6

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission on Jail Standards proposes repeal of §§289.1-289.6, concerning Inmate Work Assignments in County Jails to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §§351.002 and §351.015.

§289.1. *Work.*

§289.2. *Assignment and Supervision by Corrections Officer.*

§289.3. *Voluntary.*

§289.4. *Maximum Hours.*

§289.5. *Outside Security Perimeter.*

§289.6. *Nonexclusivity.*

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 28, 1994.

TRD-8448678 Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 289. Work Assignments

• 37 TAC §§289.1-289.5

The Commission on Jail Standards proposes new §§289.1-289.5, concerning Work Assignments. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses.

There will be no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of jails.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §§351.002 and §351.015.

§289.1. *Assignment and Supervision.* Inmate work shall be assigned by staff. Inmates activities shall not be supervised by other inmates. Inmates shall not have access to inmate records, nor handle inmate monies or commissary accounts. Maintenance of locking systems and other security detention devices shall not be performed by inmates.

§289.2. *Voluntary Work.* Pretrial detainees and inmates awaiting transfer to the Texas Department of Criminal Justice following conviction or revocation of probation, parole, or mandatory supervision may volunteer to participate in any work program operated by the sheriff that uses the labor of convicted misdemeanants. Inmates who have not been convicted shall not be re-

quired to participate in a work program. All inmates may be required to keep their immediate living area clean.

§289.3. Maximum Hours. Inmates should not be required to work more than 48 hours per week, except in an emergency.

§289.4. Outside Security Perimeter. Only inmates classified as low-risk should be assigned to work outside the security perimeter and should be supervised by corrections officers.

§289.5. Non-Exclusivity. This provision is not intended to limit in any way the utilization of work release, work furlough, or other programs affording inmates work or employment opportunities outside the facility.

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

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

TRD-9448679

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 291. Plans for Inmate Privileges in County Jails

• 37 TAC §291.1

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

The Commission on Jail Standards proposes repeal of §291.1, concerning Plans for Inmate Privileges in County Jails to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeal.

Mr. Crump also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses.

There will be no anticipated economic cost to persons who are required to comply with the repeal as proposed

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeal is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this repeal are Local Government Code, Chapter 351, §351.002 and §351.015.

§291.1. Plan.

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 28, 1994

TRD-9448680

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 291. Services and Activities

• 37 TAC §§291.1-291.5

The Commission on Jail Standards proposes new §§291.1-291.5, concerning Services and Activities. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§291.1. Inmate Telephone Plan. Each facility shall have and implement a written plan, approved by the commission, governing the availability and use of inmate telephones.

(1) Immediately after booking, but in no case later than four hours after arrival, a person shall be permitted to make at least two completed telephone calls. Toll calls should be made on a prepaid or collect basis. A free telephone shall be available for local calls for those inmates who otherwise would be unable to complete the two required calls. Facilities may have a special line reserved for inmate use.

(2) Each facility shall provide for reasonable access, both local and long distance, between an inmate and his/her attorney, family, and friends. This may be on a pre-paid or collect basis. The plan shall contain procedures for the handling of emergency calls.

§291.2. Inmate Correspondence Plan. Each facility shall have and implement a written plan, approved by the commission, governing inmate correspondence. The plan shall provide for the handling of privileged and non-privileged correspondence, both outgoing and incoming, and shall provide for the collection and distribution of correspondence.

(1) General Requirements.

(A) Inmates shall be permitted to send as many letters of as many pages as they desire, to whomever they desire. Inmate to inmate correspondence may be prohibited where legitimate penological interest exists.

(B) Inmates may receive correspondence in any quantity, amount and number of pages.

(C) Inmates shall be allowed to retain writing materials, stamps and correspondence in reasonable amounts.

(D) If requested, indigent inmates shall be furnished an unlimited supply of paper, pencils, envelopes and stamps to correspond with their attorney(s) and the courts. Additionally, indigent inmates shall be furnished paper, pencils, envelopes and stamps to post at least three letters a week for all other correspondence.

(E) Correspondence may be rejected, provided it is a violation of the inmate rules. For purposes of this plan such correspondence is defined as:

(i) containing information regarding the manufacture of explosives, weapons or drugs;

(ii) containing material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the break down of jails through inmate disruption such as strikes or riots;

(iii) a specific factual determination has been made that the publication is detrimental to inmates rehabilitation because it would encourage deviate criminal sexual behavior.

(2) Privileged Correspondence.

(A) Correspondence addressed to or received from the following persons or organizations shall be considered privileged correspondence:

(i) officials of the federal, state and local courts;

(ii) all federal officials and officers, including the President of the United States;

(iii) state officials and officers, including the Texas Commission on Jail Standards and the Governor;

(iv) letters to bonafide news media;

(v) the inmate's attorney(s).

(B) Outgoing correspondence addressed to the persons listed in subparagraph (A) of this paragraph shall not be opened or interfered with unless a search warrant is obtained.

(C) Incoming correspondence from correspondents listed in subparagraph (A) of this paragraph shall be opened only in the presence of the inmate with inspection limited to locating contraband. Whenever jail officials have probable cause to suspect that the incoming letter is part of an attempt to formulate, devise or otherwise effectuate a plan to escape from the jail, or to violate state or federal laws, officials shall obtain a search warrant prior to opening and reading the correspondence of the individual involved.

(3) Non-privileged Correspondence.

(A) Mail addressed to or received from persons or organizations not listed in paragraph (2)(A) of this section shall be considered non-privileged correspondence.

(B) Outgoing correspondence may be opened and read. Correspondence may be censored provided a legitimate penological interest exists. A

copy of the original correspondence should be retained.

(C) Incoming correspondence may be opened and read. Correspondence may be censored provided a legitimate penological interest exists. A copy of the original correspondence should be retained. If contraband is discovered, it shall be confiscated and the inmate advised of the action.

§291.3. Inmate Commissary Plan. Each facility shall have and implement a written plan, approved by the commission, governing the availability and use of an inmate commissary which allows for the purchase of hygiene items and sundries. The plan shall:

(1) indicate type of services, in-house or vendor;

(2) indicate frequency of services;

(3) provide procedures for inmate obtaining items;

(4) provide for quarterly audits by the county auditor in accordance with the Local Government Code, §351.0415;

(5) provide that all expenditures from commissary proceeds be made in accordance with the Local Government Code, §351.0415;

§291.4. Inmate Visitation Plan. Each facility shall have and implement a written plan, approved by the commission, governing inmate visitation. The plan shall:

(1) indicate frequency of visitation periods; each inmate shall be allowed a minimum of two visitation periods per week of at least 20 minutes duration each;

(2) provide that at least one visitation period be allowed during evenings or week ends;

(3) provide that pretrial detainees be permitted more generous visitation than convicted persons;

(4) provide for reasonable attorney/client visitation;

(5) provide procedures for the selection of visitors, including inmates' minor children. Accompaniment by parent, guardian or legal counsel may be required.

(6) define procedures where contact visitation is permitted;

(7) contain procedures for emergency visitation.

§291.5. Inmate Religious Services Plan. Each facility shall have and implement a written plan, approved by the com-

mission, governing religious access comparable to that normally available in the community. Where group services are held, provisions shall be made for the removal of inmates not wishing to participate. The plan shall:

(1) allow for visitation and volunteer programs;

(2) provide for access to religious leaders in addition to normal visitation and shall allow an inmate to communicate with a minister of his/her choosing consistent with security restrictions.

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 28, 1994.

TRD-9448681

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

◆ ◆ ◆
**Chapter 293. Female Inmates
in County Jails**

• 37 TAC §293.1

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

The Commission on Jail Standards proposes repeal of §293.1, concerning Female Inmates in County Jails to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeal.

Mr. Crump also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeal is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this repeal are Local Government Code, Chapter 351, §§351.002 and §351.015.

§293.1. Plan for Processing Female Inmates.

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 28, 1994.

TRD-9448882 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

◆ ◆ ◆
Chapter 295. Plans for Emergencies, Fire Prevention, Critical Articles in County Jails

• 37 TAC §§295.1-295.4

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission on Jail Standards proposes repeal of §§295.1-295.4, concerning Plans for Emergencies, Fire Prevention, Critical Articles in County Jails to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §§351.002 and §351.015.

§295.1. Emergency Plan.

§295.2. Fire Prevention Planning.

§295.3. Keys.

§295.4. Gun Lockers.

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 28, 1994.

TRD-9448883 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

◆ ◆ ◆
Chapter 297. Compliance and Enforcement

• 37 TAC §§297.1-297.13

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission on Jail Standards proposes repeal of §§297.1-297.13, concerning Compliance and Enforcement to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §§351.002 and §351.015.

§297.1. Regular Local Inspections.

§297.2. Regular Commission Inspections.

§297.3. Inspection Reports.

§297.4. Certification.

§297.5. Notice of Noncompliance.

§297.6. Response by County Officials.

§297.7. Commission Review of Compliance.

§297.8. Remedial Order by Commission.

§297.9. Other Commission Remedies.

§297.10. Review of Commission Action.

§297.11. Request for Administrative Hearing.

§297.12. County Contract with Private Entity for Jail Facilities.

§297.13. Municipal Contract with Private Entity for Jail 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 28, 1994.

TRD-9448884 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

◆ ◆ ◆
The Commission on Jail Standards proposes new §§297.1-297.13, concerning Compliance and Enforcement. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted

to Rhonda C. Long, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §§51.002 and §351.015.

§297.1. Regular Local Inspections. During intervals of at least four months and at least two times each year, the sheriff/operator shall inspect each facility for which he/she is responsible inquiring into the security, control, conditions and state of compliance with the rules of the commission. The owner of each facility is encouraged to make similar periodic inspections.

§297.2. Regular Commission Inspections. Not less than once each fiscal year, the commission staff shall visit and inspect each facility under commission jurisdiction and shall inquire into security, control, conditions, and compliance with the established minimum standards. In addition to regular commission inspections, the staff may visit and conduct special inspections to determine compliance with the established minimum standards. The commission staff shall at any time have access to all parts of each facility; the books, records, data, documents and accounts pertaining to each facility and to the inmates confined therein; and shall have the right and authority to interview any of the officials of the facility or inmates therein. The sheriff/operator shall assist staff by all means at their disposal to enable them to perform the functions, powers and duties of their office.

§297.3. Inspection Reports. Within forty-five days of each inspection by commission staff, the owner and sheriff/operator responsible for the facility inspected shall be furnished with a report of the results of the inspection, and a copy of such report shall be filed with the commission.

§297.4. Certification. Upon completion of the regular or special commission inspections, those facilities which meet minimum jail standards shall be issued a certificate of compliance signed by the executive director and inspector. The certificate of compliance shall be deemed in force until the next regular or special commission inspection of the facility.

§297.5. Notice of Non-Compliance.

(a) When the commission finds that a facility is not in compliance with state law or with the minimum standards prescribed by the commission, it shall issue a notice of

non-compliance to the owner and sheriff/operator responsible for the facility that is not in compliance. Such notice of non-compliance shall be sent to such officials by certified mail, return receipt requested. A copy of such notice of non-compliance shall be sent to the governor.

(b) The notice of non-compliance shall:

(1) specify the minimum standards established by state law or the rules of the commission with which the facility fails to comply;

(2) shall provide a reasonable time, not to exceed 30 days, within which appropriate corrective measures shall be initiated; and

(3) shall provide a reasonable time, not to exceed one year within which appropriate corrective measures shall be completed.

§297.6. Response by Officials. Upon receipt of a notice of non-compliance, the responsible officials shall initiate appropriate corrective measures within the time prescribed by the commission (which shall not exceed 30 days, and shall complete the same within a reasonable time (not to exceed one year) as prescribed by the notice of non-compliance. Within 30 days following receipt of the notice of non-compliance, the responsible officials shall report to the commission the corrective measures initiated and/or completed to correct the deficiency(s) set forth in the notice of non-compliance.

§297.7. Commission Review of Compliance. If a response is not received from the responsible officials or if a response does not offer remedies addressing all the items of noncompliance, the commission may request that officials appear at a regular or special meeting of the commission to present evidence of corrective action to be taken. Following the officials' presentation, the commission may require the officials to appear before the commission at a future date to report on compliance progress, may issue a remedial order or may deem that no further action is required.

§297.8. Remedial Order by Commission.

(a) If the commission determines that the responsible officials receiving a notice of noncompliance fail to initiate corrective measures within the time prescribed, the commission may, by remedial order, delivered by certified mail, return receipt requested or by personal service to the responsible officials, declare that the facility in question or any portion thereof be closed, that further confinement of inmates or classifications of inmates in the noncomplying

facility or any portion thereof be prohibited, that all or any number of the inmates then confined be transferred to and maintained in another designated facility, or any combination of such remedies.

(b) The remedial order of the commission shall be in writing and shall specifically identify each minimum standard with which the facility has failed to comply. Such remedial order shall become final and effective fifteen days after its receipt by the responsible officials, provided, however, that if a review of commission action (§297.10 of this title (relating to Review of Commission Action)) or request for administrative hearing (§297.11 of this title (relating to Request for Administrative Hearing)) on such remedial order is requested, the enforcement of such remedial order shall be stayed until such time as the commission has rendered its decision following its hearing.

(c) If a remedial order is issued, the commission shall furnish the sheriff/operator with a list of qualified facilities to which the inmates may be transferred. The sheriff/operator of the facility shall immediately transfer the number of inmates necessary to bring the facility into compliance to a facility that agrees to accept the inmates. The agreement shall be in writing and shall be signed by the sheriff/operator transferring the inmates and the sheriff/operator receiving the inmates. A facility transferring inmates under this subsection shall immediately remove the inmates from the receiving facility if the sheriff/operator of the receiving facility requests their removal in writing. The owner responsible for the noncomplying facility shall bear the liability for and the cost of transportation and maintenance of inmates transferred to or from a noncomplying facility by order of the commission. The costs of transportation and maintenance shall be determined by agreement between the participating jurisdictions and shall be paid into the treasury of the entity operating the facility to which the inmates are transferred.

§297.9. Other Commission Remedies. In addition to or in lieu of the remedial order remedies described in §297.8 of this title (relating to Remedial Order by Commission) the commission may institute an action in its own name to enforce, or enjoin the violation of its orders, rules or procedures, or the Local Government Code, Chapter 351. An action brought pursuant to this section is in addition to any other action, proceeding or remedy provided by law, and may be brought in a district court of Travis County, Texas. A suit brought under this section shall be given preferential setting and shall be tried by the Court, without a jury, unless the responsible officials request a jury, in accordance with the

Local Government Code, Chapter 351. The commission shall be represented by the attorney general in such actions.

§297.10. Review of Commission Action.

(a) Any responsible official disagreeing with any remedial order or action on an application for variance of the commission, within 15 days after the date thereof, may request in writing an appearance before the commission to review the action taken by the commission. The request shall include information on the circumstances to be reviewed.

(b) The request for review shall be effective if post marked within 15 days from the date of the remedial order or action on application for variance, or if it is otherwise received by the commission within such 15-day time period. The request for review shall be directed to the Executive Director.

(c) Review of commission action may determine that the remedial order or application for variance request may continue to be effective as issued, may be amended, or may be rescinded. Any action affected by this section shall be effective immediately.

§297.11. Request for Administrative Hearing.

(a) If the responsible officials disagree with a commission action and have exhausted all remedies under §297.10 of this title (relating to Review of Commission Action), the officials may request, within 15 days after the date thereof, an administrative hearing under Chapter 301 of this title (relating to Rules of Practice in Contested Cases), upon any matter of fact or law with which they disagree.

(b) The request for hearing shall be effective if post marked within 15 days from the date of the remedial order or action on application for variance, or if it is otherwise received by the commission within such 15-day time period. The request for hearing shall be directed to the chairman of the commission and shall contain the following statements:

(1) the legal authority and jurisdiction under which the hearing should be held;

(2) the particular statutes, sections of statutes, and rules involved;

(3) a short, plain recital of the errors of fact or law for which review is sought, stating in detail the facts justifying the amendment or reversal of the order or action of the commission;

(4) the name and address of the person or representative to whom notices or

other written communications shall be directed, and the name and address of the person or representative who will appear at the hearing and the name and address of the person or persons on whose behalf he will appear.

(c) While subsections (a) and (b) of this section will be reasonably construed, a request for hearing, if not made in the time and manner herein provided, shall be deemed waived, and in such event, the remedial order or action on application for variance of the commission shall become final.

(d) Upon the receipt of a timely request for hearing, the commission shall request a hearing be scheduled by the office of Administrative Hearings.

§297.12. County Contract with Private Entity for Jail Facilities.

(a) The commissioners' court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a facility for the confinement of persons accused or convicted of an offense.

(b) Contracts for these purposes shall comply with Local Government Code, §§351.101-351.104 (concerning county contract with private entity for jail facilities.)

(c) If the contract includes construction of a new facility or renovation of an existing facility, the construction documents shall be submitted and reviewed in accordance with Chapter 257 of this title (relating to Construction Approval Rules).

(d) A facility needs analysis shall be submitted by the county to the commission for approval for all facilities intended for the housing of persons not committed to the facility by local jurisdictions. The executive director may require a facility needs analysis be submitted for all facilities. The facility needs analysis shall minimally:

(1) describe the origin, conviction status, risk/needs level, and anticipated length of stay of persons to be confined in the facility;

(2) identify the availability of persons to be confined and duration of such availability;

(3) describe the basis and methodology utilized in determining the need for the facility; and

(4) indicate the work force availability within the county to properly staff the facility.

(e) A statement of objectives shall be submitted by the county to the commission for approval, indicating:

(1) the management concept under which the facility will be operated including description of how required services will be provided;

(2) educational, vocational, or rehabilitative programs which will be provided at the facility; and

(3) the construction standards under which the facility will be constructed or operated.

(f) The commissioners' court and the sheriff shall review and approve the facility needs analysis, statement of objectives, and construction documents prior to submission to the commission.

(g) Facility operational plans, as required by the commission, shall be developed by the private operator of the facility in consultation with the sheriff and shall be approved by the sheriff, in writing, prior to submission to the commission for approval. Approval by the sheriff shall not be unreasonably withheld. Revised plans shall similarly be submitted when there is a change of sheriffs, operator, types of persons being confined, or operational procedures.

(h) The sheriff shall exercise regular on-site monitoring over the private jail facility, in accordance with the Local Government Code, §351.103 (concerning contract requirements). The specifics of such on-site monitoring, including the resolution of disputes, disagreements, or deficiencies shall be provided for in the contract and facility operational plans.

§297.13. Municipal Contract with Private Entity for Jail Facilities.

(a) The governing body of a municipality may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a facility for the confinement of persons accused or convicted of an offense.

(b) Contracts for these purposes shall comply with the Local Government Code, §§361.061-361.067 (concerning municipal contract for jail facilities).

(c) If the contract includes construction of a new facility or renovation of an existing facility, the construction documents shall be submitted and reviewed in accordance with Chapter 257 of this title (relating to Construction Approval Rules).

(d) A facility needs analysis shall be submitted by the municipality to the commission for approval for all facilities intended for the housing of persons not committed to the facility by local jurisdictions. The executive director may require a facility needs analysis be submitted for all facilities. The facility needs analysis shall minimally:

(1) describe the origin, conviction status, risk/needs level, and anticipated length of stay of persons to be confined in the facility;

(2) identify the availability of persons to be confined and duration of such availability;

(3) describe the basis and methodology utilized in determining the need for the facility; and

(4) indicate the work force availability within the county to properly staff the facility

(e) A statement of objectives shall be submitted by the municipality to the commission for approval, indicating:

(1) the management concept under which the facility will be operated, including description of how required services will be provided;

(2) procedures for regular on-site monitoring by the municipality, including frequency and scope of the monitoring;

(3) educational, vocational, or rehabilitative programs which will be provided at the facility; and

(4) the construction standards under which the facility will be constructed or operated.

(f) The municipality shall review and approve the facility needs analysis, statement of objectives, and construction documents prior to submission to the commission.

(g) Facility operational plans, as required by the commission, shall be developed by the private operator and approved by the municipality in writing, prior to submission to the commission for approval. Revised plans shall be submitted when there is a change of operators, types of persons being confined, or operational procedures.

(h) The municipality shall exercise regular on-site monitoring over the private operation of the facility, in accordance with the Local Government Code, §361.062 (concerning contract requirements). The specifics of such on-site monitoring, including the resolution of disputes, disagreements, or deficiencies shall be provided for in the contract and facility operational plans.

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 28, 1994.

TRD-9448685

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 299. Variance Procedure Rules

• 37 TAC §§299.1-299.6

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission on Jail Standards proposes repeal of §§299.1-299.6, concerning Variance Procedure Rules to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§299.1. Policy.

§299.2. Filing, Showing.

§299.3. Contents.

§299.4. Burden.

§299.5. Determination Notice.

§299.6. Request for Hearing.

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 28, 1994.

TRD-9448686

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

The Commission on Jail Standards proposes new §§299.1-299.6, concerning Variance Procedure Rules. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§299.1. Policy. Local Government Code, Chapter 351 and Government Code, Chapter 511, Texas Civil Statutes, and these sections prescribe minimum standards for the construction, equipment, maintenance, operation, personnel, programs, services and for the custody, care and treatment of inmates of county facilities and municipal facilities operated under vendor contract. They are in the public interest of the state of Texas and should in all instances be reasonably enforced by the commission.

§299.2. Filing. When a facility does not meet the requirements of the state statutes or these sections, or when the elected or appointed official having jurisdiction desires to construct or operate a facility not complying with the requirements, the official may file an application for variance with the commission. The facts and circumstances justifying the variance shall be submitted to the commission for review.

§299.3. Contents. An application for variance shall include:

(1) the name, address and signature of the elected or appointed official(s) having jurisdiction of the facility for which the variance is being requested;

(2) the specific statute, sections of statutes, and/or rules for which the variance is being requested;

(3) the existing condition(s) that requires a variance or the desired condition(s) that would require a variance;

(4) the projected cost to achieve compliance without a variance;

(5) the effect the variance, if granted, would have on the operations and sanitation of the facility and on the custody, safety, health and supervision of the inmates;

(6) the length of time for which the variance is being requested; and

(7) any additional information or attachments demonstrating justification for the variance.

§299.4. Burden. The burden of showing a clear justification for a variance shall be up to the party filing an application for variance. An application for variance will not be granted if it reasonably appears to the commission that the variance requested would permit or create unhealthy, unsanitary, or unsafe conditions or otherwise jeopardize the security or supervision of inmates or the programs and services required by law or rule of the commission.

§299.5. Determination, Notice. The commission shall consider each application for variance and shall enter its order granting or denying the application in whole or in part. Notice of the order of the commission shall be mailed or delivered in person to the official(s) named in the application for variance.

§299.6. Request for Hearing. Any elected or appointed official disagreeing with an order or action of the commission upon any application for variance may, within 15 days of the date of such order or action, file a request for hearing in accordance with the provisions of §297. 11 of this title (relating to Request for Administrative Hearing).

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 28, 1994.

TRD-9448687

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 300. Fees and Payments

The Commission on Jail Standards proposes repeal of §§300.1-300.6; and 300.21-300.28, concerning Fees and Payments to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

Fees for Designated Services

• 37 TAC §§300.1-300.6

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§300.1. General.

§300.2. Designated Services.

§300.3. Applicable Facilities.

§300.4. Setting Fees.

§300.5. Collection of Fees.

§300.6. Consultation and Technical Assistance.

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 28, 1994.

TRD-9448688

Jack E. Crump
Executive Director
Commission on Jail
Standards

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For further information, please call: (512) 463-5505

Emergency Overcrowding Relief

• 37 TAC §§300.21-300.28

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§300.21. General.

§300.22. Qualifying County

§300.23. Method of Calculation.

§300.24. Reports.

§300.25. Payment Days.

§300.26. Forms.

§300.27. Records.

§300.28. Adjustments.

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 28, 1994.

TRD-9448690

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

The Commission on Jail Standards proposes new §§300.1-300.6, and 300.21-300.28, concerning Fees and Payments. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

Fees for Designated Services

• 37 TAC §§300.1-300.6

The statutes that are affected by these rules are Local Government Code, Chapter 351, §§351.002 and §351.015.

§300.1. General. The commission shall set and collect reasonable fees to recover the cost of performing designated services as required by Government Code, §511.0091 concerning fees set and collected by the commission.

§300.2. Designated Services. The following services are designated as fee recoverable when provided for facilities described under §300.3 of this title (relating to Applicable Facilities):

- (1) review of and comment on construction documents for new facilities or expansion projects of existing facilities;
- (2) performance of occupancy inspections; and
- (3) performance of annual inspections.

§300.3. Applicable Facilities.

(a) Municipal jails operated for a municipality by a private vendor or county jails, whether financed, purchased, designed, constructed, leased, operated, maintained, or managed for the county by a private vendor or provided entirely by the county shall be considered applicable facilities for which the commission shall collect fees for designated services, as described in §300.2 of this title (relating to Designated Services), when the facilities have:

- (1) a rated capacity of 100 or more prisoners; and
- (2) an actual or projected annual average jail population of prisoners sentenced by jurisdictions other than the courts of this state that is 30% or more of the total

population of the facility.

(b) Annual inspection fees shall be collected only for inspections conducted for the year in which the facility meets the requirements of subsection (a)(2) of this section.

§300.4. Setting Fees. The commission shall determine or estimate the cost of performing the designated services described in §300.2 of this title (relating to designated services) at least annually and set reasonable fees that recover the costs of the services. A fee schedule shall be developed and maintained at the offices of the commission (300 West 15th Street, Suite 503, Austin, Texas, 78701) indicating the current fees set by the commission.

§300.5. Collection of Fees.

(a) The commission will forward an invoice for payment for designated services to the municipality or county, for which the facility is or will be operated, approximately ten days following the performance of the services.

(b) Payment shall be made to the commission by the municipality or county receiving the designated services within 45 days from receipt of the invoice for services.

(c) Facilities operated by or for municipalities or counties which fail or refuse to make payment of fees are not eligible for certification.

(d) Any municipality or county which is assessed a fee for services may request a hearing before the commission for adjustment or abatement of a fee by written request to the executive director within 15 days of receipt of invoice for performance of services.

§300.6. Consultation and Technical Assistance. All fees set for designated services include the cost of consultation and technical assistance provided by the commission staff in the performance of the services and related activities. Operators of the applicable facilities are encouraged to contact and interact with the commission as needed for assistance in construction planning and jail management activities.
Figure 1: TAC 300.6.

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 28, 1994.

TRD-9448689

Jack E. Crump
Executive Director
Commission on Jail
Standards

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For further information, please call: (512) 463-5505

Emergency Overcrowding Relief

• 37 TAC §§300.21-300.28

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §§351.002 and §351.015.

§300.21. General. The commission is required by Government Code, Chapter 499, §499.124 (concerning Emergency Overcrowding Relief) to make payments to qualifying counties for certain inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID), until September 1, 1995.

§300.22. Qualifying County. A qualifying county is defined by Government Code, Chapter 499, §499.126 (concerning the Definition of Qualifying County).

§300.23. Method of Calculation. Qualifying counties will be paid based on percentages of a base number equal to the number of inmates confined in the jail on April 1, 1991 who were awaiting transfer to the TDCJ-ID as determined under Government Code, Chapter 499, §499.123(a) (concerning Payment). The applicable percentages and calculations shall be as follows.

(1) From September 1, 1991 until August 31, 1993, the commission will pay a qualifying county the sum of \$20 for each day of confinement for each inmate awaiting transfer in excess of 50% but less than or equal to 210% of the base number and the sum of \$30 for each day of confinement for each inmate awaiting transfer in excess of 210% of the base number.

(2) From September 1, 1993 until September 1, 1995, the commission will pay a qualifying county the sum of \$20 for each day of confinement for each inmate awaiting transfer in excess of 25% but less than or equal to 210% of the base number and the sum of \$30 for each day of confinement for each inmate awaiting transfer in excess of 210% of the base number.

(3) The commission will pay the sum of \$20 for each day of confinement for each inmate awaiting transfer to a qualifying county for which the base number is equal to 0.

(4) Percentage calculations are mathematically rounded up to whole integers. Payments are based on the number of inmates in excess of the rounded-up percentage requirements.

(5) Payments, when appropriate, will be made to qualifying counties for each calendar month.

§300.24. Reports.

(a) Each sheriff shall submit to the commission a report for each month indicating the number of inmates awaiting transfer confined in the jail on each day of the month.

(b) Each sheriff shall submit to the commission a list with the name, state identification number, date of confinement, date paper ready, and date transferred to TDCJ-ID or released for each inmate counted on the monthly report required by subsection (a) of this section.

(c) Reports shall be delivered to the commission not later than five days after the last day of the reporting month.

(d) The sheriff shall certify over his signature that the information provided in each report is complete and accurate.

§300.25. Payment Days.

(a) Payment, when appropriate, will be made based on each day of confinement of each inmate awaiting transfer to TDCJ-ID including the day that all paper work and processing required for transfer is completed but not the day of release or transfer to another jail or TDCJ-ID.

(b) Payment under this section will not be made to a qualifying county for any inmate who is in the jail after having been transferred from another jail and for whom the commission has made payment under this section or under §§300.51-300.63 of this title (relating to Transfer of Felony Backlog).

(c) Payment may be based on an inmate who has been transferred to another jail when such transfer was a result of a remedial order by the commission pursuant to Chapter 297 of this title (relating to Compliance and Enforcement) or under the sending county's own initiative. Inmates transferred pursuant to this subsection shall not be reported as an inmate awaiting transfer by a receiving county under §300.24 of this title (relating to Reports).

§300.26. *Forms.* The commission adopts by reference Form Pay-1, Monthly Emergency Overcrowding Payment Report, and Form Pay-2, Monthly Paper Ready Inmates Roster. Copies of the forms are available at the offices of the Texas Commission on Jail Standards at 300 West 15th Street, Suite 503, Austin, Texas, 78701. Each sheriff shall utilize the referenced forms or similar forms, approved by the executive director, for submission of monthly reports.

§300.27. *Records.* Each sheriff shall maintain complete records of the information required under §300.24 of this title (relating to Reports) and make the records available to commission staff upon request for review. The sheriff shall retain completed copies of each inmate's TDCJ-ID Document Checklist and copies of issued white warrants for a period of one year from the date of transfer or release of the inmate from the jail.

§300.28. *Adjustments.* The sheriff shall notify the commission immediately upon determination that an inaccurate report, required under §300.24 of this title (relating to Reports), was submitted by the sheriff to the commission. Revised complete reports shall be submitted to the commission within 60 days of the end of the affected reporting period indicating the correct information for all paper ready inmates confined during the reporting period. The commission may adjust future payments to a county to correct an overpayment to the county or request reimbursement from the county.

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 28, 1994.

TRD-9448691

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

Chapter 301. Rules of Practice in Contested Cases

• 37 TAC §301.1, §301.2

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission on Jail Standards proposes repeal of §301.1 and §301.2, concerning

Rules of Practice in Contested Cases to allow for adoption of new rules.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be to allow adoption of current and comprehensible new rules. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statutes that are affected by these repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§301.1. Procedures.

§301.2. Decision.

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

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

TRD-9448694

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

The Commission on Jail Standards proposes new §§301.1-301.2, concerning Rules of Practice in Contested Cases. Adoption of these rules will revise jail requirements to make them concise, current, and comprehensible.

Jack E. Crump, executive director, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Crump also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide current and comprehensible new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§301.1. Procedures. The commission will follow the rules of procedure of the State Office of Administrative Hearings for contested cases, Title 1, Part VII, Texas Administrative Code, Chapter 155.

§301.2. Decision. The commission will render a decision following receipt of the proposal for decision from the State Office of Administrative Hearings. The commission may rule to agree, disagree or modify the proposal for decision based on findings of fact or conclusion of law which substantiate the remedial action or other action by the commission. The decision by the commission shall be final and effective when rendered.

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 28, 1994.

TRD-9448695

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: November 4, 1994

For further information, please call: (512) 463-5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter NN. Electronic Benefit Transfer

• 40 TAC §3.4005, §3.4012

The Texas Department of Human Services (DHS) proposes an amendment to §3.4005 and proposes new §3.4012, concerning benefit availability dates and resolution of disputes concerning issuance of Aid to Families with Dependent Children (AFDC) and Food Stamp benefits by Electronic Benefit Transfer (EBT),

in its Income Assistance Services rule chapter. The purpose of the amendment to §3.4005 is to modify the Food Stamp availability dates for benefits to increase the opportunity that food products will be available for purchase at the retail groceries when clients' benefits are issued each month, and to reduce their shopping time. This change is also proposed to encourage the participation of retail grocers in the EBT system. The purpose of new §3.4012 is to add a procedure for clients to use when they have a question about their EBT account balance or transactions.

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 governments 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 increased participation of grocers in the EBT program and more flexibility for customers shopping with the EBT card. 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 Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-038, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment and new section is proposed 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 amendment and new section implements the Human Resources Code, §§22.001 and 33.002.

§3.4005. Benefit Availability Dates. After certification, the Texas Department of Human Services (DHS) makes Aid to Families with Dependent Children (AFDC) and Food Stamp monthly benefits available to recipients via their Electronic Benefit Transfer (EBT) accounts on a staggered cycle over the first few calendar days of the month. The cycle is based on the last digit in the case number as follows: Figure 1 for 40 TAC 3.4005

§3.4012. Resolution of Disputes.

(a) A client who has a question about an Electronic Benefit Transfer (EBT) account balance or transaction may contact the primary EBT contractor's toll-free help desk. A client who is dissatisfied with any EBT-related transaction may request a fair hearing in accordance with Chapter 79, Subchapters L, M, N, and O of this title

(relating to Fair Hearings, Appeals Process, Hearing Procedure, and Social Services Appeals) A fair hearing may be requested orally or in writing to the Texas Department of Human Services (DHS) A client who, following contact with the primary EBT contractor's toll-free help desk for an EBT dispute or error resolution is still dissatisfied, will be referred by the EBT contractor's help desk staff with the DHS EBT dispute resolution staff in DHS's state office to file a request for a fair hearing

(b) When a client request for a fair hearing regarding an EBT transaction is received by DHS staff, a DHS Petition for Fair Hearing form must be completed and sent to the DHS regional attorney for the region where the client lives no later than five days following receipt of the 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

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

TRD-9448765

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

Earliest possible date of adoption February 1, 1995

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

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §15.100 and §15.455, concerning definitions and unearned income, in its Medicaid Eligibility rule chapter. The purpose of the amendments is to clarify support and maintenance policy requirements and related definitions and to assist staff in determining the eligibility of clients in community-based Medicaid programs.

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the support and maintenance policy will be applied correctly on a statewide basis. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long Term Care Unit. Comments on the proposal may be submitted

to Nancy Murphy, Agency Liaison, Media and Policy Services-398, 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. General Information

• 40 TAC §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the health and Human Service Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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

In-kind support and maintenance-Food, clothing, or shelter that is provided to the client or that is purchased by someone else. Any cash payments given directly to the client for food, clothing, or shelter are cash income and not in-kind support and maintenance.

Support and maintenance-The value of both food and shelter that a client receives.

Support or maintenance-The value of either food or shelter that a client receives, but not both.

[Support and maintenance-Food, clothing, or shelter that is given to or received by a client and is purchased by someone else.]

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 27, 1994.

TRD-9448744 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

◆ ◆ ◆
The Texas Department of Human Services (DHS) proposes amendments to §§15.310, 15.435, and 15.460, concerning eligibility requirements for residents of public institutions, liquid resources, and income exemptions, in its Medicaid Eligibility rule chapter. The purpose for the amendments is to revise Medic-

aid eligibility rules to track the Supplemental Security Income program rules.

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the Medicaid eligibility rules will be in compliance with federal policy requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long Term Care Unit. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-408, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter C. Basic Program Requirements

• 40 TAC §15.310

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.310. Eligibility Requirements for Residents of Public Institutions.

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

(c) Eligibility for clients in acute care hospitals is determined using the Supplemental Security Income federal benefit rate.

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 27, 1994.

TRD-9448742 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 D. Resources

• 40 TAC §15.435

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.435. Liquid Resources.

(a)-(n) (No change.)

(o) The Texas Department of Human Services (DHS) excludes from countable resources the following payments:

(1) restitution payments made by the United States government under Public Law 100-383 to Japanese-Americans (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II.

(2) reparation payments received under Sections 500-506 of the Austrian General Social Insurance Act.

(3) payments received under the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (Dutch acronym, WUV).

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 27, 1994.

TRD-9448741 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. Income

• 40 TAC §15.455

◆ ◆ ◆
The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the health and Human Service Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.455. Unearned Income.

(a) (No change.)

(b) Support and maintenance (S/M). The following requirements apply to support and maintenance.

(1) Support and maintenance not counted as income. Support and maintenance are not counted as income if:

(A) eligibility is being tested for a waiver program; for example, Community Living Assistance and Support Services (CLASS), the Nursing Facility Waiver (NFW), Home and Community-Based Services (HCS), and Medically Dependent Children's Program (MDCP). The 1929(b) program is not a waiver program;

(B) support and maintenance are not considered in the eligibility or applied income budgets for the month of entry to a Title XIX long-term care facility;

(C) receipt of support and maintenance is infrequent or irregular;

(D) the client lives with a deemor (ineligible spouse/parent) and there are no non-deemors in the household;

(E) the client lives in a commercial room-and-board establishment;

(F) the client is placed in personal care, adult foster care, or supervised living by a public agency, such as Adult Protective Services (APS) or Community Care for the Aged and Disabled (CCAD);

(G) the client pays his pro-rata share of all household expenses;

(H) the client lives in a public assistance household, defined as one in which each member receives cash or vendor payments from one of the following: Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Refugee Assistance Act of 1980, a Bureau of Indian Affairs (BIA) general assistance program, payments based on need provided by a state/local government income maintenance program, Veterans Administration (VA) pension for veterans or widows, VA dependency and indemnity compensation

(DIC) for parents, or payments under the Disaster Relief Act of 1974;

(I) the client is receiving free use of land on which the shelter the client owns is located, or free use of shelter situated on land the client owns.

(2) Food, clothing, or shelter as wages. If the client receives food, clothing, or shelter which constitutes wages or remuneration for work, then this is earned income valued at its current market value (CMV) or current market rental value (CMRV). In this situation, the principles of support and maintenance do not apply; however, the earned income exclusions of \$65 and one-half the remainder do apply, unless eligibility is being determined under the institutional income limit.

(3) Support and maintenance when the client resides in the household of another person.

(A) 1/3 Federal Benefit Rate (FBR) as S/M.

(i) When the principal of 1/3 FBR applies, there is no rebuttal to show that the actual value is less.

(ii) If the client does not contribute anything toward household expenses, then count 1/3 FBR. No opportunity for rebuttal is offered.

(iii) If the client contributes less than his pro-rata share of general household expenses, then count 1/3 FBR. No opportunity for rebuttal is offered.

(iv) If the client contributes a specific-earmarked amount for food and/or shelter, but the amount contributed is less than the client's pro-rata share for each earmarked expense, then count 1/3 FBR. No rebuttal is offered.

(B) 1/3 FBR plus \$20 as S/M.

(i) If the client receives S/M and the principle of 1/3 FBR plus \$20 applies, count the maximum amount; that is, 1/3 FBR plus \$20. If the client is income-eligible, no further development is required. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be offered an opportunity to rebut and show that the actual value of the S/M is less.

(ii) If the client's eligibility is based on institutional income criteria; that is, the client is 1929(b) or Type Program (TP) 51, Status-in-Group (SIG) J, then count 1/3 FBR plus \$20 as S/M. If the client is income-eligible, no further

development is required. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the actual value is less.

(iii) If the client contributes an earmarked pro-rata share of either food or shelter expenses, but not both then count 1/3 FBR plus \$20. If the client is income-eligible, no further development is needed. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that actual value is less.

(iv) If the client purchases his food separately from other household members, then shelter is the only consideration. Count 1/3 FBR plus \$20. If the client is income-eligible, no further development is needed. If counting 1/3 FBR plus \$20 causes ineligibility, the client must be offered an opportunity to rebut and show that the actual value is less.

(4) Support and maintenance when the client resides in his own household. If the client is the householder (has ownership interest or rental liability), then count 1/3 FBR plus \$20. If the client is income-eligible, no further development is needed. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the actual value of the S/M is less. The principle of 1/3 of FBR is never applicable when the client is the householder.

(A) Support and maintenance from inside the household.

(i) If the client is the householder and others live with him, but the client pays his pro-rata share of household expenses, then there is no S/M.

(ii) If the client is the householder and others live with him, but he does not pay his pro-rata share of household expenses, then count 1/3 FBR plus \$20. If the client is income-eligible, no further development is needed. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the actual value is less.

(B) Support and maintenance from outside the household. If the amount of rent required by the landlord is less than the current market rental value (CMRV), then count 1/3 FBR plus \$20. If the client is income-eligible, no further development is required. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be

given an opportunity to rebut and show that the actual value is less.

(C) Support and maintenance from inside and outside the household. If the client receives S/M from both inside and outside the household, then count 1/3 Couple FBR plus \$20. If the client is income-eligible, no further development is needed. If counting 1/3 Couple FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the sum of S/M from inside the household and S/M from outside the household is less.

(5) Support and maintenance in companion/couple situations.

(A) Client and spouse residing in household of another person.

(i) Companion case not contributing pro-rata share. If the client and ineligible spouse do not contribute their pro-rata share of household expenses, then count 1/6 Couple FBR as S/M for the client. Do not consider the S/M received by the ineligible spouse (the other 1/6 Couple FBR) in the eligibility determination when deeming.

(ii) Companion case contributing pro-rata share. If the client and ineligible spouse contribute their pro-rata share of either food or shelter expenses but not both, then count 1/6 Couple FBR plus \$10 as S/M for the client. (The S/M attributable to the ineligible spouse is not counted in the eligibility budget when deeming.) If the client is income-eligible, no further development is required. If counting 1/6 Couple FBR plus \$10 causes ineligibility, the client must be offered an opportunity to rebut and show that the actual value is less.

(iii) Couple case not contributing pro-rata share. If the client and spouse do not contribute their pro-rata share of household expenses, then count 1/3 Couple FBR.

(iv) Couple case contributing pro-rata share. If the client and spouse contribute their pro-rata share of either food or shelter expenses but not both, then count 1/3 Couple FBR plus \$20. If the couple is income-eligible, no further development is needed. If counting 1/3 Couple FBR plus \$20 causes ineligibility, prior to denial the couple must be given an opportunity to rebut and show that the actual value is less.

(B) Client and Spouse Residing in Their Own Household.

(i) Couple case not contributing pro-rata share of household ex-

penses. If the client and spouse do not pay their pro-rata share of household expenses, then count 1/3 Couple FBR plus \$20. If couple is income-eligible, no further development is needed. If counting 1/3 Couple FBR plus \$20 causes ineligibility, prior to denial the couple must be given an opportunity to rebut and show that the actual value is less.

(ii) Companion case not contributing pro-rata share of household expenses. If the client and spouse do not pay their pro-rata share of household expenses, then count 1/6 Couple FBR plus \$10 as S/M for the client. (Do not consider S/M received by the ineligible spouse in the eligibility determination when deeming.) If the client is income-eligible, no further development is needed. If counting 1/6 Couple FBR plus \$10 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the actual value is less.

(iii) Companion case with contributions toward household expenses. If an ineligible spouse's contribution toward household expenses exceeds that ineligible spouse's pro-rata share, then the excess amount is allocated equally as a contribution among the eligible spouse and the couple's children (if any). Persons among whom the ineligible spouse's excess contribution is allocated (for example, the eligible spouse and the couple's children) are referred to as the "deeming unit."

(6) Support and maintenance in the form of rent-free shelter.

(A) If the household contributes nothing for shelter, then count 1/3 FBR plus \$20 as S/M. If the client is income-eligible, no further development is needed. If counting 1/3 FBR plus \$20 causes ineligibility, prior to denial the client must be given an opportunity to rebut and show that the actual value is less. Actual value is based on the current market rental value (CMRV).

(B) The actual value of S/M may be reduced by the amount of the household's voluntary payments directly to the provider only for the landlord's mortgage, real property taxes, or rent (in sublease situations). These are the only voluntary payments directly to vendors that reduce the actual value of the S/M.

(7) Change of permanent living arrangement. Receipt of in-kind S/M must be re-evaluated if the client changes his permanent living arrangement. Temporary absences from the permanent living arrangement do not affect S/M.

(8) Support and maintenance for an eligible child. If an ineligible parent's contribution towards household expenses exceeds that the ineligible parent's pro-rata share, then the excess amount is allocated equally as a contribution among the parent's children (eligible and ineligible) and eligible spouse (if any). Persons among whom the ineligible parent's excess contribution is allocated (for example, children and eligible spouse, if any) are referred to as the "deeming unit."

(A) Eligible child in parent's household.

(i) If an eligible child lives ONLY with his parent(s) and minor children, then no S/M is developed for that child.

(ii) If an eligible child lives with his parent(s) and another adult in his parent(s)' household, then the child may receive S/M subject to the maximum of 1/3 FBR plus \$20. (Any S/M received by the parent(s) or ineligible children is not considered in the eligibility determination when deeming.) Any contribution by a parent of the eligible child toward household expenses which is in excess of that parent's own pro-rata share is divided equally as a contribution among all members of the deeming unit (for example, the ineligible parent's children and eligible spouse, if any).

(B) Eligible child and ineligible parents live in household of another person.

(i) If an eligible child lives with his parent(s) in someone else's household, and the child does not contribute his pro-rata share of household expenses, then the child receives S/M valued at 1/3 FBR. (Any S/M received by the parent(s) and ineligible children is not considered in the eligibility determination when deeming.) Any excess contribution by an ineligible parent (for example, contribution in excess of that parent's pro-rata share) is divided equally among the parent's children and eligible spouse (if any).

(ii) If an eligible child lives with his parent(s) in someone else's household, and the child contributes his pro-rata share of either food or shelter expenses, but not both, then count 1/3 FBR plus \$20 as S/M. (Any S/M received by the parent(s) and ineligible children is not considered in the eligibility determination when deeming.) If the client is income-eligible, no further development is required. If counting 1/3 FBR plus \$20 causes ineligibility, the client must be given an opportunity to rebut and show that the actual value is less. Any excess

contribution by a parent (for example, contribution in excess of the parent's pro-rata share) is divided equally as a contribution among the parent's children and eligible spouse (if any).

(9) Support and maintenance-vendor situations. For vendor cases, the resale value of clothing given to a client on a consistent basis is treated as gift income not S/M. This value is included in both the eligibility and applied income budgets.

[(b) Support and maintenance. The following requirements apply to support and maintenance:

[(1) Support and maintenance are not counted if they are irregular or infrequent. When counted as income, their value depends on the client's living arrangement.

[(2) If a client (and eligible spouse if any) lives in another person's household and receives both food and shelter from that person, one-third of the SSI-federal benefit rate is counted as income. After this one-third amount is applied, the department does not count the additional in-kind support or maintenance from a third party.

[(3) One-third of the SSI federal benefit rate is counted as income, as described in paragraph (1) of this subsection, only for the months in which the client (and eligible spouse, if any) spends the entire month in the household of another person. If the client spends only part of a month in another's household, support and maintenance are prorated accordingly.

[(4) The one-third support and maintenance amount is considered income even if the client pays only a portion of his prorated share for food and shelter. If the client pays his full prorated share, support and maintenance are not countable.

[(5) The one-third amount does not apply in the following situations:

[(A) The client (and eligible spouse, if any) lives in a commercial room-and-board establishment.

[(B) The client is receiving either food or shelter, but not both.

[(C) The client has an eligible spouse and only he or his eligible spouse lives in another's household.

[(D) The client lives with a person from whom income is or would be deemed.

[(E) The client (or eligible couple) living in another's household is a TP5iJ or Social Security Act, 1929(b)(2)(B), client whose eligibility is continued under an institutional Medical Assistance Only type program; that is, one of the institutional income limits is being used to determine eligibility.]

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

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

Issued in Austin, Texas, on September 27, 1994.

TRD-9448743

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 §15.460

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.460. *Income Exemptions.*

(a) (No change.)

(b) The department exempts income that a client receives from any of the following sources:

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

(3) premium payment for supplementary medical insurance benefits (SMIB) under Title XVIII (Medicare), paid by a third party directly to the Social Security Administration;

(4)-(35) (No change.)

(36) the first \$2,000 per year of income from leases on individually-owned trust or restricted Indian lands;

(37) restitution payments made by the United States government under Public Law 100-383 to Japanese-Americans (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II;

(38) reparation payments received under Sections 500-506 of the Austrian General Social Insurance Act;

(39) per capita judgement funds (including interest and investment income earned on such funds while the funds are held in trust) distributed to members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the independent Seminole Indians of Florida, and the Miccosukee Tribe of Indians of Florida, under Public Law 101-277;

(40) judgment funds, including interest and investment income which accrued on Indian judgment funds while held in trust, distributed under Public Law 97-458;

(41) per capita distributions of funds held in trust by the Secretary of the Interior to members of an Indian tribe, under Public Law 98-64;

(42) all money and land transferred to members of the Puyallup Tribes under the Puyallup Tribe of Indians Settlement Act of 1989 (Public Law 101-141, §10);

(43) payments under the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (Dutch acronym, WUV).

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 27, 1994.

TRD-9448740

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

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 30 days prior to final adoption.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public hearing under Docket Number 2116 scheduled for 9:00 a.m., November 7, 1994 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal filed on behalf of the Texas Automobile Insurance Service Office (TAISO). TAISO's petition proposes amendments to the Texas Automobile Rules and Rating Manual (the Manual). These amendments were proposed in a petition (Reference Number A-0494-09), filed by TAISO on May 12, 1994.

The proposed changes to Manual Rule 136 segregate the physical damage coverages shown in the rate section of the rule and more clearly designate each paragraph and section by adding the appropriate Roman numeral, number or letter. These are editorial changes, which improve the rule's clarity, as well as adding uniformity to this section of the Manual.

The proposed changes to Manual Endorsement 585 (to be redesignated 585A) add a new paragraph to specify that motorhome coverage is provided by the attachment of a miscellaneous type vehicle endorsement to the Personal Auto Policy. Further, the proposed changes add a phrase clarifying that "the exclusions [listed] below are deleted from the Miscellaneous Type Vehicle Endorsement." The language presently contained in Endorsement 585 may cause confusion by implying that the designated exclusions are to be deleted from the policy rather than from the endorsement.

The present numbering sequence of the exclusions contained in Part D to Endorsement 583B (to be redesignated 583C)-Coverage for Damage to Your Auto contains an error in that it inadvertently labels two separate provisions exclusion 11. The 1992 revisions to the Personal Auto Policy include an exclusion 11 relating to coverage for the seizure of an auto. Separate and independent exclusions 11 and 12 were added by Endorsement 583B. The proposed changes to Endorsement 583B eliminate the sequencing error by renumbering exclusions 11 and 12 contained in Part D of Endorsement 583B to exclusions 12 and 13 respectively. These proposed editorial changes are needed in order to eliminate the conflict of having two provisions labeled exclusion 11 in Part D relating to coverage for damage to an auto. Further, the proposed changes are needed in order to insure proper interpretation and application of proposed Endorsement 585A, which references and affects exclusions 12 and 13.

A copy of the petition containing the full text of these proposed amendments to the Man-

ual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147; refer to Reference Number A-0494-09.

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public meeting on November 7, 1994. The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

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

TRD-9448756

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

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



Name: T.J. Riley
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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Limitation on Disciplinary Ac- tion

- 22 TAC §501.37

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption a proposed new §501.37, which appeared in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6329). The effective date of this withdrawal is September 27, 1994.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448721

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: September 27, 1994

For further information, please call: (512) 505-5568



TITLE 25. HEALTH SER- VICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

- 25 TAC §98.104, §98.105

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed amendments to §98.104 and §98.105, which appeared in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6959). The effective date of this withdrawal is September 27, 1994.

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

TRD-9448668

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: September 27, 1994

For further information, please call: (512) 458-7236





Name: Gabriel Aguilera
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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 1. General Procedures

Subchapter G. Interagency Agreements

• 4 TAC §1.300

The Texas Department of Agriculture adopts new §1.300, concerning the Memorandum of Agreement with the Texas Department of Commerce, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6325).

The amendment is adopted in order to ensure compliance with §481.028 of the Texas Government Code, enacted by the 73rd Legislature, which requires that the Texas Department of Commerce and the Texas Department of Agriculture enter into a memorandum of understanding regarding each agency's international marketing efforts and business finance programs and that such memorandum be adopted as a rule by the agencies.

The amendment will function by providing increased coordination and communication between the Texas Department of Agriculture and the Texas Department of Commerce with regard to program planning and budgeting related to economic development.

The new section is adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with general rulemaking authority; the Texas Government Code, §481.028(d), which directs that the memorandum of understanding between the Texas Department of Agriculture and the Texas Department of Commerce be adopted as a rule by both agencies; and Subchapter B of Title 10, Chapter 2001 of the Texas Government Code, which prescribes the standard for rulemaking by state agencies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9448648

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: October 17, 1994

Proposal publication date: August 12, 1994

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter L. Insurance Requirements

• 16 TAC §5.183

The Railroad Commission of Texas adopts an amendment to §5.183, concerning minimum limits, with changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6328).

The amendment brings the commission's insurance requirements for transporters of hazardous materials, hazardous waste, and hazardous substances consistent with existing federal regulations for motor carriers transporting such commodities in bulk, in tank vehicles, and for commercial vehicles requiring hazardous materials placarding. One change is to eliminate the words "in bulk, in tank vehicles" from paragraph 4 of the proposed text, so that the rule will cover all transportation of hazardous materials, waste, and substances, as required by federal law. Another change is to add the word "motor" between "commercial" and "vehicles" in subparagraph (a)(4) so that the terminology will be consistent with §5.501(a) of this title (relating to definitions). Another change is to add the term "cargo" before the term "damage" in subparagraph (b) to clarify that it is applicable to cargo insurance only.

The amendment will promote compliance with insurance requirements by transporters of hazardous materials, hazardous wastes, and hazardous substances by making the

commission's requirements consistent with federal requirements.

Two comments were received, both of which were in favor of the proposed rule. Comments stated that all federal insurance minimum limits should be adopted for use in Texas, by language that would reference and adopt the applicable federal code provisions as amended from time to time. A comment also suggested amending the definition of "commercial motor vehicle" as a vehicle with a gross vehicle weight rating of 10,000 pounds or more.

Groups or associations commenting in favor of adoption of the proposed rule were Texas Tank Truck Carriers Association, Inc., and Texas Motor Transportation Association, Inc. No comments were received opposing adoption of the rule.

The commission does not agree that the rule's language should be changed to prospectively adopt for intrastate commerce the minimum insurance coverages in federal regulations applicable only to interstate commerce. The commission will review the differences between the amounts required for interstate and intrastate transportation to ascertain if any changes need to be made to its rules. The commission does agree that the rule should reflect the federal requirements for transportation of hazardous waste, materials, and substances, without a limitation to transportation of those commodities in bulk, in tank vehicles. Accordingly, this change has been made to the proposed text.

The commission does not agree that the definition of "commercial motor vehicle" in §5.501(a) of this title (relating to definitions) should be changed at this time without further opportunity for public comment. The commission will review its definition of "commercial motor vehicle" in a proposed rulemaking scheduled for later this year on registration, insurance, and safety requirements for motor carriers and commercial motor vehicles.

§5.183. Minimum Limits.

(a) The minimum amounts referred to in §5.181 of this title (relating to evidence of insurance required) are hereby prescribed as follows:

(1) Combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of

others (excluding cargo) - \$500,000. These minimums do not apply to certain transporters of hazardous waste, hazardous materials, and hazardous substances, as described in paragraph (4) of this subsection.

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

(4) For all transporters which hold a certificate of public convenience and necessity from the commission and which transport hazardous waste, hazardous materials, and hazardous substances, and for all commercial motor vehicles of 10,000 pounds gross vehicular weight or more which are required to utilize hazardous materials placarding for transportation of a commodity specified in subparagraphs (A) or (B) of this paragraph, the following combined single limits apply to bodily injuries to or death of all persons injured or killed in any accident, and also apply to loss or damage in any one accident to property of others:

(A) Hazardous substances, as defined in 49 Code of Federal Regulations §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Classes A or B explosives, poison gas (Poison A), liquified compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 Code of Federal Regulations §173.403 (excluding cargo) - \$5,000,000.

(B) Oil listed in 49 Code of Federal Regulations §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 Code of Federal Regulations §171.8 and listed in 49 Code of Federal Regulations §172.101, but not mentioned in paragraphs (A) or (C) of this subsection (excluding cargo) - \$1,000,000.

(C) Any quantity of Classes A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 Code of Federal Regulations §173.403 (excluding cargo) - \$5,000,000.

(b) In cases where multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

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 27, 1994.

TRD-9448751

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Effective date: October 18, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-6989

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.503

The Railroad Commission of Texas adopts an amendment to §5.503 concerning liability insurance for commercial carriers, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6329).

The amendment makes the commission's minimum limits for commercial carrier transporters of hazardous materials, hazardous waste, and hazardous substances consistent with existing federal regulations and with §5.183, (relating to minimum limits).

The amendment will promote compliance with insurance requirements by transporters of hazardous materials, hazardous wastes, and hazardous substances by making the commission's requirements consistent with federal requirements.

Two comments were received, both of which were in favor of the proposed rule. Comments stated that all federal insurance minimum limits should be adopted for use in Texas, by language that would reference and adopt the applicable federal code provisions as amended from time to time. A comment also suggested amending the definition of "commercial motor vehicle" as a vehicle with a gross vehicle weight rating of 10,000 pounds or more.

Groups or associations commenting in favor of adoption of the proposed rule were Texas Tank Truck Carriers Association, Inc., and Texas Motor Transportation Association, Inc. No comments were received opposing adoption of the rule.

The commission does not agree that the rule's language should be changed to prospectively adopt for intrastate commerce the minimum insurance coverages in federal regulations applicable only to interstate commerce. The commission will review the differences between the amounts required for interstate and intrastate transportation to ascertain if any changes need to be made to its rules. The commission does agree that the rule should reflect the federal requirements for transportation of hazardous waste, materials, and substances, without a limitation to transportation of those commodities in bulk, in tank vehicles. Accordingly, this change has been made to the proposed text.

The commission does not agree that the definition of "commercial motor vehicle" in §5.501(a) of this title (relating to definitions) should be changed at this time without further opportunity for public comment. The commission will review its definition of "commercial motor vehicle" in a proposed rulemaking scheduled for later this year on registration, insurance, and safety requirements for motor carriers and commercial motor vehicles.

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 27, 1994.

TRD-9448752

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Effective date: October 18, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-6989

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

• 16 TAC §9.32

The Railroad Commission of Texas adopts new §9.32, relating to the LP-gas advisory committee, with changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5680). Implementing Senate Bill 383, 73rd legislature, 1993, the new section creates the LP-gas advisory committee of the commission and establishes its duration; sets forth the purpose and duties of the committee; prescribes the composition of the committee, the nomination and appointment process, and the membership terms of the committee; and sets forth the mechanisms by which the committee meets, performs its work, and is evaluated.

No comments were received from any groups or associations. One comment was received from an individual who suggested that the definition of consumer representative be expanded to allow individuals who represent the interest and welfare of the consuming public, but who are not necessarily LP-gas end users or industry representatives, to be named to the advisory committee. The commission agrees with this comment and has revised the definition of consumer representative to include representatives from governmental agencies such as the Texas Department of Public Safety which have an interest in LP-gas usage and safety.

In addition, the commission makes four other changes as follows: deleting the duplicate word "services" from subsection (a)(3); deleting the duplicate word "voting" in subsection (d); specifying that the term of office for all committee members is two years in subsection (d); and correcting the date for making nominations in subsection (e). These changes are made to clarify the language and to correct the typographical error in the nomination date.

The new section is adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of

the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public. The new section implements the provisions of Senate Bill 383, 73rd Legislature, 1993, which mandates that state agency advisory committees conform to specific requirements set forth in the act.

§9.32. LP-Gas Advisory Committee.

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

(1) Commission—The Railroad Commission of Texas

(2) Committee—The LP-Gas Advisory Committee of the Railroad Commission of Texas.

(3) Consumer representative—A member of the committee who is not engaged in the business of producing, distributing or retailing LP-gas and who is not engaged in the business of designing, manufacturing, distributing or retailing LP-gas equipment or performing LP-gas-related research or other services, but who is either an end user of LP-gas fuel, including but not limited to a consumer of odorized LP-gas as a residential or commercial heating or water-heating fuel, as an automotive or other transportation fuel, or as an agricultural or industrial fuel, or a representative from a governmental agency with a direct interest in LP-gas usage and safety.

(4) Division—The Liquefied Petroleum Gas Division of the Railroad Commission of Texas.

(5) Fiscal year—September 1 of a year through August 31 of the following year

(6) Industry representative—A member of the committee who is engaged in the business of producing, distributing or retailing LP-gas or who is engaged in the business of designing, manufacturing, distributing or retailing LP-gas equipment or performing LP-gas-related research or other services

(7) Local government representative—A member of the committee who is a fire marshal for a city or county.

(8) LP-gas—Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113

(9) Member—An industry representative, a consumer representative, or a representative of local government who serves on the LP-Gas Advisory Committee of the Railroad Commission of Texas.

(10) Presiding officer—The chairman of the LP-Gas Advisory Committee of the Railroad Commission of Texas.

(b) Establishment; Duration. The LP-Gas Advisory Committee of the Rail-

road Commission of Texas is hereby established effective January 1, 1995. The committee is abolished on December 1, 1998, unless the commission amends this subsection to establish a different date.

(c) Purpose and Duties. The purpose of the committee is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the commission regulate the safe use of LP-gas. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of the division. All such powers and duties rest solely with the commission.

(d) Composition of Committee; Membership Terms. The committee shall be composed of 12 members, 11 of whom shall be voting members. The 11 voting members shall include five LP-gas consumers, five members of the LP-gas industry, and one representative from local government, all of whom serve at the pleasure of the commission, for a period of two years. The director of the Liquefied Petroleum Gas Division shall serve as an *ex officio*, non-voting member of the committee.

(e) Nominations for Committee Membership. Any person may nominate a candidate or candidates for membership on the committee. Nominations shall be made in writing and submitted by November 15, 1994, for the initial committee, and by January 1 of each odd-numbered year thereafter. Nominations may be submitted to the commission, a commissioner, or the director of the division for transmission to the commission.

(f) Appointment of Members. All members of the committee are appointed by and serve at the pleasure of the commission. The commission shall appoint members of the first committee by January 1, 1995, and by August 31 of each odd-numbered year thereafter, such that the composition of the committee meets the requirements of subsection (d) of this section. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(g) Reimbursement of Members' Expenses. The commission shall not reimburse members for travel or other expenses related to service on the committee.

(h) Presiding Officer; Other Officers. The committee shall elect from its members a presiding officer who shall report the committee's advice and attendance in writing to the commission. The committee may elect other officers at its pleasure.

(i) Subcommittees. The committee may organize itself into subcommittees.

One member of each subcommittee shall serve as the chair of that subcommittee. The subcommittee chairs shall make written reports regarding their subcommittee's work to the presiding officer.

(j) Meetings. The committee shall meet at the call of the presiding officer or the commission. Committee and subcommittee meetings are open to the public.

(k) Committee Records. The division staff shall record and maintain the originals of the minutes of each committee and subcommittee meeting. The division shall maintain a record of actions taken by the committee and shall distribute copies of approved minutes and other committee documents to the commission and the committee members.

(l) Evaluation of Committee Costs and Benefits. By October 1 of each year, the division director shall evaluate for the previous fiscal year and report to the commission:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's activities.

(m) Report to Legislative Budget Board. The commission shall biennially report to the Legislative Budget Board the information developed under subsection (l) of this section in evaluating the committee's costs and benefits.

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 27, 1994.

TRD-9448753

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Effective date: October 18, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512) 463-7008

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• 16 TAC §9.33

The Railroad Commission of Texas adopts new §9.33, relating to the U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee, with changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5682). Implementing Senate Bill 383, 73rd legislature, 1993, the new section cre-

ates the U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee of the commission and establishes its duration; sets forth the purpose and duties of the committee; prescribes the composition of the committee, the appointment process, and the membership terms of the committee; and sets forth the mechanisms by which the committee meets, performs its work, and is evaluated.

No comments were received regarding adoption of the new section.

The commission makes one change to clarify the wording in subsection (d) regarding the term of office of the committee members.

The new section is adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public. The new section implements the provisions of Senate Bill 383, 73rd Legislature, 1993, which mandates that state agency advisory committees conform to specific requirements set forth in the act.

§9.33. U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee.

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

(1) Alternative fuel—liquefied petroleum gas (LP-gas or LPG), as that term is defined in Texas Natural Resources Code, Chapter 113; compressed natural gas (CNG), and liquefied natural gas (LNG), as those terms are defined in Texas Natural Resources Code, Chapter 116.

(2) Commission—the Railroad Commission of Texas.

(3) Committee—the U.S. Department of Labor Defense Conversion Adjustment Grant Advisory Committee of the Railroad Commission of Texas.

(4) Division—the Liquefied Petroleum Gas Division of the Railroad Commission of Texas.

(5) Educational representative—a member of the committee who is employed as an administrator or instructor at a public post-secondary educational institution.

(6) Industry representative—a member of the committee who is engaged in the business of producing, distributing or retailing LP-gas or CNG, or who is engaged in the business of designing, manufacturing, distributing or retailing LP-gas or CNG equipment or performing LP-gas or CNG related research or other services.

(7) Member—an educational representative, an industry representative, an organized labor representative, a private

sector or consumer representative, a Texas Employment Commission representative, a Texas Department of Commerce representative, a Texas Education Agency representative, a Texas Higher Education Coordinating Board representative, or a service delivery area representative who serves on the U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee of the Railroad Commission of Texas.

(8) Organized labor representative—a member of the committee who is affiliated with the Texas AFL/CIO.

(9) Presiding officer—the chairman of the U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee of the Railroad Commission of Texas.

(10) Private sector or consumer representative—a member of the committee who is an end user of an alternative fuel as an automotive or other transportation fuel.

(11) Service delivery area representative—a member of the committee who is the chairman of a private industry council, or program director of a service delivery area under the Job Training Partnership Act (JTPA) in the Dallas, Fort Worth, or surrounding areas.

(12) Texas Department of Commerce representative—a member of the committee who is the executive director of the Texas Department of Commerce, or that executive director's designee.

(13) Texas Education Agency representative—a member of the committee who is the commissioner of the Texas Education Agency, or that commissioner's designee.

(14) Texas Employment Commission representative—a member of the committee who is a member of the Texas Employment Commission, or that commissioner's designee.

(15) Texas Higher Education Coordinating Board representative—a member of the committee who is the commissioner of the Higher Education Coordinating Board, or that commissioner's designee.

(16) United States (U.S.) Department of Labor (DOL) Defense Conversion Adjustment Grant—a grant in the amount of \$480,979 to the Railroad Commission of Texas from the U.S. DOL for retraining displaced defense workers in the Dallas/Fort Worth area in alternative fuels technology. The term of the grant is from December 17, 1993, to June 17, 1995.

(b) Establishment; Duration. The U.S. Department of Labor (DOL) Defense Conversion Adjustment Grant Advisory Committee of the Railroad Commission of

Texas is hereby established effective November 1, 1994. The committee is abolished on July 1, 1995, unless the commission amends this subsection to establish a different date.

(c) Purpose and Duties. The purpose of the committee is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the commission implement the alternative fuels training program under the U.S. DOL grant; to advise the commission on the development of curriculum; to assist the commission in identifying and securing additional funds for alternative fuels training; and to serve on the evaluation team to measure the success of the program. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of the division or administration of the grant. All such powers and duties rest solely with the commission.

(d) Composition of Committee; Membership Terms. The committee shall be composed of 17 voting members, who shall include three private industry or consumer representatives, one for each alternative fuel; two industry representatives; three educational representatives; one representative of organized labor; one Texas Employment Commission representative; one Texas Department of Commerce representative; one Texas Education Agency representative; one Texas Higher Education Coordinating Board representative; and four service delivery area representatives; all of whom serve at the pleasure of the commission until July 1, 1995.

(e) Appointment of Members. All members of the committee are appointed by and serve at the pleasure of the commission. The commission shall appoint members of the committee by November 1, 1994, such that the composition of the committee meets the requirements of subsection (d) of this section. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(f) Reimbursement of Members' Expenses. The commission shall not reimburse members for travel or other expenses related to service on the committee.

(g) Presiding Officer; Other Officers. The committee shall elect from its members a presiding officer who shall report the committee's advice and attendance in writing to the commission. The committee may elect other officers at its pleasure.

(h) Meetings. The committee shall meet at the call of the presiding officer or the commission. Committee and subcommittee meetings are open to the public.

(i) Committee Records. The division staff shall record and maintain the originals of the minutes of each committee and subcommittee meeting. The division shall maintain a record of actions taken by the committee and shall distribute copies of approved minutes and other committee documents to the commission and the committee members.

(j) Evaluation of Committee Costs and Benefits. By July 15, 1995, the division director shall evaluate for the period of November 1, 1994, to July 1, 1995, and report to the commission:

(A) the committee's work;

(B) the committee's usefulness, and

(C) the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's activities.

(k) Report to Legislative Budget Board. The commission shall report to the Legislative Budget Board in October 1995 the information developed under subsection

(j) of this section in evaluating the committee's costs and benefits.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call (512) 463-7008

Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

Liquefied Natural Gas

• 16 TAC §13.2001

The Railroad Commission of Texas adopts new §13.2001, relating to the liquefied natural gas (LNG) advisory committee, with changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5683). Implementing Senate Bill 383, 73rd legislature, 1993, the new section creates the LNG advisory committee of the commission and establishes its duration, sets

forth the purpose and duties of the committee; prescribes the composition of the committee, the nomination and appointment process, and the membership terms of the committee; and sets forth the mechanisms by which the committee meets, performs its work, and is evaluated.

No comments were received from any groups or associations. One comment suggested that one of the industry representatives be a registered professional engineer. The commission agrees with this comment and has added this language to subsection (d). One comment noted that the year during which nominations must be made, as stated in subsection (3), should be 1994, instead of 1995. The commission agrees with this comment and has made this revision.

In addition, the commission makes two other clarifying changes: deleting the duplicate word "services" from subsection (a)(3), and specifying that the term of office for all committee members is two years in subsection (d).

The new section is adopted under Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LNG industry that will protect or tend to protect the health, welfare, and safety of the general public. The new section implements the provisions of Senate Bill 383, 73rd Legislature, 1993, which mandates that state agency advisory committees conform to specific requirements set forth in the act.

§13.2001 LNG Advisory Committee

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

(1) Commission—the Railroad Commission of Texas.

(2) Committee—the LNG Advisory Committee of the Railroad Commission of Texas.

(3) Consumer representative—a member of the committee who is not engaged in the business of producing, distributing or retailing LNG and who is not engaged in the business of designing, manufacturing, distributing or retailing LNG equipment or performing LNG related research or other services, but who is an end user of LNG fuel, including but not limited to a consumer of LNG as an automotive or other transportation fuel.

(4) Division—the Liquefied Petroleum Gas Division of the Railroad Commission of Texas.

(5) Fiscal year—September 1 of a year through August 31 of the following year.

(6) Industry representative—a member of the committee who is engaged in the business of producing, distributing or retailing LNG or who is engaged in the

business of designing, manufacturing, distributing or retailing LNG equipment or performing LNG related research or other services.

(7) Local government representative—a member of the committee who is a fire marshal for a city or county.

(8) LNG-liquefied natural gas, as that term is defined in Texas Natural Resources Code, Chapter 116.

(9) Member—an industry representative, a consumer representative, or a representative of local government who serves on the LNG Advisory Committee of the Railroad Commission of Texas.

(10) Presiding officer—the chairman of the LNG Advisory Committee of the Railroad Commission of Texas.

(b) Establishment; Duration. The LNG Advisory Committee of the Railroad Commission of Texas is hereby established effective January 1, 1995. The committee is abolished on December 1, 1998, unless the commission amends this subsection to establish a different date.

(c) Purpose and Duties. The purpose of the committee is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the commission develop and implement rules for the safe use of LNG. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of the division. All such powers and duties rest solely with the commission.

(d) Composition of Committee, Membership Terms. The committee shall be composed of eight members, seven of whom are voting members. The seven voting members shall include three LNG consumers, three members of the LNG industry, and one representative from local government; one industry representative shall be a registered professional engineer licensed to practice in the State of Texas. All members serve at the pleasure of the commission, for a period of two years. The director of the Liquefied Petroleum Gas Division shall serve as an *ex officio*, non-voting member of the committee.

(e) Nominations for Committee Membership. Any person may nominate a candidate or candidates for membership on the committee. Nominations shall be in writing and submitted by November 15, 1994, for the initial committee, and by January 1 of each odd-numbered year thereafter. Nominations may be submitted to the commission, a commissioner, or the director of the division for transmission to the commission.

(f) Appointment of Members. All members of the committee are appointed by and serve at the pleasure of the commission.

The commission shall appoint members of the first committee by January 1, 1995, and by August 31 of each odd-numbered year thereafter, such that the composition of the committee meets the requirements of subsection (d) of this section. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(g) Reimbursement of Members' Expenses. The commission shall not reimburse members for travel or other expenses related to service on the committee.

(h) Presiding Officer; Other Officers. The committee shall elect from its members a presiding officer who shall report the committee's advice and attendance in writing to the commission. The committee may elect other officers at its pleasure.

(i) Subcommittees. The committee may organize itself into subcommittees. One member of each subcommittee shall serve as the chair of that subcommittee. The subcommittee chairs shall make written reports regarding their subcommittee's work to the presiding officer.

(j) Meetings. The committee shall meet at the call of the presiding officer or the commission. Committee and subcommittee meetings are open to the public.

(k) Committee Records. The division staff shall record and maintain the originals of the minutes of each committee and subcommittee meeting. The division shall maintain a record of actions taken by the committee and shall distribute copies of approved minutes and other committee documents to the commission and the committee members.

(l) Evaluation of Committee Costs and Benefits. By October 1 of each year, the division director shall evaluate for the previous fiscal year and report to the commission:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of commission staff time spent in support of the committee's activities.

(m) Report to Legislative Budget Board. The commission shall biennially report to the Legislative Budget Board the information developed under subsection (l) of this section in evaluating the committee's costs and benefits.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
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For further information, please call: (512) 463-7008

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**Part II. Public Utility
Commission of Texas**
Chapter 23. Substantive Rules
Rates

• 16 TAC §23.23

The Public Utility Commission of Texas adopts an amendment to §23.23, with changes to the proposed text as published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2460). The proposed amendment addresses the Commission's concerns regarding expedited approval of changes in existing rates.

The amendment is intended to resolve problems with the rule that have arisen in the context of proceedings utilizing this provision during the three years it has been in effect. Additionally, the Commission is restructuring the rule so that it is easier to read and understand. Finally, the Commission is providing electric cooperatives greater flexibility in proposing changes to their rates and tariffs within the context of an expedited proceeding. Specifically, the amendment allows cooperatives to make significant rate design changes in an expedited rate case.

The following parties filed comments to the proposed rule: Texas Industrial Energy Consumers (TIEC); Texas Electric Cooperatives, Inc. (TEC); Central and South West Corporation (CSW), Texas-Lehigh Cement Company (Texas-Lehigh); Structural Metals, Inc. (SMI); and South Texas Electric Cooperative and its member cooperatives (STEC). SMI, Texas-Lehigh, TIEC, and CSW filed comments generally supporting the proposed rule changes.

TEC and STEC filed comments urging that there be no limitation on the number of times a utility can file under the expedited rule. If a limitation is established, STEC favored one based on the percentage increase in revenue obtained. TEC stated that the ability of the General Counsel or any intervening party to veto an expedited rate case makes any limitation unnecessary. STEC asserted that a request for a rate reduction or for a revenue neutral rate design change should not affect the number of filings the utility could make under the expedited rule if the limitation were based on a percentage increase in revenue obtained. The Commission agrees that basing the limitation on a percentage increase in

revenue is reasonable. Appropriate language has been inserted into the rule.

STEC also submitted comments regarding the limitation on the revenue change and concerning the utility's income statement. These modifications have been made. The remainder of STEC's comments were supportive of the amendment.

TEC filed comments requesting a limitation of the notice requirements to those contained in the rule. Where the notice provisions of this subsection conflict with other notice provisions it is appropriate that the notice provisions in this subsection apply. Appropriate language has been inserted into the rule.

Several commenters proposed typographical changes and clarifications which have been made.

TEC requested changing the time for mailing notice to all affected customers from 15 days after public notice is filed with the Commission to 30 days. This comment was adopted.

TEC filed comments requesting the inclusion of language in the rule stating that motions to intervene filed after the intervention deadline will automatically be denied. The adopted rule does not contain such language. There may be circumstances where an individual is unable to request intervention prior to the deadline but, nevertheless, should be granted intervention. The presiding officer appropriately will consider these cases on an individual basis.

TEC's comments sought to change the rule to where a utility could extend its effective date without approval from the presiding officer. This comment was adopted to the extent that the utility is requesting an increase in total revenue. To the extent the utility or the General Counsel recommends proposing to decrease the utility's total revenue the utility would have to request an extension.

TEC suggested that the utility have the right to determine which final order meeting the Commission considers the utility's application. Where the parties have reached an agreement on the rate change the Hearings Officer is directed to set the application on the first Commission agenda that is at least ten days after the proposed order is issued. This language addresses the concerns of the commenters.

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

§23.23. Rate Design.

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

(c) Expedited Approval of Changes in Rates. An electric distribution cooperative may request expedited review and approval of rate changes pursuant to the procedures and limitations of this subsection.

(1) Filing public notice and other information.

(A) Documents to be filed. The utility may initiate a proceeding under this subsection by filing with the Commission the following information:

(i) a copy of public notice;

(ii) the proposed customer, demand, and energy charges applicable to each class of service;

(iii) the estimated effects on total customer class revenue by customer class;

(iv) the estimated effects on base revenues (revenues minus power cost and excluding other operating revenues) for the system and by customer class;

(v) a request that the matter be assigned a docket number pursuant to subsection (c) of this section; and

(vi) a brief description of the applicability and type of service for any new class of service proposed by the utility;

(vii) if the utility desires to make changes in its service rules and regulations, the proposed service rules and regulations.

(B) Documents to be provided to others. Concurrent with the utility's filing of information as provided in paragraph (1)(A) of this subsection, the utility shall mail or deliver a copy of the public notice and other information to the office of public counsel, the general counsel's office of the Commission, the utility's ten largest customer accounts (as measured by annual kilowatt-hour consumption) addressed to each customer's billing address or an alternative address previously specified by the customer, the appropriate officer of each affected municipality, and any other utility certified to provide retail electric utility service in the service area of the applicant utility.

(C) Receipt of information. Upon receipt of the utility's public notice and other information provided in paragraph (1)(A) of this subsection, the hearings division shall docket the matter as a request for rate change pursuant to subsection (c) of this section.

(2) Public notice. The utility shall provide public notice in compliance with the requirements of this subsection. In the event of a conflict between the provisions of this Rule and Procedural Rule 22.51, the provisions of this Rule shall apply.

(A) Contents of notice. Public notice shall be entitled "Notice of Rate Change Request" and shall contain the following:

(i) the effect the proposed change is expected to have on the total revenues of the utility, expressed as an annual dollar amount over or under adjusted test year revenues and as a percent of adjusted test year revenues;

(ii) the proposed effective date of the proposed rate change;

(iii) the classes and numbers of utility customers affected by the rate change;

(iv) the following language: "Information concerning the proposed rate changes, including the proposed customer, demand, and energy charges applicable to each class of service, the estimated effect on revenue by customer class, and a brief description of the applicability and type of service for any new class of service which is proposed by the utility, is available at the general office of the utility, located at: (utility address) _____, or will be provided upon request to any customer by mail without charge. The utility has filed a copy of this Notice of Rate Change Request with the Public Utility Commission of Texas. Persons who wish to intervene in or comment upon these proceedings should notify the Commission as soon as possible. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Public Information Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervening will be _____ (45 days after the filing of Notice).

(B) Issuance of Notice. The utility shall provide notice of the proposed rate changes in the following manner:

(i) by publication in conspicuous form and place once a week for four consecutive weeks in a newspaper having general circulation in each county containing territory affected by the proposed rate change. However, no publication of public notice in any newspaper is required when the utility is seeking to reduce rates for all affected customers. Publication of public notice shall be requested no later than the date public notice is filed with the Commission (the notice filing date);

(ii) by mailing public notice to all affected customers other than the utility's ten largest customer accounts no later than 30 days after public notice is filed as provided in paragraph (1)(A) of this subsection;

(3) Application. No later than 15 days after public notice is filed with the Commission as provided in paragraph (1)(A) of this subsection, the utility shall

file an application requesting Commission review in accordance with the expedited procedures of subsection (c) of this section.

(A) Limitations. The utility's request shall be limited as follows:

(i) Revenue change. The total revenue of the utility shall not change by more than 5.0% of the adjusted test-year level of total revenues as provided in paragraph (3)(B)(ii) of this subsection;

(ii) Class allocation of revenues. The percentage change in adjusted base revenue collected from any customer class shall be no more than two times the percentage change in total system annual adjusted base revenues (revenues minus power cost) from all customer classes (not including other operating revenues, accounts 450 to 456) unless adjusted system revenues would not change, in which case no one class may receive a base revenue change greater than 10%.

(iii) Rate design. The utility's proposed rate design shall be within the following guidelines.

(I) If the utility's application includes a cost-of-service study, the utility may propose any changes in the design of existing customer class rate schedules, billing adjustments, and service fees.

(II) If the utility's application does not include a cost of service study, the utility may only propose changes in the level of charges in existing customer class rate schedules and service fees. No changes shall be proposed in billing adjustments, including adjustments for the recovery of purchased electricity costs.

(III) The utility may propose a new rate class if its application includes a cost of service study showing that the revenues allocated to the class are equal to or greater than the cost of providing service to the class. The utility may propose a rate class be established solely for a new customer if the estimated annual cost of providing service to the class is less than the estimated annual revenues for the class.

(iv) Prior rate change. The utility shall not have changed any rate pursuant to this subsection during the preceding 12 months.

(v) The sum of the percent rate changes, both positive and negative, calculated in accordance with subsection (c)(3)(A)(i) shall not exceed 10% since the utility's last full rate case.

(B) Contents of application. The utility's application shall contain the following:

(i) A Statement of Intent to change rates proposing rate revisions to be effective not less than 90 days after public notice is filed with the Commission as provided in paragraph (1) (A) of this subsection.

(ii) An Income statement showing actual test-year revenues and expenses, adjustments to revenues and expenses as provided in this paragraph, the adjusted test-year, the proposed revenue change, and the adjusted test year with proposed revenue change. Adjustments to operating revenue shall be made for annualization of changes in the recovery of purchased electricity costs, and annualization of rate changes previously approved by a regulatory authority, if applicable. No other adjustments shall be made in calculating adjusted test-year operating revenues. Adjustments to operating expenses shall be made for the annualization of changes in purchased electricity costs, if applicable, and for removal of expenses not allowed to be included in the utility's cost of service by statute or Commission rule. No other adjustments to the operating expenses shall be made.

(iii) Board resolution. A resolution of the utility's board of directors approving the proposed change in rates and authorizing the filing of the statement of intent with the Commission.

(iv) Affidavits affirming that notice has been issued in accordance with paragraph (2)(B) of this subsection, and that affidavits of newspaper publishers will be filed as soon as they are available.

(v) Cost-of-service study. The utility shall include a cost of service study in its application if the revenues collected from the customer classes would not all change in the same direction, the percentage change in total revenues collected from any customer class would be less than one-half the percentage change in total revenue, or it has been more than five years since the Commission last entered a final order setting the utility's rates in a full rate case.

(vi) Affidavits supporting any exhibits or cost-of-service study filed with the statement of intent and affirming that the proposed rate changes are within the limitations of the subsection.

(vii) A statement for each proposed rate design change, explaining in detail the estimated effect on total revenue and on base revenue by customer classes and stating the class and number of customers affected.

(viii) A statement showing operating and maintenance expenses listed by FERC account on a monthly basis.

(ix) Justification for rate design. The utility shall include in its application a statement of the reasons for each

change in rate design proposed by the utility and testimony or affidavits supporting any exhibits or cost of service study filed with the statement of intent.

(x) Other information. Any other information required in an official form that may be promulgated by the Commission for filing with statements of intent to change rates pursuant to this subsection.

(C) Application to be provided to others. Concurrent with the filing of the utility's application with the Commission, the utility should mail or deliver a copy of its application to the Office of Public Counsel and the General Counsel's office of the Commission.

(D) Failure to file application. If the utility fails to timely file an application, the proceeding shall be dismissed without prejudice.

(4) Intervention. Any affected person may intervene by showing a justiciable interest related to the proposed change in rates. Concurrently with the filing of its request for intervention, the prospective intervenor should mail a copy of its request for intervention to the utility.

(A) Deadline. Requests to intervene must be made in writing and filed with the Commission no later than 45 days after the filing of public notice with the Commission as provided in paragraph (1)(A) of this subsection.

(B) Action upon receipt. Upon receipt of a request for intervention the Hearings Officer shall:

(i) if requested or if deemed advisable, mail a copy of the request for intervention to the utility; and

(ii) if requested or if deemed advisable, mail a copy of this subsection to the person requesting intervention.

(C) The utility has seven days from receipt of the notice to object to the request for intervention.

(D) Ruling on intervention request. The Hearings Officer shall as expeditiously as practicable enter a ruling on requests to intervene based upon the request for intervention and any objection.

(5) Staff review. The Commission's staff shall review the application for compliance with the Act and this subsection.

(A) Review of application and notice. The Hearings Officer shall determine whether the utility's public notice and application substantially comply with the following:

(i) Paragraph (1)(A), (B) and (2) of this subsection concerning contents and issuance of public notice; and

(ii) Paragraph (3)(A) concerning limitations on the utility's application;

(B) Review of rate design. Additionally, the Commission's staff shall review whether the proposed rate design changes are reasonable, including whether any of the changes creates unreasonably discriminatory rates.

(6) General counsel recommendation. The General Counsel shall file a recommendation and written testimony which may be in the form of a memorandum setting forth its recommendations and the reasons for such recommendations or in the form of a proposed order. The General Counsel's recommendation and testimony shall be filed 60 days after the utility files its public notice with the Commission as provided in paragraph (1)(A) of this subsection.

(7) Extension of effective date. If the utility has proposed to increase its total revenue, the utility may extend the proposed effective date for implementation of revised rates by filing a written notice of extension with the Commission. If the utility or the General Counsel's recommendation would propose to decrease the utility's total revenue, the utility may request extending the proposed effective date for implementation of revised rates by filing a written request for extension with the Commission. Where all parties are in agreement to the extension of the effective date, no request for extension shall be necessary. The extension shall be for a period not more than 30 days. The utility's extension of the effective date shall operate to extend all subsequent procedural deadlines set forth in this subsection for the same number of days as the effective date is extended.

(8) Agreement of the parties. At any time within 70 days after public notice has been filed with the Commission as provided in paragraph (1)(A) of this subsection or any extension thereof, the parties may unanimously agree to a resolution of all issues in the case. The agreement of the parties may be in any appropriate pleading, including separate consents or non-objections to the Commission's approval of a draft proposed order that may be submitted by any of the parties.

(9) Conversion to full rate proceeding. At any time within 73 days after

the utility files public notice with the Commission as provided in paragraph (1)(A) of this subsection or any extension thereof, the utility may elect to convert its request for expedited approval of rates to a full rate proceeding by filing its election with the Commission and serving a copy on all parties. A utility which elects to convert an expedited proceeding to a full proceeding shall file an application in compliance with the Commission's filing requirements for a major rate case within 100 days after filing its election and shall serve a copy on all parties. The application shall be based on the same test-year used as the basis for the utility's expedited filing. The utility shall include in the application, as proposed rates, the same rates proposed by the utility in its expedited proceeding under this subsection. If public notice given by the utility in connection with the expedited proceeding complies with the Commission's requirements for such notice, no additional public notice shall be required. Discovery shall commence when the utility's full application is filed. Except as provided herein, the merits of the utility's full application shall be considered de novo, as if the utility's expedited proceeding has never been filed and the utility's proposed effective date for the implementation of revised rates shall be 35 days after the date the utility's full application is filed.

(10) Action when case is not agreed or converted. In any case where there is neither an agreement of the parties, no filing of an election to convert the expedited proceeding to a full rate proceeding within the time prescribed or withdrawal of the application, the application shall be deemed denied and the Hearings Officer shall issue an order denying the utility's application without prejudice.

(11) Proposed order. Where there is an agreement of the parties, the Hearings Officer shall prepare a proposed order.

(A) Deadline. The proposed order shall be filed within 75 days after the utility files public notice with the Commission pursuant to paragraph (1) (A) of this subsection unless the effective date has been extended in accordance with paragraph (7) of this subsection. In such case, the deadline for filing the proposed order shall be extended by the number of days the proceeding is extended.

(B) Contents. The proposed order shall contain proposed findings of fact and conclusions of law.

(C) Evidence. There shall be included in the evidence the utility's public notice and all other documents filed

pursuant to paragraph (1)(A) of this subsection, any affidavits concerning public notice filed by the utility; the utility's application including supporting testimony, affidavits and schedules, staff's testimony, findings of fact and conclusions of law filed by any party, and the agreements of the parties, if any. Objections to testimony and cross-examination shall be waived.

(12) Setting on the commission's agenda/rate approval. If the parties have reached an agreement on the rate change, the Hearings Officer shall set the utility's application on the first Commission agenda that is at least ten days after the proposed order is issued. The utility shall extend its proposed effective date as necessary. If rate changes are authorized by the Commission, the utility may implement revised rates on the date of the Commission's final order or at such later date as may be requested by the utility and approved by the Commission.

(13) Utility withdrawal. The utility may withdraw its application without prejudice to refiling at any time before a final order is issued by the Commission.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1994.

TRD-9448471 John M. Rertraw
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: October 13, 1994

Proposal publication date: April 8, 1994

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

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 165. Administration of Examinations

• 22 TAC §165.1

The Texas State Board of Medical Examiners adopts the repeal of §165.1, without changes, to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5923).

This issue has been addressed in a different section of the board rules.

The section will function through the deletion of obsolete rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 authority.

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

TRD-9448625 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 834-7728

Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.1, §175.4

The Texas State Board of Medical Examiners adopts amendments to §175.1 and §175.4, without changes, to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5923).

The Federation Licensing Examination (FLEX) is no longer being administered in Texas; therefore, the adoption of this amendment will clarify that the United States Medical Licensing Examination (USMLE) is the current examination being administered.

The sections as adopted will function by clarification of the rules.

No comments were received regarding adoption of the amendments

The amendments are adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 authority.

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

TRD-9448624 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 834-7728

Chapter 183. Acupuncture

• 22 TAC §183.17

The Texas State Board of Medical Examiners adopts new §183.17, without changes, to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5923).

The new section will provide a limited exemption for those individuals practicing auricular acupuncture in order to allow the Board time to gather documentation and results of studies related to this area of practice.

The new section as adopted will function by establishing an orderly system of licensing those persons practicing auricular acupuncture in the state of Texas in a manner which protects the health, safety, and welfare of the public.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 authority.

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

TRD-9448626 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 834-7728

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.16

The Texas State Board of Medical Examiners adopts the repeal of §§185.1-185.16, without changes, to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5304).

The repeal as adopted complies with the mandates of the 73rd Legislature through House Bill 2498.

The section will function by deleting obsolete rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4495b, which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the

regulation of the practice of medicine in this state, and the enforcement 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 authority.

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

TRD-9448622 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: July 8, 1994

For further information, please call: (512) 834-7728

• 22 TAC §§185.1-185.29

The Texas State Board of Medical Examiners adopts new §§185.1-185.29, without changes to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5304).

The section as adopted will comply with mandates of the 73rd Legislature through House Bill 2498.

The section will function by establishing an orderly system of licensing and disciplining those persons practicing as physician assistants in the state of Texas in a manner which protects the health, safety, and welfare of the public.

Two comments were received, one from Texas Hospital Association and one from the Texas State Board of Pharmacy. The Texas Hospital Association was concerned that §185.17(c) would not allow physician assistants to be employed by health care facilities Section §185.17(c) involves physician assistants in office practice settings only. Therefore, a physician assistant could be employed by a hospital with an onsite clinic and be supervised by a physician with a separate office setting. Communication with the Texas State Board of Pharmacy and clarification of the rules through a memo to all physician assistants have alleviated the concerns addressed in the comments from the Texas State Board of Pharmacy related to requesting drug samples.

The new sections are adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 26, 1994.

TRD-9448621 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: July 8, 1994

For further information, please call: (512) 834-7728

Chapter 199. Public Information

• 22 TAC §199.4

The Texas State Board of Medical Examiners adopts new §199.4, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5924).

As required by House Bill 1009 of the 73rd Legislature, the new section as adopted will outline charges for copies of records, computer tapes, mailing lists, and other documents available to the public.

The new section as adopted will define specific costs for providing copies of records.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 authority

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

TRD-9448623 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: October 17, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 834-7728

Part XXII. Texas State Board of Public Accountancy

Chapter 513. Registration

Registration of Sole Proprietorships

• 22 TAC §513.86

The Texas State Board of Public Accountancy adopts new §513.86 with changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register*, (19 TexReg 5924) The change is the addition of the word "written" before the word "evidence" in item (3).

The new section allows a sole proprietorship to continue operating for up to one year after the death of the sole proprietor

The new section will function by requiring proof of death of the sole proprietor, proof that a certificate or registration holder is managing the practice, and proof that the sole proprietor practice's survivability would be jeopardized by disruption of its continuation.

Two comments were received by the board, one from Mark Troutman of Austin and one from Richard Forrest of Houston. The comments were made available to the board at the time of its consideration of this proposed section.

Mr. Forrest suggested proposed subsection (3) containing the reason why a sole proprietorship would be allowed to continue to practice be broadened to include: (a) a "winding down" period so clients of the deceased certificate holder would not suffer a disruption of services and a possible hardship; (b) allowing the practice to continue because sale of the practice would be easier and more likely if the practice was a going concern; and (c) allowing the practice to continue to avoid diminishing the practice's value to the deceased practice holder's estate.

Comment (a) apparently presumes the practice will be closed, and not sold.

In response to comment (a) staff suggests it is unlikely clients would require services from the winding down practice for up to twelve months before engaging another CPA's services. Staff suggests that the occasions when a practice is closed and not sold are unusual, that these few instances can be handled by the executive director on an individual basis, and that 90 days may be a more reasonable "winding down" time period.

Comments (b) and (c) are essentially the same: maintain the practice's value pending sale.

In response to comments (b) and (c) staff suggests proposed subsection (3) addresses these concerns and is in agreement with comments (b) and (c). Some of the board's reasons for ensuring the survivability for up to twelve months of a sole proprietorship after the certificate holder's death are to maintain the value of the practice pending sale of the practice, to allow the estate adequate time to market the practice and to select a qualified purchaser, and to minimize client inconvenience.

Mr. Troutman agreed with the proposed rule and suggested a few improvements. He suggested the board also require documents such as Letters Testamentary or a court Order under Section 238 of the Probate Code, either of which would judicially authorize a person to act on behalf of the sole proprietor's estate.

Staff suggested that Letters Testamentary and Section 238 Orders may take anywhere from a few weeks to several months to obtain in addition to the board's processing time, that some of the practices' clients may be unable to forego a CPA's services for that long, and that some clients may be forced to retain another CPA, thus eroding the value of the sole proprietor's estate and negating the intent of this proposed section.

On the issue of who is authorized to speak for the estate, staff suggested this is a Probate Court issue, is not within the board's jurisdiction, and that an attempt by the board to

resolve this issue might place the practice in temporary limbo which would devalue the practice.

Mr. Troutman pointed out that the proposed section did not address incapacity of the sole proprietor. Board staff agreed incapacity should be addressed. Staff suggested the board might want more time to consider incapacity and to study any proposed language. Adding new language on incapacity to the proposed section would be a substantive change requiring re-publication and delaying adoption of the section as published. Staff suggested adoption of the section as published with later amendments for incapacity.

§513.86. Death of a Sole Proprietor Upon written authorization from the executive director, a sole proprietorship may continue to operate for a period of up to 12 months following the death of the sole proprietor. The executive director, subject to ratification by the board at the next board meeting, may permit the continued operation of the sole proprietorship when he has been provided with

(1) a certified copy of the sole proprietor's death certificate;

(2) a copy of the power of attorney from the sole proprietor's executor, administrator, or heir designating a certificate or registration holder in good standing with the board to manage the sole proprietorship on behalf of such party. When such party is not a certificate or registration holder, the power of attorney must authorize a certificate or registration holder to manage the sole proprietorship on behalf of such party; and

(3) written evidence that a disruption in the continuation of the sole proprietorship would jeopardize the survivability of the firm.

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 19, 1994.

TRD-9448718

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 18, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 505-5566

Chapter 521. Fee Schedule Duplication and Other Charges and Refund of Board Fees

• 22 TAC §521.6

The Texas State Board of Public Accountancy adopts an amendment to §521.6 without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register*, (19 TexReg 5925)

The amendment allows implementation of House Bill 1009, 73rd Legislature, 1993, requiring state agencies to set fees for duplication.

The amendment will function by pegging photocopying charges to the General Services Commission's charges and defining personnel and overhead charges.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and House Bill 1009, 73rd Legislature, 1993.

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 19, 1994.

TRD-9448720

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 18, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 505-5566

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

The Texas Department of Health (department) adopts repeal of §37.47 and new §37.47, concerning the Children's Speech-Language and Hearing Advisory Committee. New §37.47 is adopted with changes to the proposed text as published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5148). The repeal is adopted without changes.

The new section is adopted for the following reasons: In compliance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The present advisory committee, the Children's Speech-Language and Hearing Advisory Committee, was established in 1983. Upon review by the department, the committee's name and structure have been revised to create a better balance between professional and public members. The new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the section's effective date.

No comments from outside the department were received regarding adoption of the proposal. However, §37.47(d)(2) was amended as a result of staff comments.

Comment: The committee's task listed at §37.47(d) include review of proposed legislation, which is outside the scope of this advisory committee. Department staff should continue to perform this function.

Response: The department agrees, and §37.47(d)(2) has been amended accordingly.

Special Senses and Communication Disorders

• 25 TAC §37.47

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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 26, 1994.

TRD-9448873 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Effective date: January 1, 1995

Proposal publication date: July 5, 1994

For further information, please call: (512) 458-7236

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§37.47. Children's Speech-Language and Hearing Advisory Committee.

(a) The committee. The Children's Speech-Language and Hearing Advisory Committee shall be appointed under and governed by this section.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board concerning appropriate techniques, tools, and training for screening hearing and speech/language in schools, child care and

Head Start settings, and public health clinics; improvement of systems for early identification of hearing or speech/language delayed children; and improvement of systems to connect children who fail screening with diagnostic and remedial services.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to age groups mandated to be screened, periodicity of screening, qualifications and training of screeners, appropriate screening techniques and equipment, reporting requirements for screening, maintenance of records of screening, and operation of the Program for Amplification for Children of Texas.

(2) The committee shall also review proposed rules to determine their impact on the quality of screening and access of identified children to quality diagnostic and remedial services, and shall advise staff of the department's Bureau of Women and Children in matters pertaining to the identification and care of children with hearing or speech-language disorders.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Committee abolished. The committee shall be automatically abolished on January 1, 1999.

(f) Composition. The committee shall be composed of 11 members appointed by the board as follows:

- (1) five consumer members; and
- (2) six nonconsumer members, which shall include:

(A) two audiologists, one from private practice and one from the public sector;

(B) two speech-language pathologists, one from private practice and one from the public sector;

(C) one school nurse; and

(D) one physician with expertise in caring for hearing and speech-language impaired children.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31 of each even-numbered year, beginning in 1996.

(A) The following members shall be appointed initially for two-year terms:

(i) audiologist in the private sector;

(ii) speech-language pathologist in the public sector; and

(iii) consumer.

(B) The following members shall be appointed initially for four-year terms:

(i) audiologist in the public sector;

(ii) physician;

(iii) consumer; and

(iv) consumer.

(C) The following members shall be appointed for six-year terms:

(i) speech-language pathologist in the private sector;

(ii) school nurse;

(iii) consumer; and

(iv) consumer.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in either the office of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer to its officers by other terms, such as chairperson and vice-chairperson.

(i) **Meetings.** The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) **Attendance.** Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) **Staff.** Staff support for the committee shall be provided by the department.

(l) **Procedures.** *Roberts Rules of Order, Newly Revised*, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) **Subcommittees.** The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) **Statement by members.** The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) **Reports to board.** The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its

members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) **Reimbursement for expenses.** In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) **Effective date.** This section shall become effective on January 1, 1995.

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 26, 1994.

TRD-8448672

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

Effective date: January 1, 1995

Proposal publication date: July 5, 1994

For further information, please call: (512) 458-7238

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• 25 TAC §37.48

The Texas Department of Health (department) adopts repeal of §37.48, concerning operating procedures for the Children's Vision Screening Advisory Committee, without changes to the proposed text as published in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5314).

The repeal is adopted for the following reasons. In compliance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. No formal meetings of the Children's Vision Screening Advisory Committee have been held in the last two years, and two of the six committee positions are currently vacant. The department has determined that the committee's functions can be more efficiently performed by department personnel and other professionals, and that it should be abolished.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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 26, 1994.

TRD-9448671 Susan K. Steeg
General Counsel, Office of
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Health

Effective date: October 18, 1994

Proposal publication date: July 8, 1994

For further information, please call: (512) 458-7236

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Chapter 98. HIV and STD
Control

Subchapter C. Texas HIV
Medication Program

General Provisions

• 25 TAC §98.101

The Texas Department of Health (department) adopts an amendment to §98.101, concerning the Texas HIV Medication Program, without changes to the proposed text as published in the April 26, 1994, issue of the *Texas Register* (19 TexReg 3130).

The section sets out the criteria used in determining which drugs are provided under the

department's program. The amendment allows the Texas board of Health (board) to approve, and the program to furnish medication "that have been shown to be effective in reducing hospitalizations" as required by the authorizing statute. Previously the rule required that the drug be approved by the United States Food and Drug Administration (FDA) specifically for the indicated application. Because advantages in pharmacological knowledge for treatment of these conditions is rapid, the effectiveness of drugs for this program may be established by the consensus and standards of care with the medical community prior to formal approval by the FDA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; §85.016 which provides the board with authority to adopt rules concerning HIV programs; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 26, 1994.

TRD-9448670 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Effective date: October 18, 1994

Proposal publication date: April 26, 1994

For further information, please call: (512) 458-7236

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Chapter 229. Food and Drug
Licensure of Wholesale Device
Distributors

• 25 TAC §§229.431-229.443

The Texas Department of Health (department) adopts new §§229.431-229.443, concerning the licensure of wholesale device distributors. Sections §§229.432 and §229.440 are adopted with changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6331). Sections 229.431, 229.433-229.439, 229.441-229.443 are adopted without changes.

These sections provide for the minimum licensure standards necessary to ensure the safety and efficacy of devices distributed by wholesale device distributors. These new sections will enable the department to collect licensure fees to recover the costs of estab-

lishing an official establishment inventory, implementing surveillance activities, monitoring facilities in violation, and removing adulterated and misbranded devices from commerce. The changes to the sections as they were proposed are discussed in the following comments and responses.

A summary of comments received and the department's responses are as follows.

COMMENT: Concerning §229.433, a commenter recommended that the definition of "wholesale distribution" be clarified to exclude those individuals who act as independent sales agents of manufacturers to further the distribution of devices.

RESPONSE: The department disagrees since "independent sales agents" as described by the commenter are not employed by the manufacturer and act as distributors of devices to persons other than the consumer or patient. These independent distributors are subject to applicable federal requirements for device distributors and as such should not be excluded from these rules.

COMMENT: Concerning §229.441, a commenter objected to the adoption of minimum standards for wholesale device distributors which are redundant with federal standards and which would serve to add costs to the health care industry and to state government regulatory agencies.

RESPONSE: The department believes the adoption of federal regulations is necessary due to the preemptive nature of these requirements and will ensure that state rules are consistent with standards enforced nationwide. The department believes these licensure requirements do not place an undue burden on the health care industry or the department.

COMMENT: Concerning §229.442, a commenter recommended that this section be removed or changed to allow the advertisement of prescription devices at trade shows, seminars, and conventions, and to allow distribution of written advertising materials to medical professionals.

RESPONSE: The department disagrees, since the restrictions placed on the advertising of prescription devices in this section are required by statute and do not prevent the dissemination of advertisements to members of the medical, dental, and veterinary professions.

Minor editorial changes were made for clarification purposes in §229.432 and §229.440.

Iniermedics Orthopedics, Inc. provided comments on the proposed rules. The commenter was generally in favor of the rules but expressed concerns, questions, and recommendations as stated earlier.

The new sections are adopted under the Texas Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§229.432. *Applicable Laws and Regulations.*

(a) The Texas Department of Health (department) adopts by reference the following laws and regulations:

(1) Federal Food, Drug, and Cosmetic Act, 21 United States Code, et seq as amended;

(2) 21 Code of Federal Regulations (CFR), Part 801, Labeling, as amended;

(3) 21 CFR, Part 803, Medical Device Reporting, as amended;

(4) 21 CFR, Part 804, Medical Device Distributor Reporting, as amended;

(5) 21 CFR, Part 807, Establishment Registration and Device Listing for Manufacturers and Distributors of Devices, as amended;

(6) 21 CFR, Part 820, Good Manufacturing Practice for Medical Devices: General, as amended;

(7) 21 CFR, Part 814, Premarket Approval of Medical Devices, as amended; and

(8) 21 CFR, Subchapter J—Radiological Health, as amended.

(b) Copies of these laws and regulations are indexed and filed in the office of the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

(c) Nothing in these sections shall relieve any person of the responsibility for compliance with other applicable Texas and federal laws and regulations.

§229.440. *Refusal, Cancellation, Suspension, or Revocation of License.*

(a) The Commissioner of Health (commissioner) may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has violated any of the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or these sections;

(6) has failed to pay a license fee or an annual renewal fee for a license; or

(7) has obtained or attempted to obtain a license by fraud or deception.

(b) The commissioner may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated the Health and Safety Code, §431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated the Health and Safety Code, Chapter 481 (Texas Controlled Substance Act), or the Health and Safety Code, Chapter 483 (Dangerous Drugs Act); or

(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The Texas Department of Health (department) may, after providing opportunity for hearing, refuse to license a wholesale distributor of devices, or may suspend or revoke a license for violations of the requirements in these sections or for any of the reasons described in the Act.

(d) Any hearings for the refusal, revocation or suspension of a license are governed by the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health) and the Administrative Procedure and Texas Register Act, the Government Code, Chapter 2001.

(e) A license issued under these sections shall be returned to the department if the wholesale device distributor's place of business:

(1) ceases business or otherwise ceases operation on a permanent basis;

(2) relocates; or

(3) changes name or ownership. For a corporation, an ownership change is deemed to have occurred, resulting in the

necessity to return the license to the department, when 5.0% or more of the share of stock of a corporation is transferred from one person to another.

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 26, 1994.

TRD-9448669

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

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For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 20. Natural Resource Damage Assessment

The General Land Office (GLO) adopts new Chapter 20, §§20.1-20.4, 20.10, 20.20-20.23, 20.30-20.36, and 20.40-20.44, concerning procedures and protocols for assessing damage to natural resources resulting from an unauthorized discharge of oil into coastal waters. The General Land Office (GLO) adopts this final rule with changes to the proposed text as published in the August 19, 1994, issue of the *Texas Register* (19 TexReg 6525).

Sections 20.1, 20.3, 20.10, 20.23, 20.32, 20.36 and 20.41 are adopted with changes to the proposed rule. Sections 20.2, 20.4, 20.20-20.22, 20.30, 20.31, 20.33-20.35, 20.40, 20.42-20.44 are adopted without changes to the proposed rule.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 40, Subchapter C (Oil Spill Prevention and Response Act (OSPRA)), which requires the commissioner of the GLO to promulgate administrative procedures and protocols for the assessment of natural resource damage from an unauthorized discharge of oil.

This chapter establishes procedures and protocols for assessing damages for injuries to natural resources sustained as the result of an unauthorized discharge of oil. This chapter is promulgated pursuant to OSPRA, §40.107(c) (4). These procedures and protocols are applicable only to oil spills that enter or pose an imminent threat to Texas' coastal waters. Only natural resource trustees may assert a claim for damages to natural resources. The GLO, the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Parks and Wildlife Department

(TPWD) were designated by the governor of Texas as natural resources trustees.

Section 20.10 contains the definitions applicable to the damage assessment process. Terms not defined have their ordinary meaning. Section 20.20 requires the commissioner to provide notice to natural resource trustees whenever there is a report of an unauthorized discharge of oil. Section 20.21 requires coordination between the state on-scene oil spill coordinator (SOSC) and the trustees, and describes the trustees' advisory role during a spill response. Trustees, like all parties in a spill response, are required to follow an incident unified command system and to follow applicable spill contingency plans. Section 20.22 requires the GLO, TNRCC, and TPWD to coordinate their damage assessment activities and to develop an administrative record to document the assessment process. Section 20.23 allows the responsible person (RP) to participate in the damage assessment process. Pursuant to §20.23(f), the trustees may limit the participation of the RP if the RP's actions interfere with the trustees' responsibilities or unreasonably delay the process. Section 20.23(f)(1) and (2) also allows RPs whose participation has been limited or terminated to rejoin the assessment process. During the assessment, the trustees and the RP are required, upon request, to share data with each other according to §20.23(d), and under §20.23(e) they may enter into stipulations regarding data and its interpretation. Section 20.30 requires the trustees to perform a preliminary field investigation. The purpose of the investigation is to determine whether an assessment should be conducted and, if so, to choose the type of assessment. Section 20.31 requires the trustees to provide the RP with written notice of intent to perform an assessment and includes a description of the contents of the notice. Section 20.32 describes the procedures to be used to determine injury and to quantify injury and loss of services. These procedures are not exclusive, but are descriptive of commonly utilized procedures and protocols. The trustees retain the discretion to use any reliable method appropriate to the specific discharge. This section also describes economic methodologies and methods of calculating damages and interest.

Sections 20.33 and 20.34 identify the circumstances wherein trustees may use an expedited damage assessment method or a comprehensive damage method. These sections establish schedules for the completion of the assessment. Section 20.35 authorizes the use of the negotiated assessment method. The RP may initiate a negotiated assessment by making a written request within 15 days of receipt of the notice of assessment. Section 20.36 contains the requirements for plans for restoration, rehabilitation, replacement or acquisition of the equivalent of injured natural resources.

Section 20.40 details the required contents of the assessment record, and provides for permanent retention of the record at the Archives and Records Division of the GLO. Section 20.41 lists the damages recoverable in a claim for damages for injuries to natural resources. The section also describes the limitation on natural resource damages,

contained in OSPRA, §40.203(c) and (d), and the liability of the Coastal Protection Fund and the federal Oil Spill Liability Trust Fund. Section 20.42 describes the parameters of a negotiated settlement and also describes the mandatory provisions for any settlement of a claim for damages to natural resources. Section 20.43 defines the procedures for mediation, which is required prior to the initiation of any lawsuit by either trustees or the RP for natural resource damages. Finally, §20.44 describes the public's role in the damage assessment process. Trustees are required to provide for public notice and comment when they select an assessment procedure, when a restoration plan is proposed and when they propose to issue a certificate of completion for a restoration plan.

One commenter questioned whether the trustees would apply state law when assessing a natural resource damage claim pursuant to federal law. In the event that the trustees conduct a natural resource damage assessment (NRDA) pursuant to federal law, the trustees will, of course, follow federal laws and regulations. However, the trustees have agreed, pursuant to §20.1, to conduct a field investigation and encourage the federal trustees to invite the responsible party to participate in all cases. Because the preamble to the proposed rule will not be republished, no change was made based on this comment.

One commenter requested that §20.1 be amended to state that there will be no double recovery of damage claims in the event that federal trustees make a separate NRDA claim pursuant to federal law. Section 20.41(h) and the Texas Natural Resources Code, Title 2, Chapter 40, Subchapter E, §40.203(e), clearly prohibit double recovery for natural resource damages resulting from an unauthorized discharge of oil. For clarification, §20.1 was amended to specifically state that double recovery is prohibited.

One commenter supported §20.1 because it clearly outlines the applicability of Chapter 20. The commenter also supported the intention to be consistent with federal rules and to cooperate with the federal trustees. Finally, this commenter was appreciative of the requirement that the state trustees perform a field investigation. Support for the intent expressed in this section indicates that the negotiated rulemaking group's (NRG) joint effort to address the concerns of government, industry and citizens was worthwhile.

One commenter questioned whether the definition of "assessment or natural resource damage assessment" in §20.10 limited the procedures and protocols to currently available technology. The protocols and procedures referenced in the §20.10 definition of "assessment" are those listed in §20.32(a), which include "any other reliable incident-specific method." Therefore, reliable procedures and protocols developed in the future may be utilized by the trustees pursuant to §20.32. No change was made based on this comment.

One commenter requested addition of the phrase "utilized over an extended period of time" after "scientific procedures" in the §20.10 definition of comprehensive assessment. The definition of comprehensive as-

essment is the same as the definition in the Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40.107, and the rules cannot amend statutory definitions. Requiring a history of use prior to current use of a scientific procedure would unnecessarily restrict trustees and RPs from using or developing innovative methodologies and technologies. Such a view sacrifices progress for tradition and is counter-productive and inefficient considering new developments in restoration technology and rapid advancements in other scientific disciplines. No change was made based on this comment.

One commenter requested amending the definition of "cost-effective" in §20.10 to the alternative that "most thoroughly accomplishes the desired effect and does so at the comparatively lowest cost." The definition of "cost-effective" at §20.10 essentially says the same thing as the suggested amendment. No change was made based on this comment.

A commenter questioned whether the definition of "damages" in §20.10 includes reasonable monitoring costs, lost use and diminution in value incurred prior to full recovery. Section 20.10 refers to damages that may be recovered and includes the cost of assessments. Section 20.41(a)(1)(E) refers to monitoring costs and §20.41(a)(4) refers to diminution in value, both of which may be recovered in a natural resource damage claim. No change was made based on this comment.

One commenter requested that the definition of "harmful quantity" in §20.10 require a measurable injury to resources. Harmful quantity refers to the quantity of oil discharged which triggers a response and an obligation to report the spill. This is the same definition used by state and federal spill responders. It is not intended to be a measure of natural resource injury. No change was made based on this comment.

Two commenters stated that the definition of "passive use values" in §20.10 should include the value that one places on the availability of the resource for one's own future use. One of the commenters also recommended changing "or" to "and" in that phrase to indicate that use by a person, a person's family and the general public are not mutually exclusive. The §20.10 definition of "passive use values" was amended by adding the word "person" and by changing "or" to "and."

One commenter recommended amending the §20.10 definition of "pathway" to include the possibility of defacement of non-biological resources. The connection between the discharged oil and the impacted natural resource may include, in the physical pathway, a non-biological resource. For example, the oiling of sediment, a non-biological resource, may result in injury to biological organisms in the sediment. Such an effect is accounted for in the definition of pathway. The phrase "physical pathway" ensures that the connection is not limited to biological resources. No change was made based on this comment.

One commenter recommended amending the §20.10 definition of "pre-discharge condition" to specify that such conditions can be estimated or approximated, but not measured

Whether an effect is precisely measurable or, at best, only approximately measurable varies depending upon the parameter being measured and the techniques utilized. Amending the definition of "pre-discharge condition," as suggested by this commenter, creates a presumption that current techniques for measuring pre-discharge conditions are not adequately reliable. The test for admissibility of scientific evidence is reliability and that standard applies to both precise measurements and approximations. Existing scientific and legal processes provide sufficient protection to ensure the reliability of such measurements. No change was made based on this comment.

A commenter recommended that the §20.10 definition of "services" be amended to include ecological, scientific, historic, subsistence and passive uses. Section 20.41(a)(4) provides for claims for both use and passive use values. The §20.10 definition of "services" is amended to clarify that "services" refers to ecological services. Scientific and historic uses are covered in the §20.10 definition of public uses, which includes all human uses of natural resources. Subsistence uses are not part of a NRDA as such uses are the subject of private claims under Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.003(6)(A). No other change was made based on this comment.

One commenter recommended changing the definition, in §20.10, of "state on-scene coordinator" (SOSC) to account for those situations involving discharges of oil that are 240 barrels or less, where the Railroad Commission (RRC) is SOSC. Texas Natural Resources Code, Title 2, Chapter 40, Subchapter B, §40.052, provides that the State Coastal Discharge Contingency Plan, into which these rules will be incorporated, shall provide for the RRC to be SOSC when an oil spill of 240 barrels or less, from exploration and production activities or transportation by pipeline, occurs. Since the State Coastal Discharge Contingency Plan must contain this provision, and since trustees must follow all applicable contingency plans, amendment of this rule would be redundant. No change was made based on this comment.

One commenter recommended that the definition of "unauthorized discharge of oil" in §20.10 be amended to include all discharges of oil authorized by law, not just those authorized pursuant to permit. The definition of "unauthorized discharge of oil" is the definition in Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.003(24). These regulations cannot substantively change statutory definitions. No change was made based on this comment.

One commenter recommended adding a definition, in §20.10, of "response activities" because this phrase is used throughout the rules. Response activities include a myriad of activities related to response to an unauthorized discharge of oil. The SOSC has broad discretion to authorize and initiate response activities. It is not appropriate to limit the SOSC's authority or discretion in a rule related to NRDA. No change was made based on this comment.

One commenter suggested amending §20.20(b) to require the SOSC to provide trustees with an update "when it is possible to do so," rather than "promptly," as required by this section. The trustees must promptly investigate a spill to determine whether to initiate the assessment process. Pursuant to §20.20(a), the trustees receive initial spill reports, upon which they rely. However, in those instances where the impact on natural resources is significantly different from that described in the initial report, the trustees must be notified promptly. Therefore, no change was made based on this comment.

One commenter requested changes to §20.21(a) to give the SOSC explicit authority to assign the trustees to particular components of the unified incident command system (ICS). Further, this commenter recommended clarification of the SOSC's role to emphasize that response activities have priority over NRDA activities. The SOSC, as the state's primary coordinator in spill response, needs discretion in establishing the unified ICS. Further, the SOSC must have the flexibility to merge state, federal and private ICSs. In order to preserve this necessary flexibility, the SOSC's ability to assign the trustees to the most appropriate position in a unified ICS should not be restricted. Therefore, the language of this section was not amended to assign trustees to a specific place in the ICS. The National Contingency Plan (NCP), Code of Federal Regulation, Title 40, Chapter 300, provides, as does §20.21(a)(3) of this chapter, that the SOSC and the trustees shall coordinate their activities, and that trustee activities shall not interfere with response activities. Amendment of §20.21(a), as suggested by the commenter, is not required. No change was made based on these comments.

One commenter recommended adding language to §20.21(b) to require that trustees demonstrate the ability to comply with all appropriate safety requirements, have appropriate training, and provide their own safety equipment. Section 20.21(b) provides that the SOSC shall allow access to the impacted area "in accordance with the site safety plan." Site safety plans cover the topics mentioned by the commenter, therefore no change was made based on this comment.

A commenter supported the provision in §20.21(a)(3) requiring the trustees to coordinate and integrate assessment activities through the SOSC. Support for this section indicates that the NRG has successfully addressed the concerns of industry, government and citizens to protect natural resources and to accurately document natural resource injuries at the earliest opportunity.

One commenter suggested amending §20.21(b) to require that state trustees, themselves, ensure that NRDA does not interfere with response activities. Further, the commenter stated that the SOSC should not have to show that the trustees are unreasonably interfering before limiting their activities. In the alternative, the commenter recommended the deletion of the last sentence in §20.21(b). As the state's primary spill response coordinator, the SOSC is the person who should determine whether trustees activ-

ities unreasonably interfere with response actions. The SOSC has a broad overview of all response activities and is in the best position to prioritize activities during spill response. Therefore, no change was made based on this comment.

Several commenters requested that §20.23 outline standards and procedures for limiting RP participation. The facts that may lead to limiting RP participation depend on the unique circumstances of the incident. Trustees must maintain the flexibility to control RP participation in the assessment process. The trustees will provide the RP with reasons for terminating or limiting participation pursuant to §20.23(f). The RP is entitled to rebut the trustees' written reasons, pursuant to §20.40(c)(6). These procedures are sufficient to provide notice to the RP. More specific procedures would create a bureaucratic process that distracts the trustees and unnecessarily delays the assessment process.

One commenter recommended allowing the RP to rejoin the assessment process upon a showing that dilatory or disruptive practices will cease. Section 20.23(f) allows the trustees to limit or terminate the participation of the RP. A limitation on the participation implies that an RP's status may change during the course of the assessment process. This section does not prohibit the trustees from allowing the RP to rejoin the assessment process. However, for clarification, subsection (f) has been amended by adding paragraphs (1) and (2) which explain the circumstances under which the RP may rejoin. The terms and conditions of the RP's participation shall be determined by the trustees on a case-by-case basis.

Two commenters recommended that trustees should be able to limit or terminate participation only when the RP intentionally or willfully obstructs the trustees' ability to fulfill their trust responsibilities. The trustees should not be required to prove an RP's willfulness or intent, especially when RP delay might cause trustees to miss statutory schedules. No change was made based on this comment.

Two commenters recommended that the RP be allowed to submit a rebuttal letter in response to the trustees' written statement limiting or barring RP participation. One of the commenters also requested that the trustees prepare a written statement of grounds for terminating the RP's participation for the assessment record. Section 20.23(f) requires the trustees to prepare a written statement describing the factual basis for disallowing further participation by the RP. Any correspondence received during the damage assessment process becomes part of the assessment record. Section 20.40(c)(1)(6) clearly states that all "other documents related to the role of the responsible person in the assessment process" shall become part of the assessment record. Thus, the RP has the opportunity to present a written rebuttal, pursuant to §20.40(c)(6). No change was made based on this comment.

Two commenters recommended adding language to §20.23(f) to require the trustees to provide the RP with written reasons for limiting RP participation in the assessment process. Based on this comment, §20.23(f) was

amended to clarify that the trustees' written statement limiting RP participation, required by this subsection, will be given to the RP.

One commenter suggested amending §20.30(a) to allow RP participation in the preliminary field investigation. Section 20.30(b) allows RP participation in all phases of the assessment process. No change was made based on this comment.

A commenter questioned whether it was cost-effective to conduct a preliminary field investigation in the event of each unauthorized discharge of oil as required in §20.30 Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40.107(c)(6)(C), requires the trustees to initiate an actual field investigation. A field investigation is necessary to assess the unique characteristics of each spill incident. Section 20.30 does not require the trustees to investigate every spill. The preliminary field investigation is a screening tool used to determine whether a damage assessment is required. The trustees retain considerable discretion in determining the necessity for and the scope of a preliminary field investigation. No change was made based on this comment.

Regarding §20.31(a), one commenter noted that the subsection refers to "60 days," while §20.31(b) refers to "10 calendar days." The commenter recommended consistency in time references. Based on this comment, §20.3 was amended to add a sentence stating that any reference to days in the rules refers to "calendar days."

One commenter suggested §20.31(a) be amended to clarify which on-scene coordinator (OSC) determines that cleanup is complete. The SOSC will make this determination. OSPRA does not and cannot require the federal OSC to give particular information to state trustees. No change was made based on this comment.

One commenter stated that the requirement in §20.31(b) would result in the loss of data while the trustees are awaiting the RP's response to the notice of intent to perform an assessment. This commenter also requested that the phrase "reasonable and rational assessment" be defined. Section 20.31(b) does allow NRDA activities to continue if they are necessary for a reasonable and rational assessment. The phrase "reasonable and rational assessment" retains its ordinary meaning. The trustees will consider the unique characteristics of each incident and ensure that assessments are reasonable and bear a rational connection to the costs of performing the assessment. No change was made based on this comment.

One commenter noted that §20.32(a) requires incident specific valuations, whereas §20.33 and §20.34 do not mention valuation methods for projects from an equivalent restoration plan (ERP). The commenter requested an amendment requiring trustees to consider the acquisition of the equivalent resources when determining cost-effectiveness. The procedures and protocols listed in §20.32 apply to all types of assessments, including expedited assessments (§20.33) and comprehensive assessments (§20.34). Valuation of restoration projects does not differ because

the chosen project is pre-identified in an ERP. The same valuation methodologies are applicable to pre-identified projects, acquisition of the equivalent or any other remedy appropriate to the injuries sustained. No change was made based on this comment.

One commenter suggested that §20.32(d) be amended to require state trustees to develop a manual of normal practices for the conduct of NRDA. These rules are intended to establish normal practices for the conduct of NRDA related to oil spills in coastal waters. Trustees also conduct NRDA for oil discharges not impacting coastal waters and for releases of hazardous substances. While development of a manual may be useful, it is not statutorily required and the GLO is reluctant to add to the tasks required of trustees. No change was made based on this comment.

One commenter recommended modifying §20.32(f)(6)(C) by adding the word "substantially" before the phrase "equivalent to the total discounted value of interim lost services." Trustees are required to pursue recovery for all injuries to natural resources, including lost services. Modification, as suggested by the commenter, may imply that trustees can satisfy their obligations by recovering less than the value of the interim lost services. This would be inconsistent with trustee responsibilities. No change was made based on this comment.

One commenter stated that if contingent valuation (CV) is used at all, it should be done as prescribed in §20.32(f)(8), i.e. pursuant to the recommendations and guidance of the *Report of the National Oceanic and Atmospheric Administration (NOAA) Panel on Contingent Valuation (CV report)*. The GLO appreciates this commenter's support.

One commenter requested amending §20.32 to require the state trustees to use federal regulations for CV, instead of the CV report. Federal regulations for CV are not yet final. The CV report was written under the guidance of Nobel prize winners. This rule's adoption of the CV report provides state trustees with the best advice now available. The trustees can choose to use federal regulations for CV when those regulations are final. Section 20.32(a) has been amended to clarify that the trustees may use any reliable method, in addition those listed in §20.32.

Concerning §20.32(g), one commenter stated that interest on estimated restoration costs and natural resource values under §20.32(g)(2) and (3) are inappropriate and that interest should only be collectible for costs already incurred at the time the claim is made. Discount rates are commonly used in a variety of business transactions. They are appropriately used in these sections where trustees may choose to finalize a claim for natural resource damages before full recovery of the injured resources. No change was made based on this comment.

One commenter requested the phrases "travel cost method," "factor income method" and "hedonic price method" as used in §20.32 be defined. This section lists, but does not fully describe, the acceptable valuation methods. The language in the rule gives sufficient notice of the parameters of the particu-

lar method and a further, fuller description would make the rule unnecessarily complex. For example, there are several well-accepted variations on the "travel cost method," and, depending on the unique characteristics of the spill, trustees may utilize the most appropriate one. No change was made based on this comment.

One commenter requested a definition of the phrase "rational connection" used in §20.32(a). The phrase "rational connection" is not defined in the rule. The phrase is used in Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40.107, and is intended, like other undefined terms, to have its ordinary meaning. The ordinary meaning of the phrase is that there is a relationship, for which one can provide a reason, between the expenditures for an assessment and the value of the injury sustained. This is similar to the requirement that the costs of the assessment not be disproportionate to the value of the injured resource. No change was made based on this comment.

One commenter questioned whether an RP would incur liability for injuries to natural resources caused by response activities. Once there is an unauthorized discharge of oil, RPs are liable for all injuries to natural resources, whether caused directly by oiling of the resource, or by response activities. For example, if in-situ burning is used, the RP is liable for injury caused by the oil itself, injury caused by preparation of the site for burning, injury caused by use of chemical additives to enhance burning, injury caused by the fire and any other injury to any natural resource incurred as a result of the response activity. Section 20.32(a) requires trustees to consider adverse impacts caused by response activities. No change was made based on this comment.

A commenter requested that §20.32(b)(3) be amended to require that trustees make "an actual finding of measurable damage to the unique natural resources injured by an unauthorized discharge of oil." The standard for showing injury to natural resources is a scientific, technical one. The legal standard for the admissibility of the scientific evidence is reliability. These scientific and legal standards cannot and should not be modified by this rule. The commenter's request that compensation be allowed only for "unique" resources would result in an unacceptably subjective standard. Undoubtedly, the party liable for natural resource damages would argue that "unique" resources are very rare and almost never injured by oil spills. In contrast, a person concerned about maintaining the viability of an ecosystem would argue that each natural resource is unique and any injury to a resource should be fully compensated. Natural resources are defined in Texas Natural Resources Code, Title 2, Subchapter A, §40.003(15), as all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, or otherwise controlled by the state. No change was made based on this comment.

One commenter recommended amending 20.32(d)(11) by replacing the word "measure" with the phrase "estimate the likely" because

according to the commenter toxicity testing cannot absolutely duplicate actual conditions. While it may be true that one cannot exactly replicate field conditions, laboratory tests for toxicity regularly produce reliable measures. Toxicity testing has been used successfully for decades in analyzing industrial wastewater discharges. No change was made based on this comment.

Regarding §20.32(d), one commenter suggested addition of a subsection requiring the trustees to conduct an accurate analysis of uncertainties inherent in the methods used to estimate injury and damages. The assessment record, required by §20.40, will document the use of estimates. Requiring the trustees to perform uncertainty analysis would unnecessarily complicate the NRDA process and greatly increase costs. Theoretical mathematical exercises are not required for the generation of a reasonable, rational, and reliable assessment. The methodologies described in §20.32 meet the legal standard of reliability. There is no sound basis for imposing this extremely burdensome requirement. No change was made based on this comment.

Regarding §20.32(e)(3) and (f), a commenter requested that the phrase "incident- and site-specific" be substituted for "incident-specific." The word "incident" refers to all aspects of the unauthorized discharge, including the location. No change was made based on this comment.

A commenter requested that the phrase "full recovery" be replaced with "maximum recovery" in §20.32(f)(6). Section 20.32(f)(6) describes the habitat or species replacement cost method for valuing injury. The phrase "full recovery" is appropriate since this method is designed to consider all effects, including lost services. Full recovery, as used in this subsection, describes the recovery of the injured resources and the restoration of services. No change was made based on this comment.

Regarding §20.32(f)(8), a commenter stated that the guidance provided by the CV report was too cost restrictive and too vague to be used in designing a CV study. The CV report provides the best available guidance for designing CV studies. All assessments are subject to §20.32(a), which requires the cost of an assessment to have a rational connection to the value of the injured resource. Since the report was written by some of the most renowned experts in the United States, no change was made based on this comment.

One commenter requested the deletion of §20.32(f)(8), stating that CV is not a reliable method, that the CV report described CV method surveys as unreliable, and that CV is undeserving of a rebuttable presumption. Public policymakers, academic economists, business leaders, conservationists, lawyers, and psychologists debate the reliability of CV. The costs of conducting a valid CV study make its cost-effectiveness prohibitive in all but the most catastrophic spills. Yet, not even all spills that result in the total loss of a tanker's cargo, such as the 1993 Braer spill in the Shetland Islands, result in significant recoveries based on CV. Texas Natural Resources Code, Title 2, Chapter 40,

Subchapter C, §40.107(c)(4), requires the trustees to consider the unique characteristics of each spill. Texas may be subject to a catastrophic spill and Texas trustees must be empowered to respond to all characteristics of the spill, including loss of passive uses. For example, passive uses are treasured by the thousands of Texans and others who visit the coast each year to enjoy migratory birds. The attendant increases in tourism enhance the economic well-being of many small coastal towns. The existence of the birds themselves creates economic growth and should be valued and compensated for by RPs. The fact that CV is controversial is not a basis for forbidding its use. There are many experts who contend that CV is a reliable tool. No change was made based on this comment.

One commenter suggested replacing the term "realized" with "actual" in §20.32(g)(1). Since "actual" more appropriately reflects common usage, this change was made.

One commenter suggested that §20.32(h) quote the commercial paper rate for calculating post-judgment and pre-judgment interest instead of the United States Treasury rate. This change was made to represent the more appropriate value to the RP of delaying payment on a NRDA claim.

A commenter stated that §20.33 fails to meet the statutory requirement to establish procedures and protocols. The procedures and protocols in §20.32 are applicable to all assessment procedures. No change was made based on this comment.

One commenter requested that expedited settlement procedures in §20.33(a)(1)(A) include instances involving large fish kills and significant observable mortality. Section 20.33(a)(3) provides the trustees with discretion to expand the use of expedited assessments. Therefore, the situations described by the commenter could be covered in an expedited assessment. No change was made based on this comment.

One commenter requested that §20.33(a)(1)(B) and (C) be amended to allow more time for expedited assessments. OSPRA does not set a schedule for expedited assessments. However, the NRG decided that use of this efficient procedure should include any assessment which could be completed in twelve months. No change was made based on this comment.

A commenter recommended that §20.33(b) be amended to require the trustees to use "scientifically valid simplified procedures and protocols" in an expedited assessment. The trustees may use any reliable procedures and protocols pursuant to §20.32(a) and pursuant to *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993). Section 20.33(b) allows the trustees to utilize "appropriate simplified procedures and protocols in an expedited settlement." No change was made based on this comment.

One commenter suggested adding a provision to §20.33(c) to allow RPs, who are participating in the assessment process, to request additional studies, sampling and analyses, even if the trustees, exercising their best professional judgment, disagree. Such

an addition may undermine the spirit of joint, cooperative assessments, which contemplate consensus between the RP and the trustees. The RPs may conduct independent studies, sampling or analyses during the assessment procedures. Pursuant to §20.23(d), the RPs must, upon request, share such information with trustees. Because the trustees must act in a manner consistent with their public trust duties, these rules do not allow the RP to override the trustees' best professional judgment. Therefore, no change was made based on this comment.

One commenter noted that §20.33 and §20.34 apparently do not recognize the acquisition of the equivalent resources, other than in an ERP. The commenter requested fuller discussion of the acquisition of the equivalent resources alternative as a remedy for injuries to natural resources. The acquisition of the equivalent resource is an option, like all others, that will be evaluated by the trustees prior to final selection of a restoration plan. Further, pursuant to §20.36(c)(3), the acquisition of the equivalent resource may be used in conjunction with other restoration options. The trustees have discretion in selecting the most appropriate restoration plan. Section 20.36(b) requires the trustees to evaluate all appropriate options, including the acquisition of the equivalent resources. The acquisition of the equivalent resource is an option separate from the selection of a restoration project from an ERP. No change was made based on this comment.

One commenter requested amendment of §20.34(b) to include the basis for granting or denying an extension of time for conducting a comprehensive damage assessment. Section 20.34(b) is based on Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40.104(c)(7)(C). The statute does not state any grounds for denying or granting an extension of time to conduct a comprehensive assessment. No change was made based on this comment.

A commenter recommended the deletion or amendment of the last sentence in §24.34(c) to require that studies and surveys are rationally connected to the value of the natural resource before injury. Section 20.32(a) requires all assessments to have a rational connection to the value of the injured resources. The suggested amendment would be redundant, therefore, no change was made based on this comment.

One commenter objected to the provision in §20.35(d) which allows either the trustees or the responsible person to terminate a negotiated assessment agreement at any time. The commenter recommended that termination be limited to negotiations and not apply to restoration agreements. A negotiated assessment is an agreement between the trustees and the RP for the conduct of the assessment. Neither party should be permanently bound to an agreement which may no longer be appropriate to the unique characteristics of the spill incident. Further, the trustees may discover new evidence during the restoration phase requiring them to negotiate with the RP. An inability to re-open the agreement could result in a violation of the trustees' legal responsibilities. No change was made based on this comment.

A commenter requested an amendment of §20 36(a) and (b) to state that trustees shall invite the RP to participate in the development and implementation of restoration, replacement, rehabilitation and acquisition of the equivalent natural resources. Section 20 23(b) requires the trustees to invite the RP to participate in the restoration plan. Pursuant to the definition of "restoration plan" in §20 10, replacement, rehabilitation and acquisition of the equivalent resources are all activities in which the RP is entitled to participate. The general statement in §20 23(b) covers all phases of the assessment process. Adding it to §20 36 would be redundant. No change was made based on this comment.

One commenter requested that §20.36(b)(6) be amended to allow restoration projects to proceed without public participation when additional adverse impacts may occur during the 30-day public comment period. Public participation is an important element of the damage assessment process. Generally, when a restoration plan has been developed, all adverse effects are known. If additional adverse effects are still occurring, it is unlikely that a restoration plan will be complete and ready for public review. No change was made based on this comment.

A commenter requested the deletion or amendment of §20 36(c) to provide liability only for pilot projects that test cost-effectiveness of restoration methods that have previously been shown to be technically feasible. Pilot projects may be used to test for technical feasibility and for cost effectiveness. They are an important tool in ensuring that the most efficient methods are employed. The trustees' ability to conduct pilot projects, which may result in significant cost savings, should not be limited. No change was made based on this comment.

Two commenters stated that §20 36(e)(2)(A) should be amended to require an assessment of the cost effectiveness of ERPs and to prohibit the use of an ERP to pay to fix an environmental problem unrelated to the injury or to fund a preferred project. The same commenters questioned whether OSPRA allows the trustees to pool recoveries. Section 20 36(e) does not create a category of restoration plans independent from the general NRDA process. ERPs will be analyzed for cost effectiveness, like all other restoration plans. Section 20 36(e)(2)(A) requires an ecological tie between the project and the injury sustained, and thus protects against funding of favored or unrelated projects. OSPRA does not prohibit the pooling of recovered damages. No changes were made based on these comments.

One commenter emphasized the importance of ensuring that the cost of any restoration plan, described in §20 36, is consistent with the value and use of the resources prior to the unauthorized discharge. Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40 107(c)(7)(E), requires the trustees to ensure that the cost of any restoration, rehabilitation, replacement or acquisition project shall not be disproportionate to the value of the natural resource before injury. This same prohibition is reiterated in §20 32(a) of these rules. No change was made based on this comment.

Two commenters requested a definition of "equivalent resource plan." One of the commenters suggested that the plan be in place prior to a spill incident, that the plan have a limited, identifiable geographical or resource scope, and that the plan comply with basic damage assessment procedures, including public participation. Section 20.36(e) encompasses the concepts suggested by the commenters and further similar language would be redundant. No change was made based on these comments.

One commenter noted that §§20 36(e), 20 33(c) and 20 34(d) refer to "restoration projects," while §20 36(e)(1) and §20 41(g) refer to "projects." The commenter requested clarification. Section 20 36(e)(1) and §20 41(g) were amended to specifically refer to "restoration projects."

One commenter requested the amendment of §20 40(c)(6) to include correspondence, agreements and other documents related to the role of the public participant. All public comment will become part of the assessment record as provided in §20.44. Any documents and correspondence related to the NRDA process will also be part of the assessment record. This includes agreements or other documents related to the role of the public participant. No change was made based on this comment.

One commenter objected to the requirement in §20 40(d)(2) that data included in the assessment record must either meet the quality assurance/quality control plan (the "QA/QC plan") or have a scientifically reliable basis for utilization. The NRG determined that data may be reliable despite the fact that it fails to meet all aspects of the QA/QC plan. Pursuant to *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993), the standard for admissibility of expert testimony is reliability. The section has been amended to more closely follow *Daubert* by deleting the word "scientifically" from the phrase "scientifically reliable."

One commenter requested that §20 41(d)(1) clearly state that facts and data contained in attorney-client privileged and attorney work-product documents are not excepted from the public record. This comment accurately reflects existing law and nothing in this chapter can change or circumvent applicable rules of evidence. Because §20 41(d)(1) is consistent with existing law, no change was made based on this comment.

One commenter recommended that §20 41 be revised to clarify the order in which trustees present their claim for assessment costs. Regarding §20 41(b), another commenter questioned whether trustees can recover from both the Coastal Protection Fund (CPF) and the RPs. For purposes of clarification, this section has been amended to state that trustees, like all other claimants in an oil spill incident, make their claim first to the RP. If the trustees cannot collect from the RP, they may, depending on the size of the claim, present it to either the federal Oil Spill Liability Trust Fund or to the CPF. Assessment costs are separately reimbursable to each trustee because state fiscal procedures make it difficult for one entity to collect all costs and then reimburse each trustee. Clarifying changes were made to §20 41.

One commenter stated that §20.41(f), which requires the RP to pay the trustees within 60 days of the claim, conflicts with the mediation requirements. The commenter noted that §20 41(f) allows the claim to be mediated even if the CPF has paid the claim. The commenter is correct to the extent that he suggests that the payment may be mediated. However, if the CPF has paid the claim, the NRDA claim is subrogated to the commissioner and the RP is not entitled to mediation. The commissioner is required to seek reimbursement to the CPF and does so in an action separate from a NRDA claim. Section 20 41 has been amended to clarify the liability of the RP and the CPF.

One commenter requested modification of §20.41(a)(1)-(5) to ensure that §20 40(a)(6), requiring a rational connection between the assessment and its cost, applies. Section 20 32(a) requires reasonable assessments with a rational connection to the value of the injured resource. Furthermore, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §40 107(c)(7)(E), requires that all "assessments generated by the trustees be reasonable and have a rational connection to the cost of conducting the assessment." The entire assessment process is subject to §20 40(a)(6), therefore the suggested change is not necessary. No change was made based on this comment.

A commenter objected to §20 41(a)(4) because it allows trustees to recover damages after restoration, replacement, rehabilitation and/or acquisition of equivalent resources has occurred. The trustees are required to recover, on behalf of the public, the full difference in value between the value of natural resources before the injury and the value of the natural resources after restoration. Even after the restoration project is complete, the trustees may recover for past, present and future loss of services. No change was made based on this comment.

One commenter recommended that §20 41(g) be amended to require the conditions of §20 36(e)(2) be met prior to allowing the trustees to pool recovered compensation. Another commenter stated that §20 41(g) was inconsistent with §20 36 because it fails to require an ecological tie between the injured resource and the ERP. In response to this comment, §20 41(g) has been amended to clarify that pooling of recoveries will only occur when the requirements for an ERP have been met.

One commenter recommended adding language to §20 10 and §20 41 to include the costs of "cleaning up the discharged oil." The costs of cleanup are separately recoverable under Texas Natural Resources Code, Title 2, Chapter 40, Subchapter F, §40 202, and are not part of a NRDA claim. No change was made based on this comment.

One commenter requested the deletion of §20 41(a)(5) and §20 32(f)(3) because these sections allow the trustees to recover for losses other than natural resource damages. According to the commenter, these sections allow double counting. The trustees are entitled to recover losses associated with payments collectible by trustees for use of a natural resource by a private party, as pro-

vided in §20.41(a)(5). Park or beach entrance fees are an example of the types of fees appropriately recoverable by trustees. As stated in §20.41(a)(5), fees, economic rent or payments collectible by the trustees may be recoverable. This subsection is applicable only where a trustee agency would be entitled to the fees or rents. When such fees or rents are collectible by other parties, the trustees will not make a claim for their recovery. The trustees shall ensure there is no double counting. Further, the trustees shall ensure that RPs are not charge twice for losses based on fees or rents. Section 20.32(f)(3) allows use of the factor income method to value injured natural resources. This method does not cause double counting. Therefore, no changes were made based on this comment. However, based on other comments, §20.41 has been amended.

One commenter recommended that §20.42(a) be amended so that the responsible party makes all payments to the CPF. The CPF is not the most appropriate repository for recoveries from NRDA's. First, recovered damages may only be used to restore, rehabilitate, replace or acquire the equivalent of the natural resource. Placing these monies in the CPF would artificially inflate the CPF, thereby creating the impression that there are more funds available for spill response than actually exist. In such an instance, the fees collected may be suspended because a natural resource damage recovery has increased the CPF balance. Second, there is no clear mechanism to withdraw such funds from the CPF without further appropriation from the legislature. This would create an untenable situation where trustees could not access monies committed to restoration. Third, the first \$5 million of CPF interest is dedicated to the RRC. This provision prevents the trustees from maximizing the use of recovered monies. No change was made based on this comment.

Regarding §20.44, one commenter suggested that the section should be clarified to state that only the trustees and the RP make the determination regarding the need for an assessment. While §20.44(e) allows a member of the public to participate in the decision whether to conduct an assessment, the subsection does not give the member of the public a vote in the decision. The trustees retain, throughout the assessment process, the final authority on all decisions. No change was made based on this comment.

One commenter supported the case-by-case cooperative approach to NRDA, the procedures outlined in this chapter and the mediation requirements. Through the negotiated rulemaking process, the trustees and representatives of the public and industry sought to create a cooperative approach to rulemaking and restoration of natural resources injured as a result of unauthorized discharges of oil into coastal waters. The spirit of cooperation achieved by the NRG is reflected throughout this chapter.

One commenter expressed support for the requirement that a field investigation be conducted as part of every assessment. The commenter also endorsed the requirement that the RP be invited to participate in the

assessment and restoration process and the availability of negotiated assessments. The GLO appreciates the commenter's support.

BP Oil supported §§20.1, 20.23, 20.32, and 20.43. BP Oil opposed §§20.10, 20.23, 20.32, 20.33, 20.35, 20.36, 20.41 and 20.42. Exxon opposed §§20.32-20.34, 20.36, 20.40, 20.41, and 20.44. Marine Spill Response Corporation opposed §20.10 and §20.21. Minerals Management Service recommended changes to §20.10. National Oceanic and Atmospheric Administration (NOAA) opposed §§20.1, 20.10, 20.30-20.34, 20.36 and 20.40. The Railroad Commission opposed §§20.10, 20.20, and 20.21. Howard Seitzman suggested changes to §20.3 and to §20.23. Shell Oil Company supported §§20.30, 20.23, 20.32, and 20.35. Shell Oil Company opposed §§20.10, 20.30-20.33, 20.36, and 20.41. Star Enterprise opposed §§20.32, 20.36, 20.42, and 20.44. Texas Mid Continent Oil and Gas Association concurred with comments submitted by BP Oil and Shell Oil Company.

Subchapter A. General Provisions

• 31 TAC §§20.1-20.4, 20.10

The new sections are adopted pursuant to the Texas Natural Resource Code, 40.107(c)(4), which requires the commissioner of the GLO to adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil.

§20.1. Declaration and Intent. The commissioner of the Texas General Land Office (commissioner) adopts these rules pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, §40.107(c)(4). OSPRA also requires the Texas Natural Resources Conservation Commission and Texas Parks and Wildlife Department to adopt these rules. They will incorporate these rules, after they have been adopted by the General Land Office and become effective, into their rules. These rules are applicable in the event that an unauthorized discharge of oil to coastal waters results in injury to natural resources. These rules are intended to be consistent with the National Contingency Plan, the Area Contingency Plan, and the State Coastal Discharge Contingency Plan, all three of which are defined in §20.10 of this title (relating to Definitions). These rules are also intended to achieve consistency, to the extent allowed by OSPRA, §40.107, with existing and proposed federal rules for assessing damages to injured natural resources. Thus, the state natural resource trustees are encouraged to cooperate and coordinate their actions with the federal trustees. The federal trustees are, of course, not bound by these rules and have the right to bring separate claims in addition to any claim made by the state trustees. Even though state and federal trustees may bring a separate claim, double recovery is prohibited. The state trustees may bring a claim for natural resource damages pursuant to

their authority under the Oil Pollution Act of 1990 (OPA), 33 United States Code Annotated, §2701 et seq, or under OSPRA, §40.107. The state trustees may utilize the natural resource damage assessment procedures established under the rule or under the rules adopted pursuant to OPA, or a combination of procedures drawn from both OPA and OSPRA rules. Whether the state trustees utilize OPA procedures or a combination of OSPRA and OPA procedures, they will perform the field investigation as described in §20.30 of this title (relating to Natural Resource Damage Assessments). The state trustees, when utilizing some or all of the OPA procedures, will encourage the federal trustees, as defined in §20.10 of this title (relating to Definitions), to invite the responsible party to participate in the process pursuant to the procedure in §20.23 of this title (relating to Responsible Person Participation).

§20.3. Usage. As used in these rules, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require. Any reference to "days" in this chapter shall refer to calendar days.

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

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

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

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

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

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

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

Coastal waters—The waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous

thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo and as further defined in §19.2(a)(1) of this title (relating to Definitions).

Commissioner—The commissioner of the Texas General Land Office.

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

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

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

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

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

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

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

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

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

Field investigation—An evaluation of the area impacted by an unauthorized discharge of oil to determine the actual and potential exposure of natural resources and the impact on natural resources and the services they provide for the purpose of

evaluating which damage assessment methods, if any, should be utilized by state trustees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public use—The services provided by natural resources for human activities; this includes, but is not limited to, cultural, archaeological, transportation, public water supply, industrial water supply, swimming, fishing, harvesting of natural resources, nature viewing, hunting, diving, sailing, boating, hiking, camping, climbing, photographing, drawing, painting, and other human activities.

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

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

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

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

Responsible person—

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

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

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

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

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

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

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

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

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

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

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

This agency hereby certifies that the 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 27, 1994.

TRD-9448770 Gary Mauro
Commissioner
General Land Office

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

Subchapter B. State Trustee Response, Organization, and Coordination

• 31 TAC §§20.20-20.23

The new sections are adopted pursuant to the Texas Natural Resource Code, §40.107(c)(4), which requires the commissioner of the GLO to adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil.

§20.23. Responsible Person Participation.

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

(b) Participation by the responsible person in assessments conducted under these rules. The state trustees shall invite the responsible person to participate in the assessment process, the preliminary field investigation, the selection of assessment methods, the restoration plan, and post-assessment activities. The state trustees may limit or terminate the participation of the responsible person when such participation is inconsistent with the responsibilities of the state trustees.

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

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

(e) Stipulations. Any assessment conducted with the participation of the responsible person shall include any stipulations agreed to by the responsible person and the state trustees. Stipulations may be

proposed by either the responsible person or the state trustees at any time during the assessment. The stipulations shall survive, and shall be binding on all parties, after termination of the responsible person's participation or after the termination of a negotiated assessment.

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

(1) makes a showing that the dilatory or disruptive practices will not re-occur; and

(2) performs corrective actions if requested by the trustees.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Commissioner
General Land Office

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

Subchapter C. Natural Resource Damage Assessments

• 31 TAC §§20.30-20.36

The new sections are adopted pursuant to the Texas Natural Resource Code, §40.107(c)(4), which requires the commissioner of the GLO to adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil.

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

(a) The state trustees may utilize any reliable incident-specific methods and procedures including, but not limited to, those listed in this section to determine and quantify injury to and loss of services of natural resources. In selecting the appropriate assessment procedures and protocols,

the state trustees shall consider the unique characteristics and the location of the natural resources affected by the unauthorized discharge of oil, including adverse impacts caused by response activities, if any. The methods identified in this section shall be designed to ensure that the cost of any restoration, rehabilitation, replacement or acquisition project shall not be disproportionate to the value of the natural resource before the injury. Any assessment generated by the state trustees shall be reasonable and the costs of conducting the assessment shall have a rational connection to the value of the injured resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) surveys of special protection or management areas, state and federal wildlife refuges, parks, habitats of threat-

ened and endangered species, and other relevant natural areas;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Fish and wildlife. The Texas Parks and Wildlife Department's guidelines

for measuring the monetary value of fish and wildlife resources (as defined in §§69.20-69.31 of this title, relating to Fish and Wildlife Values) may be used to value the loss of fish and wildlife resources.

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

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

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

(5) Market price.

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

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

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

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

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

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

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

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

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

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

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

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

(8) Contingent valuation method. The state trustees may use the contingent valuation method to estimate loss in

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

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

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

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

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

(h) The state trustees are entitled to pre-judgment interest and post-judgment interest on natural resource damage claims at a rate equal to the nominal dealer commercial paper rate, as published in the *Wall Street Journal*, on the date the claim is presented to the responsible person, compounded forward from 30 days from the date a damage claim is presented until the time of payment.

§20.36. Plans for Restoration, Rehabilitation, Replacement and/or Acquisition of the Equivalent of Injured Natural Resources.

(a) General. The state trustees shall develop and implement a plan for the restoration, replacement, rehabilitation and/or acquisition of the equivalent natural resources.

(b) Requirements. Each restoration plan developed by state trustees shall:

(1) include an analysis of a natural recovery alternative and other appropriate alternative restoration plans;

(2) be cost-effective and technically feasible;

(3) not have costs disproportionate to the value of the natural resources and the services provided by the resources prior to the unauthorized discharge of oil;

(4) allow for corrective revisions in the execution of the restoration plan;

(5) provide for a period of monitoring sufficient to determine the effectiveness of the plan; and

(6) be available for public review and comment for at least 30 days prior to initiation of the plan.

(c) Procedure. The restoration plan may be developed simultaneously with other portions of the damage assessment.

(1) When the state trustees conduct an expedited damage assessment, restoration plans should be developed as early in the process as practicable.

(2) When the state trustees conduct a comprehensive damage assessment, restoration plans may be developed in phases. Phased restoration plans may be utilized when:

(A) state trustees determine that pilot projects are necessary to establish the feasibility of the restoration plan;

(B) natural recovery is the chosen alternative for some, but not all, of the injured natural resources; or

(C) there is a potential for continuing injury resulting from the unauthorized discharge of oil.

(3) The restoration plan may include any combination of restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources to ensure full compensation for injured natural resources.

(d) Certification of completion. The state trustees, exercising their best professional judgment, shall establish criteria for determining when a restoration plan is completed.

(1) The state trustees, when determining whether restoration is complete, shall consider:

(A) performance standards and appropriate measures for their achievement;

(B) natural changes occurring in reference areas; and

(C) ability of the natural resources to maintain their viability without further human intervention.

(2) The state trustees shall issue a certificate of completion to the responsible person when no further actions are necessary to achieve the goals of the restoration plan.

(e) Equivalent resource plans. If an equivalent resource plan has been developed for the ecosystem encompassing the injured natural resources, the state trustees may utilize the restoration projects identified in that plan for purposes of compensating for the injuries resulting from a particular unauthorized discharge of oil.

(1) Public participation. The state trustees, when selecting a restoration project from the equivalent resource plans developed pursuant to this section, shall submit the project for public review and comment according to §20.44(c) of this title (relating to Public Review and Comment).

(2) Criteria for use of equivalent resource plan project. The state trustees may select a project from the equivalent resource plan when the state trustees, in consultation with the responsible person, determine that:

(A) there is an ecological relationship between the injured resources and the objectives of the particular project;

(B) the direct, on-site, in-kind restoration of the injured resources is not technically feasible or cost-effective; and

(C) utilization of an equivalent resource plan project will result in a level of services substantially similar to those lost as the result of the unauthorized discharge of oil.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary Mauro
Commissioner
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For further information, please call: (512) 305-9129

Subchapter D. Administration

• 31 TAC §§20.40-20.44

The new sections are adopted pursuant to the Texas Natural Resource Code, §40.107(c)(4), which requires the commissioner of the GLO to adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil.

§20.41. Recovery of Damages.

(a) In an action filed pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, §40.107, the state trustees may recover:

(1) the costs of the assessment, including, but not limited to:

(A) salary, fringe benefits, overhead, release, and transportation, lodging and state per diem costs;

(B) the costs of sampling and analyses of oil and natural resources, including reference areas;

(C) the costs of laboratories, contractors, and other experts retained by the state trustees in assessing injury and determining damages;

(D) the cost of the mediation required by §20.43 of this title (relating to Mediation); and

(E) any other costs incurred in carrying out state trustee functions for assessing natural resource damages and for developing, implementing and monitoring plans for the restoration, rehabilitation, and/or acquisition of the equivalent of damaged resources;

(2) the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources in compensation for the injury to natural resources sustained as the result of an unauthorized discharge of oil;

(3) the costs to mitigate further injury to natural resources from the time of the initial discharge until the time of restoration of the injured natural resources and the services they provide;

(4) the diminution in value of the natural resources and the services they provide from the time of the unauthorized discharge of oil and during and after their restoration, replacement, rehabilitation, and/or acquisition of equivalent resources;

(5) fees, economic rent or any payments collectible by the state trustees for the use of the natural resource by a private party; and

(6) all costs that have a rational connection to the assessment and are incurred in the performance of the assessment, and the development, implementation, and monitoring of the restoration plan.

(b) Separate reimbursement. The responsible person shall reimburse assessment costs to each state trustee separately.

(c) Limitation on liability. If a responsible person is entitled to a limitation of natural resource damages liability, then any recovery under OSPRA, §40.107, shall be limited as provided in OSPRA, §40.203.

(d) Coastal Protection Fund (CPF) liability. The CPF is absolutely liable for all natural resource damages assessed as the result of injuries caused by an unauthorized discharge of oil into coastal waters. In the event that the responsible person does not reimburse state trustees, the trustees shall be reimbursed from the CPF pursuant to this subsection.

(1) State trustee costs.

(A) State trustees may recover from the CPF all costs incurred responding to an unauthorized discharge of oil and in assessing damages resulting from injuries to natural resources caused by an unauthorized discharge of oil into coastal waters.

(B) State trustees must submit directly to the commissioner satisfactory proof of costs incurred. Satisfactory proof of costs is compliance with the procedures prescribed by and according to the rules of the comptroller of public accounts of the State of Texas. The commissioner will recommend that the comptroller make payment to the state trustees for their assessment costs.

(2) Damages for injuries to natural resources. In the event the responsible person fails to pay a natural resource damage assessment claim, the state trustees may present the claim to the CPF for the costs of actions to restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources and for the costs to mitigate injuries to natural resources resulting from an unauthorized discharge of oil pursuant to this subsection.

(3) CPF liability and limitation.

(A) CPF liability. Any damages for injuries to natural resources in excess of the liability limits of OSPRA, §40.203, are payable by the CPF pursuant to this subsection. The CPF is liable when:

(i) the federal fund denies the claim; or

(ii) the amount of the claim paid by the federal fund is not sufficient to restore, rehabilitate, replace and/or acquire the equivalent of the injured natural resources.

(B) Limitation on CPF liability. If subparagraph (A) of this paragraph applies, then the CPF shall be liable for

further damages for restoration, rehabilitation, replacement and/or acquisition of the equivalent natural resources and for the mitigation of injuries to natural resources for a period of two years from the date the federal fund grants or denies the claim.

(4) Reimbursement to the CPF. The commissioner shall diligently seek reimbursement to the CPF. The commissioner shall seek reimbursement from the responsible persons, the federal fund and any other person who is liable under OSPRA for all expenditures from the CPF, when the CPF has paid a natural resource damage assessment claim. When state trustees have recovered damages from the CPF, the commissioner shall be subrogated to all rights or causes of action of the trustees.

(e) Assessment claim. The state trustees shall present the assessment claim to the responsible person via hand delivery or United States Postal Service Return Receipt Requested Certified Mail.

(f) Payment of assessment claim. Within 60 days of the presentation of an assessment claim by the trustees, the responsible person shall make full payment unless the assessment is in dispute and referred to mediation pursuant to OSPRA, §40.107(c)(7)(F). In the case of successful mediation, payment of the assessment claim shall be made within 60 days of the completion of the mediation unless otherwise agreed.

(g) Pooling of recovered compensation. When monetary compensation is received by the state trustees as the result of payment of an assessment claim, the state trustees may use funds recovered from more than one assessment claim to execute a restoration project which meets the requirements of §20.36(e) of this title (relating to Equivalent Resource Plans).

(h) Double recovery prohibited. The commissioner shall ensure that there is no double recovery for natural resource damages resulting from an unauthorized discharge of oil.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9448768 Gary Mauro
Commissioner
General Land Office

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

Program Planning

• 37 TAC §87.1, §87.9

The Texas Youth Commission (TYC) adopts an amendment to §87.1 and §87.9, concerning case planning and individual counseling, without changes to the proposed text as published in the August 18, 1994, issue of the *Texas Register* (19 TexReg 6417).

The justification for amending the section is to provide a more efficient method of documenting treatment of TYC youth.

The amendment will remove references to the CCF-135 Individual Counseling Record form that is no longer used to document progress reviews of Individual Case Plans and TYC youth counseling. Progress reviews and TYC youth counseling are now documented on the CCF-520 Chronological Record form.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 27, 1994.

TRD-9448716 Steve Robinson
Executive Director
Texas Youth Commission

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Proposal publication date: August 16, 1994

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter E. Income

• 40 TAC §15.465

The Texas Department of Human Services (DHS) adopts an amendment to §15.465, concerning income exclusions, in its Medicaid Eligibility rule chapter.

The purpose for the amendment is to comply with a policy clarification issued by the Health Care Financing Administration based on federal regulations for the Supplemental Security Income program, effective July 1, 1994, that Veterans Administration (VA) aid-and-attendance allowances, housebound allowances, and VA reimbursement for unusual medical expenses are not countable income for eligibility or applied income purposes.

The amendment will function by making DHS's Medicaid Eligibility rules consistent with federal regulations.

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 is adopted to be effective July 1, 1994, to comply with federal requirements.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§15.465. Income Exclusions.

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

(e) VA aid-and-attendance exclusion. The following requirements apply:

(1) The department excludes aid-and-attendance allowances, housebound allowances, and VA reimbursement for unusual medical expenses in the income eligibility determination and applied income calculation because they represent medical expenses paid by a third party.

(2) (No change.)

(f) (No change.)

(g) Housebound allowances. The department excludes VA housebound allowances in the eligibility determination and applied income processes because they represent medical expenses paid by a third party. Veterans and widow(ers) who do not qualify for regular aid and attendance may qualify for a housebound allowance. Housebound allowances are usually received only by an individual living in the community.

(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.

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TRD-9448739 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: July 1, 1994

Proposal publication date: N/A

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

Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) adopts amendments to §§47.1901, 47.1903, 47.1904, 47.2901, 47.2903-47.2908, 47.2911, 47.2912, 47.2914, 47.3901, 47.3906, 47.3908, 47.4904, and 47.6901; adopts the repeal of §47.4903; and adopts new §47.4905 in its Primary Home Care chapter. The amendment to §47.3906 is adopted with changes to the proposed text as published in the August 19, 1994, issue of the *Texas Register* (19 TexReg 6536). The amendments to §§47.1901, 47.1903, 47.1904, 47.2901, 47.2903-47.2908, 47.2911, 47.2912, 47.2914, 47.3901, 47.3908, 47.4904, and 47.6901, the repeal of §47.4903, and new §47.4905 are adopted without changes to the proposed text and will not be republished.

The justification for the proposal is to allow primary home care provider agencies to apply to provide family care services as a second service under the primary home care program; add policy related to the provision of family care services; and make editorial changes to some rules. Also in this issue of the *Texas Register*, DHS is adopting the repeal of Chapter 53, Family Care Program.

The proposal will function by providing family care clients a choice of provider agencies.

No comments were received regarding adoption of the proposal. The department, however, is adopting §47.3906 with two changes that were included in a previous adoption but overlooked on this proposal. The department has deleted §47.3906(h)(15) and added §47.3906(i)(6).

General Provisions and Services

- 40 TAC §§47.1901, 47.1903, 47.1904

The amendments are 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 amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9448738 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

Service Requirements

- 40 TAC §§47.2901, 47.2903-47.2908, 47.2911, 47.2912, 47.2914

The amendments are 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 amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9448737 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

Claims Payment

- 40 TAC §§47.3901, 47.3906, 47.3908

>The amendments are 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 amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

§47.3906. *Claims Payment Reviews and Audits.*

(a) Service delivery records. The provider agency must use the Texas Department of Human Services' (DHS's) service delivery record form to document services delivered, unless it obtains written approval from the department's assistant commissioner for provider systems to use a different timesheet. The provider agency must not preprint or pre-enter the time in, time out, total time, or monthly total of hours in the record of time portion of any timesheet.

(b)-(e) (No change.)

(f) Documentation errors. Documentation errors may cause claims for services to be disallowed.

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

(A) Administrative errors. Administrative errors result in exceptions applied to the administrative portion of the unit of service. An exception of 17% of the paid unit rate is the administrative portion applied to the unit of service.

(B) (No change.)

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

(g) (No change.)

(h) List of administrative errors. Administrative errors include, but are not limited to, the following.

(1) The provider agency leaves the month and year of service blank at the top of the timesheet, but the month and year can be verified elsewhere on the timesheet. The department applies the error to the total number of units reimbursed for the pay period.

(2) The attendant completes the time in and time out columns, but leaves the daily total time column blank, and the timekeeper fails to enter the daily total time based on the attendant's entry. The department applies the error to the total number of units reimbursed for the days left blank.

(3) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant worked. The department applies the error to the total number of units reimbursed for the pay period.

(4) The timekeeper corrects the date of signature, but fails to initial the correction. The department applies the error to the number of units reimbursed after the earliest signature date.

(5) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. The department applies the error to the total number of units reimbursed for the pay period.

(6) The timekeeper enters a date of signature that is before the date of the last day services are delivered. The department applies the error to the total number of units reimbursed after the signature date.

(7) The timekeeper fails to sign the timesheet. The department applies the error to the total number of units reimbursed for the pay period.

(8) The timekeeper uses a signature stamp, but fails to initial the stamped signature. The department applies the error to the total number of units reimbursed for the pay period.

(9) The attendant and/or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the timesheet. The department applies the error to the total

number of units reimbursed for the pay period

(10) The attendant and/or time-keeper makes an illegible entry in or an illegible correction to any portion of the record of time column. The department applies the error to the total number of units reimbursed for the days in which entries are illegible.

(11) The attendant fails to initial an increase in the daily total time or the monthly total of hours for the pay period. The department applies the error to the number of units reimbursed in excess of the original entry.

(12) The attendant fails to sign the timesheet. The department applies the error to the total number of units reimbursed for the pay period.

(13) The provider agency uses a timesheet that has not been approved by the department. The department applies the error to the total number of units reimbursed while using an unapproved timesheet.

(14) The department reimburses the provider agency for services, but a valid prior approval/confirmation of services form is missing for the period reimbursed by the agency. The department applies the error to the total number of units reimbursed and not covered by a valid prior approval/confirmation of services form.

(i) List of financial errors. In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the following.

(1) The department reimburses the provider agency for services, but the timesheet is missing for the period for which services are reimbursed. The department applies the error to the total number of units reimbursed for the pay period.

(2) The attendant leaves the entire record of time column blank. The department applies the error to the total number of units reimbursed for the pay period.

(3) The department reimburses the provider agency for hours that exceed the authorization given by the department. The department applies the error to the total number of units reimbursed in excess of the units authorized by the department.

(4) The department reimburses the provider agency for hours that exceed the total number of hours recorded on the timesheet. The department applies the error to the total number of units reimbursed in excess of the units recorded on the timesheet. If the sum of the time in and time out does not equal the total time or if the sum of the daily totals of time does not equal the monthly total of hours on the timesheet, then the lesser of the two totals is used to calculate the total number of hours recorded on the timesheet.

(5) The department reimburses the provider agency for units of service for days on which the client did not receive services or was Medicaid ineligible (not applicable to family care). The department applies the error to the total number of units reimbursed for the day on which the client did not receive services or was Medicaid ineligible (not applicable to family care).

(6) The provider agency makes a claim for services, but a valid physician's order is missing. The department applies the error to the total number of units claimed and not covered by a valid order.

(j) The department reimburses the provider agency for any underpayments reflected in the audit reports. The department may withhold the reimbursement of an underpayment if the provider agency has an outstanding audit exception.

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 27, 1994.

TRD-9448736

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

Effective date November 1, 1994

Proposal publication date: August 19, 1994

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

Provider Contracts

• 40 TAC §47.4903

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

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 27, 1994.

TRD-9448733

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

Effective date November 1, 1994

Proposal publication date: August 19, 1994

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

• 40 TAC §47.4904

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, §§22.001-22.024 and §§32.001-32.041.

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 27, 1994.

TRD-9448735

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

Effective date November 1, 1994

Proposal publication date August 19, 1994

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

• 40 TAC §47.4905

The new section 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 new section implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

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 27, 1994.

TRD-9448732

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

Effective date November 1, 1994

Proposal publication date August 19, 1994

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

Sanctions

• 40 TAC §47.6901

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, §§22.001-22.024 and §§32.001-32.041.

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 27, 1994.

TRD-9448734 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Chapter 53. Family Care Program

The Texas Department of Human Services (DHS) adopts the repeal of §§53.101, 53.102, 53.201-53.204, 53.301, 53.302, 53.401-53.404, 53.501-53.504, and 53.601-53.603, without changes to the proposed text as published in the August 19, 1994, issue of the *Texas Register* (19 TexReg 6543).

The justification for the repeals is to delete the family care program as a separate program, but allow primary home care provider agencies to apply to provide family care services as a second service under the primary home care program. Also in this issue of the *Texas Register*, DHS is adopting related amendments in Chapter 47, Primary Home Care.

The repeals will function by providing family care clients a choice of primary home care provider agencies.

No comments were received regarding adoption of the repeals.

Program Definitions

• 40 TAC §53.101, §53.102

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448731 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Contracting for Family Care Services

• 40 TAC §§53.201-53.204

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448730 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Provider Agency Staff Requirements

• 40 TAC §53.301, §53.302

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448729 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Service Delivery Requirements

• 40 TAC §§53.401-53.404

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448728 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Claims

• 40 TAC §§53.501-53.504

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448727 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Reviews and Audits of Provider Agency Records

• 40 TAC §§53.601-53.603

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals 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 legal authority.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448726 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: November 1, 1994

Proposal publication date: August 19, 1994

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

Chapter 90. Nursing Facilities and Related Institutions

Subchapter B. Application Procedures

• 40 TAC §90.17

The Texas Department of Human Services (DHS) adopts an amendment to §90.17, concerning criteria for denying a license or renewal of a license, in its Nursing Facilities and Related Institutions rule chapter, with changes to the proposed text as published in the July 29, 1994, issue of the *Texas Register* (19 TexReg 5831).

The justification for the amendment is to add to reasons a license may be denied, to delete a number of reasons a license may be denied, and clarify that multi-facility owners with poor history may not be licensed for additional facilities.

The amendment will function by improving licensure application rules.

During the public comment period, DHS received comments from New Avenues of Hope, Inc., the Texas Health Care Association, and Private Providers Association of Texas. The following is a summary of comments received and DHS's responses to the comments.

Comment: Public providers (state schools, state centers, and mental health and mental retardation (MHMR) centers) are excluded from this rule. The rule appears to discriminate against the private provider.

Response: Public providers are excluded by law from licensure requirements. A statutory change would have to occur to require public providers to be licensed.

Comment: One of the reasons for denying a license, substantially failing to comply with the rules for nursing facilities or intermediate care facilities for the mentally retarded, is unclear and requires clarification.

Response: The proposed amendment defines substantial failure as "including, but not limited to, noncompliance that poses a serious threat to health and safety, or a failure to maintain compliance on a continuing basis." DHS believes that the definition is sufficient.

Comment: One of the newly proposed criteria for denying a license, "the applicant, manager, or affiliate aids, abets, or permits a substantial violation about which the applicant, manager, or affiliate had or should have had knowledge," is overly broad, contains no objective standards, and allows a tremendous amount of subjectivity. The phrase "should have had knowledge" is open-ended, open to interpretation, and should be omitted.

Response: This criterion was developed to require management to be accountable for employees' actions. The phrase "should have had knowledge" is necessary to emphasize management's responsibility for all activities within a facility. The rule language is broad in order to cover the multitude of situations which can occur in long term care.

Comment: The criterion, "disclosure of federal or state Medicare or Medicaid sanctions or

penalties, including, but not limited to, vendor holds, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions, in the two-year period preceding the licensure application" is both overly broad and restrictive. A proposal to decertify is a proposal with no final administrative appeal and should be deleted. The term "downgrading the status of a facility license" is not a Medicare/Medicaid sanction or penalty and should be deleted.

Response: A proposal to decertify is appealable; the rules regarding the appeal are found in §19.2209. In response to the comment regarding "downgrading the status of a facility license," DHS is adopting subsection (a)(6)(B) with a change to read, in part, disclosure of "federal or state nursing facility sanctions or penalties."

Comment: Define "final actions."

Response: "Final actions" is already defined in the rule, which states, "An action is final when routine administrative and judicial remedies are exhausted."

DHS is adopting subsection (a)(6) with a change to reinstate subparagraph (E) "unsatisfied final judgments" which was proposed to be deleted from the list of reasons to deny a license. Upon further consideration, DHS believes this language should be retained.

Also, DHS is adopting subsection (e) to read: "If an applicant for a new license owns multiple facilities, the overall record of compliance in all of the facilities will be examined. Denial of a new license will not preclude the renewal of licenses of other individual facilities with satisfactory records."

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; and under Texas Civil Statutes, Article 4413 (502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

§90.17. 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 §90.41 and §90.42 of this title (relating to Standards for Nursing Facilities and Standards for Facilities Serving Persons with Mental Retardation), including, but not limited to:

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

(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) provides the following false or fraudulent information:

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

(B)-(E) (No change.)

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

(A)-(D) (No change.)

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

(A) (No change.)

(B) federal or state nursing facility sanctions or penalties, including, but not limited to, vendor holds, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) (No change.)

(D) unsatisfied final judgments;

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

(F) suspension of a license to operate a health care 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 and grant a license under subsection (a)(6) if DHS finds the applicant, license holder, manager, or affiliate able to comply with the rules in this chapter.

(c) DHS shall 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) (No change.)

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

(3) (No change.)

(d) Only final actions are considered for purposes of subsections (a)(6) and (c). 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 for a new license owns multiple facilities, the overall record of compliance in all of the facilities will be examined. Denial of a new license will not preclude the renewal of licenses of other individual facilities with satisfactory records.

(f) DHS will not approve as meeting licensing standards new beds or the expansion of a facility serving persons with mental retardation or related conditions that

participates in the medical assistance program under Title XIX of the Social Security Act, as provided by the Health and Safety Code, §222.042, unless:

(1) the new beds or the expansion was included in the plan approved by the Interagency Council on Intermediate Care Facilities for the Mentally Retarded (ICF/MR) in accordance with Health and Safety Code, §533.061; and

(2) the Texas Department of Mental Health and Mental Retardation has approved the beds or the expansion for certification in accordance with Health and Safety Code, §533.065.

(g) If DHS denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an admin-

istrative hearing in accordance with §90.238 of this title (relating to Administrative Hearings).

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 27, 1994.

TRD-9448725

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

Effective date: November 15, 1994

Proposal publication date: July 29, 1994

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

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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: 305.71(b)

BASIN	SEGMENT	EXPIRATION DATE
11 : San Jacinto-Brazos Coastal	1101 - 1113	February 1, 1996
09 : Trinity-San Jacinto Coastal	0901 - 0902	February 1, 1996
06 : Neches River	0601 - 0609	April 1, 1996
	0610 - 0614	May 1, 1996
07 : Neches- Trinity Coastal	0701 - 0704	June 1, 1996
21 : Nueces River	2101 - 2117	July 1, 1996
12 : Brazos River	1200 - 1203	August 1, 1996
	1204 - 1219	October 1, 1996
	1220 - 1226	December 1, 1996
	1227 - 1241	March 1, 1997
	1242 - 1255	May 1, 1997
16 : Lavaca	1601 - 1605	June 1, 1997
04 : Cypress Creek	0400 - 0409	June 1, 1997
24 : Bays & Estuaries	2401 - 2419	July 1, 1997
	2420 - 2427	July 1, 1997
	2428 - 2437	August 1, 1997
	2438 - 2473	August 1, 1997
	2474 - 2494	October 1, 1997
18 : Guadalupe River	1801 - 1818	December 1, 1997
03 : Sulphur River	0301 - 0306	December 1, 1997
15 : Colorado-Lavaca Coastal	1501 - 1502	January 1, 1998
14 : Colorado River	1401 - 1427	March 1, 1998
	1428 - 1433	April 1, 1998
22 : Nueces-Rio Grande Coastal	2201 - 2204	May 1, 1998
01 : Canadian River	0100 - 0105	June 1, 1998

BASIN	SEGMENT	EXPIRATION DATE
10 : San Jacinto River	1001 - 1005	August 1, 1998
	1006	October 1, 1998
	1007	December 1, 1998
	1008	January 1, 1999
	1009	February 1, 1999
	1010 - 1013	March 1, 1999
	1014	May 1, 1999
	1015 - 1016	July 1, 1999
	1017	August 1, 1999
23 : Rio Grande	2300 - 2314	October 1, 1999
13 : Brazos-Colorado Coastal	1301 - 1305	November 1, 1999
17 : Lavaca-Guadalupe Coastal	1701	November 1, 1999
19 : San Antonio River	1901 - 1913	December 1, 1999
20 : San Antonio-Nueces Coastal	2001 - 2004	January 1, 2000
02 : Red River	0201 - 0229	March 1, 2000
25 : Gulf of Mexico	2501	April 1, 2000
08 : Trinity River	0801 - 0804	May 1, 2000
	0805 - 0818	July 1, 2000
	0819 - 0823	August 1, 2000
	0824 - 0841	September 1, 2000
05 : Sabine River	0501 - 0505	October 1, 2000
	0506 - 0515	November 1, 2000

FIGURE: 31 TAC 503.1(a)

Texas Coastal Management Program Proposed Boundary - September 1994

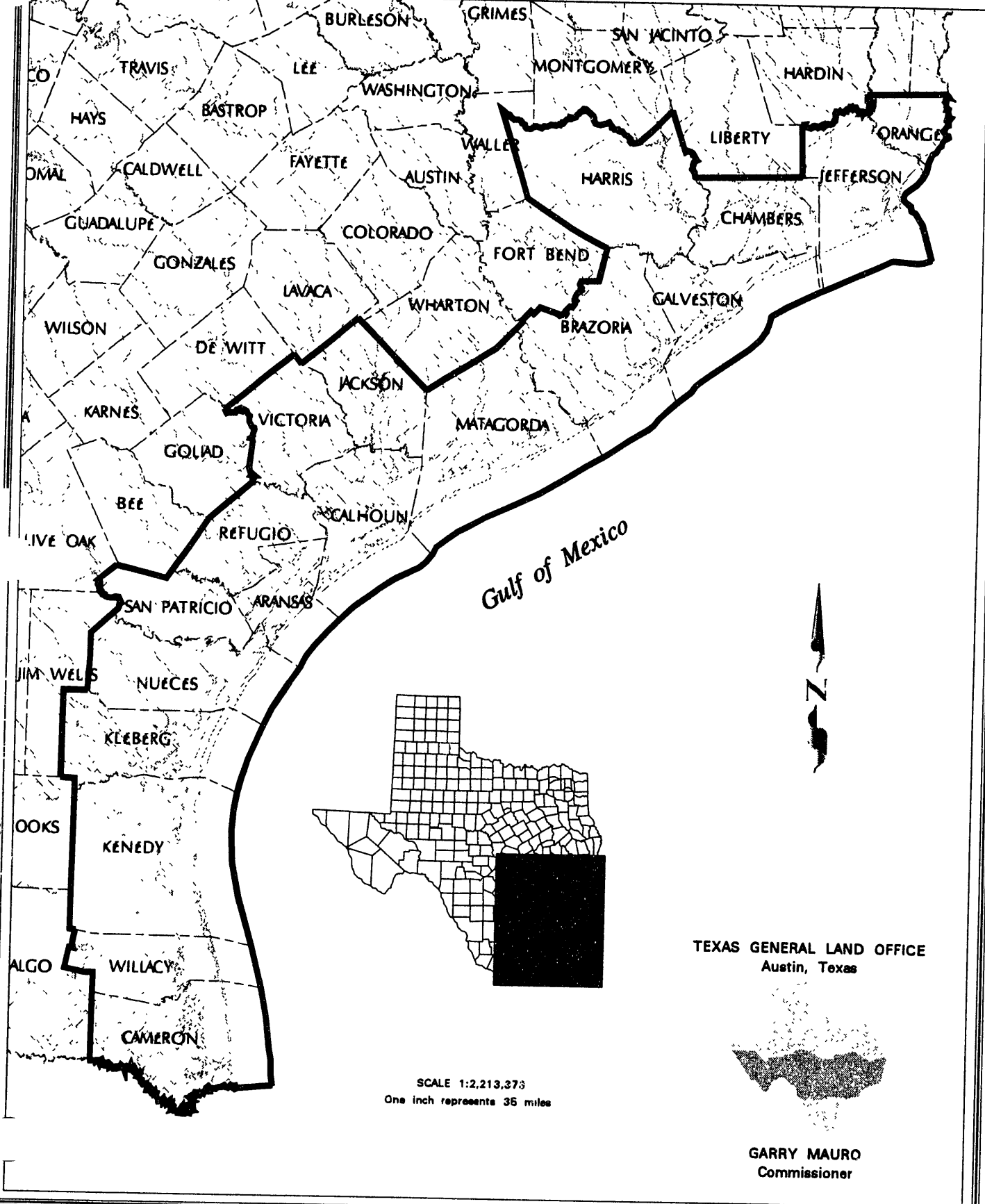


Figure 1: TAC 300.6.

FEE SCHEDULE

Plan Review

100-200 capacity	\$1,500.00
201-500 capacity	\$2,000.00
501-1,000 capacity	\$2,500.00
Over 1,000 capacity	\$2,500.00 + \$5.00 per bed in excess of 1,000 capacity

Occupancy Inspection

100-200 capacity	\$1,200.00
201-500 capacity	\$2,500.00
501-1,000 capacity	\$3,200.00
Over 1,000 capacity	\$3,200.00 + \$3.00 per bed in excess of 1,000 capacity

Additional visits for follow-up inspection \$500.00 per visit
(1 day)

Annual Inspection

100-200 capacity	\$750.00
201-500 capacity	\$1,200.00
501-1,000 capacity	\$2,000.00
Over 1,000 capacity	\$2,000.00 + \$2.00 per bed in excess of 1,000 capacity

Figure 1 for 40 TAC 3.4005

AFDC - Last Digit of Case Number:	Availability Date:
0,1,2,3	1
4,5,6	2
7,8,9	3

Food Stamps (effective February 1, 1995) - Last Digit of Case Number:	Availability Date:
0 [0,1]	1
1 [2,3]	2
2 [4,5]	3
3 [6]	4
4 [7]	5
5 [8]	6
6 [9]	7
7	8
8	9
9	10

Food Stamps (effective June 1, 1995) - Last Two Digits of Case Number:	Availability Date:
00-06	1
17-13	2
14-20	3
21-27	4
28-34	5
35-41	6
42-48	7
49-55	8
56-62	9
63-69	10
70-75	11
76-81	12
82-87	13
88-93	14
94-99	15

Name: Ivan Roberts
Grade: 8
School: Lomax Junior High School, La Porte ISD



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

Wednesday, October 5, 1994, 10:00 a.m.

Courtyard by Marriott-Love Field, 2833 Lemmons Trail

Dallas

Texas Boll Weevil Eradication Foundation

AGENDA:

Call to order

Opening remarks and introductions

Discussion and action:

Approval of minutes

Financial Report-Treasurer, Program Director

Program Director's report-liability insurance, update on Southern Rolling Plains program and Foundation Office

Foundation personnel policy and rules

Referenda-Rio Grande Valley, Central Rolling Plains, and Gulf Coast and Winter Garden

Chairman's report-borrowing authority resolution, funding, office opening and ribbon cutting

Board member's resignation and appointment

TDA report-1-800 number billing

Next meeting date and place

Discussion: other business

Adjourn

Contact: Frank Myers, P.O. Box 95089, Abilene, Texas 79608-5089, 1-800-687-1212, or (915) 672-2800.

Filed: September 27, 1994, 2:37 p.m.

TRD-9448717

Texas Council on Alzheimer's Disease and Related Disorders

Thursday, October 6, 1994, 10:00 a.m.

Texas Tech Health Science Center, McInturff Conference Center at University Medical Center, 602 Indiana, Second Floor

Lubbock

AGENDA:

The council will meet in council session; and discuss and possibly act on: current happenings in Alzheimer's research by Shirley E. Poduslo, Ph.D., Professor, Director of Basic Research; informal discussions during the lunch hour; future plans in Alzheimer's research; and take a tour of the facilities.

Contact: Veronda Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 27, 1994, 2:30 p.m.

TRD-9448714

Texas Education Agency (TEA)

Thursday, October 6, 1994, 10:30 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public testimony; Commissioner's overview of the October 1994 SBOE meeting; Setting standards on the Biology I end-of-course examination and designation of Algebra I end-of-course examination as a benchmark administration for spring 1995. To the extent necessary, the discussion of individual assessment instruments and assessment instrument items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §35.030; Request for State Board of Education confirmation of commissioner of education appointments to the Academics 2000 State Panel; Membership of advisory committees; Discussion of educator excellence indicator system; and discussion of pending litigation. The discussion of pending litigation will be held in Room 1-103 in executive session in accordance with §551.071(1)(A), Texas Government Code, and will include a discussion of (1) Edgewood ISD et al v. Meno and related school finance litigation, (2) Angel G. et al v. Meno, et al, (3) TRA et al v. Gary W. Leeper et ux., et al, relating

to home schooling; and (4) potential litigation against the federal government regarding illegal immigrants.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 2:56 p.m.

TRD-9448785

Thursday, October 6, 1994, 1:30 p.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-111

Austin

State Board of Education (SBOE) Committee on Personnel

AGENDA:

Public Testimony; Proposed amendments to 19 TAC §137.436, Schedule of Fees for Certification Services; Request for reapproval from the Houston Independent School District alternative certification program for teachers; Discussion of proposed amendments to 19 TAC §137.231, Alternative Teacher Certification; Recommendation for trustee appointments to the Fort Sam Houston Independent School District; Approval request for an educator preparation program from Southwest Texas State University; and Status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 2:57 p.m.

TRD-9448786

Thursday, October 6, 1994, 1:30 p.m. OR upon adjournment of the Joint Meeting of the Committee on Students and the Committee on School Finance

William B. Travis Building, 1701 North Congress Avenue, Room 1-100

Austin

State Board of Education (SBOE) Committee on Students

AGENDA:

Public Testimony; List of approved tests for special language programs; Discussion of proposed amendments to 19 TAC §75.152, Advanced High School Program and §75.153, Academic Achievement Record (Transcript); Discussion of law and rules relating to exemptions on the Texas Academic Skills Program (TASP) Test; Proclamation 1994 of the State Board of Education Advertising for Bids on Instructional Materials; and Discussion of proposed priorities for purchasing instructional materials under a six-year budget.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 2:57 p.m.

TRD-9448787

Thursday, October 6, 1994, 1:30 p.m. OR upon adjournment of the Joint Meeting of the Committee on Students and the Committee on School Finance

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

Austin

State Board of Education (SBOE) Committee on School Finance

AGENDA:

Public Testimony; Proposed amendments to 19 TAC §175.128, Application Fees and other Charges; proposed amendments to 19 TAC §176.11, Definitions and 19 TAC §176.18, Driver Training Instructor License; Request for approval to apply for and receive National Science Foundation grant funds; Request for authorization to apply for federal grant under the National Science Foundation, directorate for education and human resources elementary, secondary, and informal education division; Review of the biennial legislative appropriation request for 1995-1996 and 1996-1997; Review of the proposed annual audit plan of the division of internal audits for 1994-1995; Proclamation 1994 of the State Board of Education advertising for bids on instructional materials; and Discussion of proposed priorities for purchasing instructional materials under a six-year budget.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 2:58 p.m.

TRD-9448788

Thursday, October 6, 1994, 4:00 p.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-109

Austin

State Board of Education (SBOE) Ad Hoc Committee on Communications

AGENDA:

Discussion and review of issues pertaining to the Hero for Children Award, Celebrations of Educational Excellence, the National Association of State Boards (NASBE) Conference.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 2:59 p.m.

TRD-9448789

Thursday, October 7, 1994, 8:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

Austin

State Board of Education (SBOE) Ad Hoc Committee on Legislation

AGENDA:

The committee will discuss legislative recommendations for the 74th Texas Legislature-this discussion will provide an opportunity to discuss broad themes around which specific legislative recommendations can be developed.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 3:00 p.m.

TRD-9448790

Friday, October 7, 1994, 8:30 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-109

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund

AGENDA:

Public Testimony; Adoption of Long-Term Asset Allocation Strategic Plan and Ancillary Recommendations for the Permanent School Fund; Recommended Permanent School Fund Investment Program for October and the Funds Available for the Program; Review of Permanent School Fund Securities Transactions and the Investment Portfolio; and Report of the Permanent School Fund Executive Administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 3:01 p.m.

TRD-9448792

Friday, October 7, 1994, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

AGENDA:

Public Testimony; Presentation: long-range planning issues related to Pre-K-12 and post secondary education collaboration; Approval process for innovative programs funded through the Public Education Development Fund; Development of the Long-Range Plan for Public Education 1995-1999; Transition outcomes and issues for students receiving special education services; The German teacher exchange pro

gram; Discussion of federal governmental relations activities; and "Smart Talk: Supporting Learning, Working, and Cultural Understanding in a Multilingual, Global Community."

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 3:00 p.m.

TRD-9446791

Friday, October 7, 1994, 1:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

Austin

State Board of Education (SBOE)

AGENDA:

Approval of SBOE minutes of September 9, 1994; Public testimony; Approval of consent agenda; Setting standards on the Biology I end-of-course examination and designation of Algebra I end-of-course examination as a benchmark administration for spring 1995 (to the extent necessary, the discussion of individual assessment instruments and assessment instrument items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §13.030); Request for SBOE confirmation of commissioner of education appointments to the Academics 2000 State Panel; Membership of advisory committees; § TAC §137.436, Schedule of Fees for Certification Services; Request for reapproval from Houston Independent School District alternative certification program for teachers; List of approved tests for special language programs; 19 TAC §175.128, Application Fees and Other Charges [proprietary schools]; 19 TAC §176.11, Definitions and 19 TAC §176.18, Driver Training Instructor License [driver training schools]; Request for approval to apply for and receive National Science Foundation Grant funds; Request for authorization to apply for federal grant under the National Science Foundation, Directorate for Education and Human Resources Elementary, Secondary, and Informal Education Division; Review of biennial legislative appropriation request for Fiscal Years 1995-1996 and 1996-1997; Approval process for innovative programs funded through the Public Education Development Fund; Adoption of the long-term asset allocation strategic plan and ancillary recommendations for the Permanent School fund (PSF); Recommended PSF investment program for October and funds available for the program; Information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 28, 1994, 3:01 p.m.

TRD-9448793

Advisory Commission on State Emergency Communications

Wednesday, October 5, 1994, 10:30 a.m.

Hobby Building, Room 102, 333 Guadalupe Austin

Poison Control Coordinating Committee Meeting

AGENDA:

The Committee will call the meeting to order and recognize guests; hear public comment; approval of August 24, 1994 minutes; old business; report from each center of the first month of start-up/operations of Texas Poison Center Network; report from Texas Department of Health and Advisory Commission on State Emergency Communications on first month of start-up/operations of Texas Poison Center Network; report of the Subcommittee on Medical Management and Protocols; report of subcommittee operations; report of Subcommittee on Education; report of Subcommittee on Telecommunications; report of Subcommittee on Finance; new business; election of chair and vice chair; member terms of office. Adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Jim Goerke, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

Filed: September 27, 1994, 1:50 p.m.

TRD-9448700

Office of the Governor, Criminal Justice Division

Friday, October 7, 1994, 9:00 a.m.

Hyatt Hotel, 208 Barton Springs Road, Texas Ballroom #6

Austin

Texas Crime Stoppers Advisory Council

AGENDA:

I. Call to order, II. Approve minutes of August 20, 1994 meeting, III. Texas Department of Criminal Justice Crime Stoppers program report, IV. Review of Texas Crime Stoppers Advisory Council rules, V. Team manager's report, VI. Review the fiscal year 1995 Crime Stoppers Assistance funding guidelines, VII. Election of officers

for fiscal year 1994/1995, VIII. Education Committee's report, IX. Schedule next meeting date, X. Adjourn.

Contact: Paula Alvarez-Crampton, P.O. Box 12428, Austin, Texas 78701, (512) 463-1784.

Filed: September 29, 1994, 7:59 a.m.

TRD-9448823

Texas Department of Health

Friday, October 14, 1994, 9:15 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Special Joint Meeting of the Dental Technical Advisory Committee Early Periodic Screening, Diagnosis and Treatment (EPSDT) and the Dental Professional Advisory and Review Committee

AGENDA:

The committees will discuss and possibly act on: legislative update; Texas Department of Health (TDH) goals/1996-1997 legislative appropriations request; managed care plans under Texas Medicaid (STAR); survey results of dentists regarding participation in the EPSDT dental program; provider recruitment options based on survey results; proposed rules to create an Oral Health Services Advisory Committee to be effective January 1, 1995; and committee business sessions: EPSDT Dental Professional Advisory and Review Subcommittee (approval of minutes; and new business: criteria for hospitalization; adjustment to reimbursement for general anesthesia in office; revisions to Medicaid Provider Procedures Manual; discussion of orthodontic and orthognathic procedures; and utilization review report); and Dental Technical Advisory Committee (approval of minutes of last meeting; and new business: proposed rules; sedation/anesthesia permits for dentists and medical radiologic technologists; proposals for mandatory dental education; proposals for dental exams and screenings of long-term care patients; role of Texas Dental Association, Texas Dental Hygienists Association, and other groups relative to support of TDH goals; and staff reports on sealants, fluoride, and dental health education).

Contact: N. L. King, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7323. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1994, 3:11 p.m.

TRD-9448801

Monday, October 17, 1994, 8:30 a.m.
Room T-607, Texas Department of Health,
1100 West 49th Street
Austin

Midwifery Board, Grievance Committee
AGENDA:

The committee will meet to discuss and possibly act on a request to be heard by L. Henderson.

Contact: Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1994, 3:04 p.m.

TRD-9448798

Monday, October 17, 1994, 8:30 a.m.
Room T-607, Texas Department of Health,
1100 West 49th Street
Austin

Midwifery Board, Continuing Education Committee
AGENDA:

The committee will meet to discuss and possibly act on a rule change for approving continuing education units (CEU) already credited by other agencies and applicable to midwifery by program coordinator.

Contact: Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1994, 3:04 p.m.

TRD-9448799

Monday, October 17, 1994, 8:30 a.m.
Room T-607, Texas Department of Health,
1100 West 49th Street
Austin

AGENDA:

The committee will meet to discuss and possibly act on: rule change for waiving education requirements for midwives from other state/countries; rule change on §37.180(c)(3)(B) relating to proposed requirements of preceptor to be reduced from 100 to 75 births; adoption North America Registration of Midwives test for the mandatory courses and reciprocity; and adopting procedure for obtaining test on Midwifery Act, rules, and standards.

Contact: Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, contact

Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1994, 3:04 p.m.

TRD-9448800

Monday, October 17, 1994, 9:30 a.m.
Room T-607, Texas Department of Health,
1100 West 49th Street
Austin

Midwifery Board

AGENDA:

The board will meet to discuss approval of the minutes of the May 16, 1994 meeting, and discuss and possibly act on: Education Committee report (rule change for waiving education requirements for midwives from other state/countries; rule change on §37.180(e)(3)(B) relating to the proposed requirements of preceptor to be reduced from 100 to 75 births; North America Registry of Midwives test for the mandatory courses and reciprocity; and test on Midwifery Act, rules and standards); Continuing Education Committee report (rule change for approving continuing education units (CEU) already credited by other agencies and applicable to midwifery by program coordinator); Grievance Committee report (report on complaints; and complaint procedure); Standards Committee report (standards); Rules Committee report (fee increase); new business (correspondence regarding charging a fee to persons not documented for Midwifery Manual; set meeting dates for coming year; report by Elizabeth Lee on Association of Texas Midwives's proposed Midwifery Bill; Lisa Comer regarding apprenticeship; and other public comments** not requiring board action).

** Public comments will be limited to three minutes each not to exceed allotted time of 30 minutes. Persons interested in making public comment should notify the Midwifery Program, Belva Alexander, (512) 458-7700 ten days prior to the Board meeting.

Contact: Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 28, 1994, 3:03 p.m.

TRD-9448797

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Texas Higher Education Co-ordinating Board

Wednesday, October 12, 1994, 10:00 a.m.
Texas A&M University-Corpus Christi,
Corpus Christi Hall, Room 276

Corpus Christi
Campus Planning Committee
AGENDA:

View and/or presentations: Texas A&M University-new Library, Computing and Study Complex; new Dairy Products Teaching and Research Lab presentation; and re-approval of Bush Presidential Library. Texas Agricultural Extension Service-new district headquarters at Fort Stockton presentation. Texas A&M University-Galveston Campus-National Marine Fisheries property lease (approval for formula funding). Texas A&M University-Corpus Christi-new University Services Center; and new Early Childhood Center.

Contact: Dr. Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 27, 1994, 1:57 p.m.

TRD-9448701

Wednesday, October 12, 1994, 3:30 p.m.
University of Texas at Brownsville, Gorgas Hall, Conference Room

Brownsville

Campus Planning Committee

AGENDA:

View and/or presentations: The University of Texas at Brownsville-new Science and Engineering Technology building.

Contact: Dr. Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 27, 1994, 1:57 p.m.

TRD-9448702

Thursday, October 13, 1994, 9:00 a.m.
University of Texas at Tyler, Administration Building, Room 301

Tyler

Campus Planning Committee

AGENDA:

View and/or presentations: The University of Texas at Tyler-new Liberal Arts Complex. The University of Texas HC at Tyler-Ambulatory Care Center addition. The University of Texas at Dallas-Student Union Building addition and renovation. The University of Texas at Arlington-new Hazardous Waste Storage Building presentation; Thermal Energy Plant renovation; and Ransom Hall renovation. The University of Texas at El Paso-Physical Science Building renovation. The University of Texas HSC at Houston-Institute of Molecular Medicine renovation-second and third floors.

Contact: Dr. Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 27, 1994, 1:57 p.m.

TRD-9448703

Wednesday, October 26, 1994, 1:30 p.m.

Chevy Chase Office Complex, Building
Five, Room 1.100, 7700 Chevy Chase Drive

Austin

Community and Technical Colleges Com-
mittee

AGENDA:

Increasing pressure to exempt out-of-district offerings from the size limitations imposed by Coordinating Board rules; report on the special committee work on the relations between TSTC and the community colleges; and questions concerning the status of Tyler Junior College if UT Tyler is converted to four-year status and the effect this might have on agreement between the two institutions submitted to the Board for action at this meeting.

Contact: Dr. Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 27, 1994, 1:58 p.m.

TRD-9448705

Wednesday, October 26, 1994, 3:30 p.m.

Chevy Chase Office Complex, Building
Five, Room 5.211, 7745 Chevy Chase Drive

Austin

Legislative Relations Committee

AGENDA:

Discussion of issues for the upcoming legis-
lative session.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 27, 1994, 1:57 p.m.

TRD-9448704

**Texas Department of Human
Services**

Thursday, October 6, 1994, 10:00 a.m.

701 West 51st, Fourth Floor, West Tower,
Conference Room 460W

Austin

Services to Persons with Disabilities Sub-
committee

AGENDA:

According to the agenda, the Services to
Persons with Disabilities Subcommittee will
welcome everyone and make introductions
and will consider: public comment; com-
ments by chair; comments by direc-

tor/OSPD updates; take action on guidelines
for ADAC/SSPD subcommittees and
CLASS/DAHS/Day Care; present informa-
tional items of ADAC/ADAC Steering
Committee, DATCIL Annual Report, NFW
update, and Personal Care Homes; follow-
up on previous motions of
DHC/CMAS/SSPD 24 hour revision to li-
censing requirements and individualized
provider option; meeting summary; next
meeting, and adjournment.

Contact: D. J. Johnson, P.O. Box 149030,
Austin, Texas 78714-9030, (512) 450-3533.

Filed: September 28, 1994, 4:37 p.m.

TRD-9448811

Texas Lottery Commission

Friday, October 7, 1994, 9:00 a.m.

6937 North IH-35, American Founders
Building, First Floor Auditorium

Austin

Texas Lottery Commission

AGENDA:

According to agenda summary, the Texas
Lottery Commission will call the meeting to
order; public comment on any of the items
on the agenda; approval of minutes of the
August 10, 1994 meeting; consideration and
possible proposal of rules relating to the
creation and operation of a Bingo Advisory
Committee; consideration and possible ac-
tion, including adoption, of rules relating
to the administration of the Bingo Enabling
Act for the following: 16 TAC §402.542
and 16 TAC §402.543; consideration and
possible action, including adoption, of rules
relating to the administration of the State
Lottery Act for the following: 16 TAC
§§401.201, 401.203, 401.204, 401.209,
401.211, 401.214, 401.219, 401.220,
401.223, 401.226-401.228; 16 TAC
§401.302; and 16 TAC §401.368; Commis-
sion may meet in executive session with its
attorneys to receive legal advice regarding
pending litigation pursuant to §551.071 of
Texas Government Code, including Wol-
verine Council Auxiliary v. Texas Lottery
Commission, Capitol Bingo, Inc. v. Texas
Lottery Commission, and Frenzel v.
Sadberry, et al; consideration and possible
proposal of a rule relating to charges for
copies of public records; may consider the
status and possible entry of an order in any
lottery contested case if a proposal for
decision has been received from the assigned
administrative law judge and the time
period has lapsed for the filing of excep-
tions and replies; report by the executive
director and possible discussion and action
on: Minority Participation Report, Legisla-
tive Appropriations Request, and financial
status of the agency; may meet in executive

session on any of the above-listed items as
authorized by the Texas Open Meetings
Act; and adjournment.

For ADA assistance, call Michelle Guerrero
at (512) 323-3791 at least two days prior to
meeting.

Contact: Michelle Guerrero, 6937 North
IH-35, Austin, Texas 78758, (512)
323-3791.

Filed: September 28, 1994, 5:10 p.m.

TRD-9448820

**Texas Mental Health and
Mental Retardation Board**

Friday, October 7, 1994, 9:00 a.m.

909 West 45th Street, Auditorium

Austin

Equity of Access Task Force

AGENDA:

1. Recap from last meeting
- Minutes
- Material requested by the task force
2. Definition
3. Principles
4. Explore "What If...?" scenarios
5. Schedule next meeting

If ADA assistance or deaf interpreters are
required, notify TXMHMR, (512) 323-3255
(voice, TDD, RELAY TEXAS), Ernest
Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668,
Austin, Texas 78711, (512) 206-4506.

Filed: September 29, 1994, 9:45 a.m.

TRD-9448827

Thursday, October 13, 1994, 8:00 a.m.

100 Crescent Court, Suite 1740

Dallas

Search and Screen Committee

AGENDA:

1. Consideration of applicants for the posi-
tion of Commissioner

NOTE: Interviews and discussions will be
conducted in closed sessions. No final ac-
tion will be made at this meeting.

If ADA assistance or deaf interpreters are
required, notify TXMHMR, (512) 323-3255
(voice, TDD, RELAY TEXAS), Ernest
Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668,
Austin, Texas 78711, (512) 206-4506.

Filed: September 29, 1994, 9:45 a.m.

TRD-9448828

Friday, October 14, 1994, 8:00 a.m.

100 Crescent Court, Suite 1740

Dallas

Search and Screen Committee

AGENDA:

1. Consideration of applicants for the position of Commissioner

NOTE: Interviews and discussions will be conducted in closed sessions. No final action will be made at this meeting.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255 (voice, TDD, RELAY TEXAS), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: September 29, 1994, 9:46 a.m.

TRD-9448829

Texas Natural Resource Conservation Commission

Thursday, October 6, 1994, 9:00 a.m.

State Capitol Building, Capitol Extension Room E-1.012

Austin

Petroleum Storage Tank Advisory Committee

AGENDA:

Call to order.

Continue discussion on PST regulations contained in Subchapter H, L, and M.

Discuss items tabled from previous meetings.

Review topics covered in previous meetings and develop legislative recommendations.

Schedule future meetings.

Contact: Dwight C. Russell, P.E., 7801 North Lamar Boulevard, Suite D-77, Austin, Texas 78752, (512) 452-8834.

Filed: September 27, 1994, 4:44 p.m.

TRD-9448749

Board of Nurse Examiners

Tuesday, October 18, 1994, 10:00 a.m.

1812 Centre Creek Drive

Austin

ANP Advisory Committee

1. Proposed rules for credentialing and re-credentialing

2. Discussion of operational definitions and requirements for Clinical Nurse Specialist

and Nurse Practitioner Education to become effective in 1997.

Contact: Diane E. Powers, Box 140466, Austin, Texas 78714, (512) 835-8661.

Filed: September 28, 1994, 10:49 a.m.

TRD-9448778

Texas Department of Protective and Regulatory Services

Friday, October 7, 1994, 7:30 p.m.

Wyndham Greenspoint Hotel, 12400 Greenspoint Drive

Houston

Texas Board of Protective and Regulatory Services

AGENDA:

The Board of Protective and Regulatory Services will participate in a discussion of issues related to foster care and adoption as part of the 21st Annual Training Conference of the Texas State Foster Parent Association, Inc. The discussion is listed in the conference agenda as "Fireside Chat with DPRS Representatives." No formal presentations will be made and no action will be taken.

Contact: Michael Gee, P.O. Box 149030, Mail Code B-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: September 27, 1994, 11:53 a.m.

TRD-9448698

Public Utility Commission of Texas

Wednesday, October 6, 1994, 9:30 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting at the above date and time at which the Commission will consider the following dockets: P-12703, P-12141, P-13402, 12284, 11823, 12476, 13139, 12900, 12065, 13206, and 13207.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 28, 1994, 3:13 p.m.

TRD-9448803

Thursday, October 6, 1994, 9:35 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA:

There will be an administrative meeting for discussion, consideration, and possible action on approval of comments to FCC regarding use of 800/900 numbers; application of alternative dispute resolution techniques at the PUC; interaction with Legislative Committees and/or Sunset Commission; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 28, 1994, 3:11 p.m.

TRD-9448802

Friday, October 7, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 13207-application of Texas Utilities Electric Company to amend Certificate of Convenience and Necessity for a proposed transmission line within Midland County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 28, 1994, 9:45 a.m.

TRD-9448766

Tuesday, November 29, 1994, 10:00 a.m. (Rescheduled from November 29, 1994, 9:00 a.m.)

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A rescheduled hearing on the merits will be held on the above date and time in Docket Number 12456-application of East Texas Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for a proposed transmission line, within Anderson, Houston, Cherokee, Smith, and Van Zandt counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 28, 1994, 3:14 p.m.

TRD-9448804

Sabine River Compact Administration

Thursday, October 27, 1994, 9:30 a.m.

Jilton Palacio Del Rio

San Antonio

AGENDA:

Call to order, approval of minutes, report of chairman, report of secretary, report of treasurer, report of committees, unfinished business, new business, adjournment.

Contact: Mary H. Gibson, 15091 Texas Highway, Many, Louisiana 71449-9730, (318) 256-4112.

Filed: September 27, 1994, 2:00 p.m.

TRD-9448706

Council on Sex Offender Treatment

Sunday, October 9, 1994, 3:45 p.m.

Beto Criminal Justice Center, Judges' Chambers, Sam Houston State University
Huntsville

Clinical Polygraph Committee

AGENDA:

I. Convene, David Cory, Chair

II. Council on Sex Offender Treatment
Clinical Polygraph Committee Background

III. Texas Polygraph Examiners Briefing,
Eric Holden, President American Polygraph
Association

IV. Consideration of the Question: Should
the Council on Sex Offender Treatment be
guided by the establishment of
guidelines for Clinical Polygraph Examination
sex offender?"

V. Adjourn

Contact: Eliza May, P.O. Box 12546,
Austin, Texas 78711, (512) 463-2323.

Filed: September 28, 1994, 4:46 p.m.

TRD-9448812

Monday, October 10, 1994, 11:03 a.m.

Beto Criminal Justice Center, Room 205,
Sam Houston State University
Huntsville

I. Convene, Dr. Linda Reyes

II. Review and revisit RSOTP Rules.

A. Pending Applicants

B. CBU Credits for Videos, etc.

C. LCDC issue

D. Clarification of Supervision and Training
Hours Issues

E. Clarification of CEU Conference Issues

III. Other Business

IV. Adjourn

Contact: Eliza May, P.O. Box 12546,
Austin, Texas 78711, (512) 463-2323.

Filed: September 28, 1994, 4:47 p.m.

TRD-9448815

Texas Southern University

Thursday, October 6, 1994, 12:30 p.m.

3100 Cleburne/University Library, Fifth
Floor

Houston

Board of Regents, Development Committee

AGENDA:

Meeting to Consider: Reports from the ad-
ministration on university fund-raising ef-
forts.

Contact: Madison Scott, 3100 Cleburne,
Houston, Texas 77004, (713) 529-8911.

Filed: September 28, 1994, 5:10 p.m.

TRD-9448821

Structural Pest Control Board

Thursday, October 20, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 2405
East Campus Drive, Room 3.122

Austin

Regular Board Meeting

AGENDA:

I. Approval of board minutes of June
14-15, 1994 meeting.

II. Public comment.

III. Consider for adoption amendments to
§§593.23, 595.11, 591.1, 599. 2-599.7 and
new regulation §§595.13-595.15.

Contact: Benny M. Mathis, Jr., 9101 Bur-
net Road, Suite 201, Austin, Texas 78758,
(512) 835-4066.

Filed: September 27, 1994, 4:43 p.m.

TRD-9448748

Texas Sustainable Energy Development Council

Friday, October 7, 1994, 8:00 a.m.

1000 Red River, Teachers Retirement Sys-
tem Cafeteria, Conference Room

Austin

Executive Committee

AGENDA:

I. Call to Order

II. Discuss Administrative Matters

a. Approve Posting for Temporary Position

b. Discuss Evaluation of Progress

c. Review FSC Contract Amendment

d. Approval Agenda for October 28 Council
Meeting

e. Schedule Next Meeting Date

III. Discuss Public Participation Plan and
Schedule

IV. Discuss Strategic Planning

a. Review Framework for Strategic Plan

b. Discuss Procedure and Schedule for De-
veloping Action Steps

V. Adjourn

Contact: Charlotte Banks, 1700 North Con-
gress Avenue, Room, 850, Austin, Texas
78701, (512) 463-1745.

Filed: September 28, 1994, 4:50 p.m.

TRD-9448817

Texas Department of Transportation

Thursday, September 29, 1994, 9:00 a.m.

815 Brazos, Suite 302, Brazos Building
Austin

Emergency Revised Agenda

Motor Vehicle Board

AGENDA:

12. Other: f. Election of Vice-Chair.

Reason for Emergency: Through clerical
oversight, item 12. f. was omitted from the
Texas Motor Vehicle Board's September
29, 1994, meeting agenda. The Board is,
therefore, supplementing its previously filed
agenda by the addition of that item. Such
omission was not discovered until Septem-
ber 26, 1994. The addition of item 12. f.
calling for the election of a vice-chair of the
Texas Motor Vehicle Board, is in accord-
ance with §2.08 of the Texas Motor Vehicle
Commission Code and §551.045 of the
Texas Government Code. In order to ensure
strict compliance with the Texas Motor Ve-
hicle Commission Code and ensure validity
of future Board actions, it is considered an
urgent public necessity that the agenda be
supplemented as described.

Contact: Brett Bray, 815 Brazos, #300,
Austin, Texas 78701, (512) 476-3587.

Filed: September 28, 1994, 10:45 a.m.
TRD-9448777

◆ ◆ ◆
Texas Turnpike Authority

Wednesday, October 5, 1994, 9:45 a.m.
3015 Raleigh Street
Dallas

Privatization Committee Meeting

AGENDA:

Roll call of committee members

Recognition of other directors present

1. Discussion with staff and general counsel of responses to the Texas Turnpike Authority RFP for money counting and transportation.

2. Consider committee recommendations concerning acceptance, modification, or rejection of the Item 1 RFP.

Adjournment.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: September 27, 1994, 4:43 p.m.

TRD-9448747

Wednesday, October 5, 1994, 10:30 a.m.
3015 Raleigh Street

Dallas

Budget Committee

AGENDA:

Roll call of committee members

Recognition of other directors present

1. Discussion of preliminary approval of proposed operating budgets for calendar year 1995

a. Dallas North Tollway budgets

b. Mountain Creek Lake Bridge budgets

c. Feasibility Study Fund budget

2. Executive session—pursuant to Article 6252-17, §2(g) of Revised Civil Statutes concerning staff briefing on staff positions, conditions, and additions related to the 1995 budgets.

3. Consider resolutions recommending (a) Dallas North Tollway 1995 budgets, (b) Mountain Creek Lake Bridge 1995 budgets and (c) Feasibility Study Fund budget for 1995.

Adjournment

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: September 27, 1994, 4:43 p.m.

TRD-9448746

Wednesday, October 5, 12:15 p.m.

3015 Raleigh Street

Dallas

New Projects Committee Meeting

AGENDA:

Roll call of committee members

Recognition of other directors present

1. Discussion with staff, general counsel and bond counsel on SH 190 T matters.

2. Executive session—Pursuant to Article 6252-17, Vernon's Revised Civil Statutes: §(e) and §(r)—briefing by TTA staff, advisors, and attorneys on legal matters related to the Issuance of Series 1995 190T Parity Revenue Bonds, as extension and enlargement of the Dallas North Tollway and Federal Laws applicable to SH 190T.

3. Consider committee recommendations to TTA Board concerning interlocal/interagency agreements with NCTCOG, TxDOT, and DART.

4. Consider committee recommendations to TTA Board on Supplemental Agreement Number One to Contract FSF-42.

5. Consider committee recommendations to TTA Board on Supplemental Agreement Number One to Contract FSF-43.

Adjournment.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: September 27, 1994, 4:43 p.m.

TRD-9448745

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University of North Texas/University of North Texas Health Science Center

Tuesday, October 4, 1994, 3:30 p.m.

Chestnut and Avenue C, University of North Texas, Board Room, Administration Building

Denton

Board of Regents, Budget and Finance Committee

AGENDA:

Investment Policies for the University of North Texas and the University of North Texas Health Science Center

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: September 28, 1994, 4:46 p.m.

TRD-9448813

Texas Board of Veterinary Medical Examiners

Thursday-Friday, October 6-7, 1994, 8:30 a.m.

Fourth Floor Conference Room, 1946 South IH-35

Austin

Revised Agenda

AGENDA:

This agenda is revised to add consideration of the 1996-1997 Legislative Appropriations Request for Board approval.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: September 28, 1994, 5:06 p.m.

TRD-9448819

◆ ◆ ◆
Regional Meetings

Meetings Filed September 27, 1994

The Brazos River Authority Lake Management Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, October 6, 1994, at 10:00 a.m. Information may be obtained from Mike Bukula, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9448715.

The Erath City Appraisal District Board of Directors will meet at 1390 Harbin Drive, Stephenville, October 11, 1994, at 7:00 a.m. Information may be obtained from Vicky Greenough, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434 or Fax: (817) 965-5633. TRD-9448699.

The Sabine River Authority of Texas Board of Directors will meet at the Fredonia Hotel, 200 Fredonia, Nacogdoches, October 6, 1994, at 10:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-2192. TRD-9448722.

◆ ◆ ◆
Meetings Filed September 28, 1994

The Ark-Tex Council of Governments (Emergency Revised Agenda.) Board met at IH-30, Two Senorita's Restaurant, Mt. Pleasant, September 29, 1994, at 5:30 p.m. (Reason for emergency: This must be voted on before the next meeting.) Information may be obtained from Pam Plummer, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8683. TRD-9448779.

The Austin-Travis County MHMR Center Public Relations Committee will meet at

1430 Collier Street, Board Room, Austin, October 5, 1994, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 474-4141. TRD-9448822.

The Texas Automobile Insurance Plan Association Governing Committee will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin, October 6, 1994, at 9:30 a.m. Information may be obtained from Dianna Brooks, P.O. Box 18447, Austin, Texas 78760-8447, (512) 444-5999. TRD-9448808.

The Bosque Higher Education Authority, Inc. Board of Directors met at 2600 Washington Avenue, Waco, October 3, 1994, at 9:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9448814.

The Brazos Higher Education Service Corporation, Inc. Board of Directors met at 2600 Washington Avenue, Waco, October 3, 1994, at 9:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9448818.

The Brazos Student Finance Corporation Board of Directors met at 2600 Washington

Avenue, Waco, October 3, 1994, at 9:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9448816.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet in the Council Offices, 1706 East 29th Street, Bryan, October 4, 1994, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9448761.

The 50th Judicial District Juvenile Board will meet in the District Courtroom, Cottle County Courthouse, Paducah, October 6, 1994, at Noon. Information may be obtained from David W. Hajek, Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9448763.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, October 4, 1994, at 3:00 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9448806.

The Tyler County Appraisal District Board of Directors will meet at 806 West

Bluff, Woodville, October 6, 1994, at 4:00 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9448805.

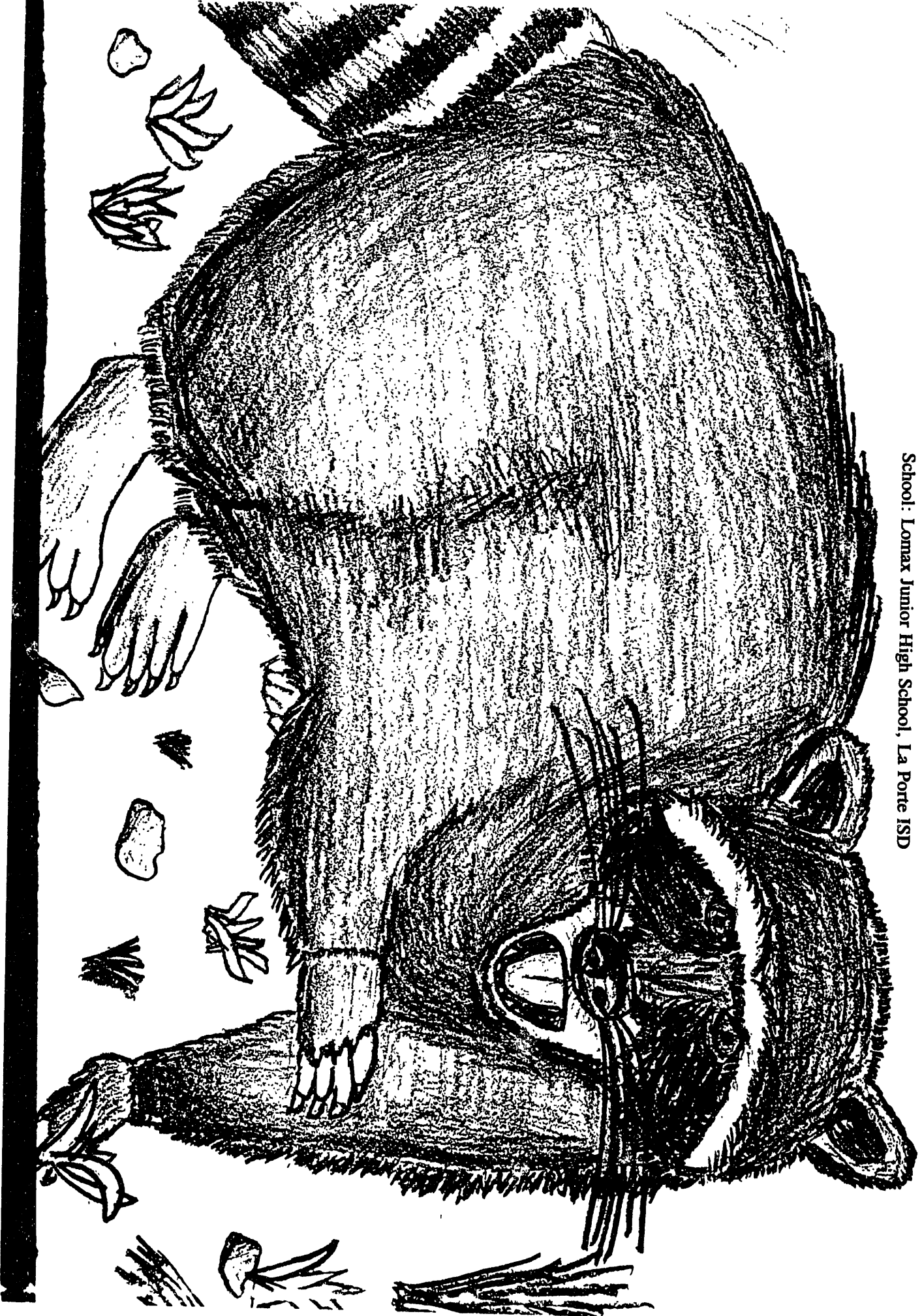
◆ ◆ ◆
Meetings Filed September 29,
1994

The Brazos River Authority (Revised Agenda.) Lake Management Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, October 6, 1994, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9448826.

The East Texas Council of Governments JTPA Board of Directors will meet at the Roy H. Laird Country Club, 1306 Houston Street, Kilgore, October 6, 1994, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9448830.

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Name: Orlando Diaz
Grade: 8
School: Lomax Junior High School, La Porte ISD



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 Animal Health Commission Resolution-Equine Infectious Anemia (EIA)

WHEREAS, Equine Infectious Anemia (EIA) is of great concern to the Texas Animal Health Commission and a threat to the equine industry of Texas;

WHEREAS, the Texas Animal Health Commission is charged with the responsibility of controlling Equine Infectious Anemia;

WHEREAS, extensive input and ongoing cooperation from all aspects of the equine industry in the State of Texas is vital to any program attempting to deal with the problem of Equine Infectious Anemia;

WHEREAS, the Texas Animal Health Commission has identified 54 Texas counties where new cases of Equine Infectious Anemia indicate that there is a high risk of the disease:

BE IT HEREBY RESOLVED that the Texas Animal Health Commission is dedicated to educating all aspects of the equine industry in the State of Texas about the causes, detection, and prevention of Equine Infectious Anemia, and is further dedicated to cooperating with the veterinary and education profession, the equine industry, local governments, and other public and private associations with common goals to effectuate that education.

BE IT FURTHER RESOLVED that the Texas Animal Health Commission strongly recommends that persons purchasing horses in the State of Texas have those horses tested for Equine Infectious Anemia prior to change of ownership.

BE IT FURTHER RESOLVED that the Texas Animal Health Commission strongly encourages shows, fairs, and exhibitions held in any of the counties identified as high risk require all horses to be accompanied by proof of negative Equine Infectious Anemia test conducted within the twelve months preceding the event.

BE IT FURTHER RESOLVED that the Texas Animal Health Commission further encourages all shows, fairs, and exhibitions in the State of Texas to require all horses originating from any of the counties identified as high risk to be accompanied by proof of negative Equine Infectious Anemia test conducted within the twelve months preceding the event.

Issued in Austin, Texas on September 26, 1994.

TRD-8448713

Terry Beale, DVM
Executive Director
Texas Animal Health Commission

Filed: September 27, 1994

Coastal Coordination Council Correction of Error

Due to typographical and proofreading errors by the *Texas Register* the effective dates for the Coastal Coordination Council rules adopted in the September 27, 1994, *Texas Register* (19 TexReg 7606) were printed incorrectly.

The correct effective dates should read "June 15, 1995".

Comptroller of Public Accounts Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the August 23, 1994, issue in the *Texas Register* (19 TexReg 6671).

The consultant will assist the Comptroller's Texas Performance Review Division in identifying additional sources of federal and other non-tax revenues for the State. These revenues may include independent estimates based on past Texas Performance Review initiatives (e.g. through administrative, automated, or legislative changes) and associated administrative or other costs. The successful proposer will be expected to begin performance of the contract on or about September 26, 1994.

The contract is awarded to Andersen Consulting, LLP, 701 Brazos Street, Suite 1020, Austin, Texas 78701. The total dollar value of the contract is not to exceed \$74,995 in the aggregate. The contract was executed September 26, 1994, and extends through September 30, 1995. Andersen Consulting, is to present a final report on or about November 1, 1994, on conclusions reached from the services performed under said contract.

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

TRD-8448638

Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: September 26, 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 Texas Civil Statutes, Title 79, Article 1.04, as amended (Vernon's Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/03/94-10/09/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	10/01/94-10/31/94	18.00%	18.00%

⁽¹⁾Credit for personal, family or household use. ⁽²⁾Credit for business, commercial, investment or other similar purpose. ⁽³⁾For variable rate commercial transactions only.

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

TRD-9448760 Lealle L. Pettijohn
Acting Commissioner
Office of Consumer Credit Commissioner

Filed: September 28, 1994

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**Texas Education Agency
Notice of Public Hearing**

The State Board of Education Ad Hoc Committee on Legislation will hold a public hearing on Friday, October 21, 1994, to solicit recommendations for inclusion in the board's proposals to the 73rd Texas Legislature. The hearing will begin at 8:30 a.m. and will conclude at 12:00 noon. The hearing will be held in Room 1-104 of the William B. Travis Building located at 1701 North Congress Avenue in Austin.

The board is seeking a wide range of public input to assist in the development of its legislative initiatives for the coming legislative session. Concrete suggestions for specific legislative action will be more helpful than broad, philosophical position statements. As a result of input from the public hearing, the board will develop a set of recommendations for legislative action intended to increase student achievement, reduce the dropout rate and ensure that students are prepared to be successful and productive citizens.

In order to allow the board to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Anyone wishing to testify should register in advance by contacting the Division of Governmental Relations at (512) 463-9682 by 3:00 p.m. on Thursday, October 20. Registrations to speak will not be accepted after that date.

Testimony will be heard on a first-come, first-served basis and will be limited to five minutes in order to accommodate as many speakers as possible. It is recommended that 25 copies of written testimony, including the name and

address of the speaker, be provided at the time of the hearing.

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

TRD-9448864 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: September 27, 1994

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**Employee Retirement System of Texas
Consultant Contract Award**

This award for consulting services is being filed pursuant to the provisions of the Government Code, §2254.024, Subsection (a)(6). The consultant will provide reporting services of federal actions affecting public pension plans in order to assist the Employees Retirement System of Texas in discharging its fiduciary responsibilities and maintaining a qualified pension plan. The consultant is Don Kennard, Route 3, Box 229, Charles Town, West Virginia 35414. The total cost of the contract is \$19,800, and the term of the contract is September 1, 1994 through August 31, 1995.

Issued in Austin, Texas, on September 27, 1994.

TRD-9448724 Charles D. Travis
Executive Director
Employee Retirement System of Texas

Filed: September 27, 1994

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**General Services Commission, State
Energy Conservation Office
Notice of Proposed State Energy
Conservation Plan**

Title III of the Energy Conservation and Production Act of 1976, as amended by Title I of the Energy Policy Act of 1992, 42 United States Code 6832 et seq. (Act), establishes mandated requirements for the Buildings Energy Standards Program. 42 United States Code 6831-6937. The Act applies to all State building codes

which, by definition, includes the codes of units of general purpose local government. 42 United States Code 6832. The Act provides separate requirements for residential and commercial building codes. With respect to residential codes, the Act requires that, by October 24, 1994, each state certify to the Secretary of the Department of Energy (DOE) that it has reviewed the code for energy efficiency and determined whether revisions to meet or exceed the Council of American Building Officials (CABO) Model Energy Code, 1992 are appropriate. This determination is to be made following public notice and hearing. If a state determines that it is not appropriate to revise residential building codes as aforementioned, the reasons for this determination are to be made available to the public. With respect to commercial building codes, the Act requires each state to certify to the Secretary that it has reviewed and updated its code for energy efficiency. The certification must include a demonstration that the State's code provisions meet or exceed the standards of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Illuminating Engineering Society of North America (ASHRAE) Standard 90.1-1989.

Texas is a "home rule" state. As such, the State has determined that it is not feasible to adopt or revise general residential or commercial building codes at the local level to meet the energy efficiency standards of the CABO Model Energy Code, 1992 or ASHRAE Standard 90.1-1989, respectively. In spite of the limitations of "home rule", however, the State has encouraged the promulgation and adoption of model energy codes by local governments. These efforts are outlined in part B of this response. The State has adopted standards for state-owned buildings which are described in the following Part A.

State-Owned Buildings:

(1) Residential Energy Codes.

The building code applicable to state-owned residential buildings is the CABO Model Energy Code of 1992. Hence, the requirements of the Act are satisfied.

(2) Commercial Energy Codes.

In 1989 Texas adopted its Energy Conservation Design Standard for New State Buildings, which was revised in 1990 and 1993, and is in the process of being updated and revised again for re-release in 1995. See, 1 Texas Administrative Code §§5.301-5.303. This standard is an adaptation of ASHRAE Standard 90.1-1989, including the accompanying envelope and lighting compliance software packages. Changes were made to the ASHRAE standard to delete criteria that were not appropriate for Texas buildings, to strengthen criteria of particular importance to Texas climates (e.g., narrowing the climate base for the envelope criteria from a national climatic base to one specific to Texas), and to include changes resulting from an extensive public review process. Revisions to Standard 90.1 since 1989 have also been incorporated. Thus, the Texas Energy Conservation Design Standard for New State Buildings exceeds the provisions of ASHRAE Standard 90.1-1989.

A new version of the Texas Energy Design Standard for New State Buildings will add HVAC system performance criteria, improved daylighting criteria, criteria for extensions to existing buildings, and a computerized version of the standard. Revisions reflecting the economic criteria of the proposed new 90.1 standard will also be included. Thus, the 1995 revision will not only be more stringent

than the updated ASHRAE Standard 90.1, it will also be more advanced.

By virtue of this extensive development effort, the requirements of the Act are satisfied.

B. Non-State-Owned Buildings:

(1) Residential Energy Codes.

A generally applicable residential energy code for non-state owned buildings does not exist. Some local governments have adopted the CABO Model Energy Code of 1992 (e.g., the cities of Abilene and Waxahachie), and others, (e.g., the cities of Austin and Garland) have adopted their own residential energy codes, which, generally, are more stringent than the CABO Model Energy Code.

The State has initiated and funded two programs in an effort to encourage the adoption of model energy codes at the local level. One program provides CABO Model Energy Code Training for Texas builders and code officials. The other program is adapting ASHRAE Standard 90.2 to the various climatic conditions and building design practices within Texas for use as a model residential energy standard.

(2) Commercial Energy Codes.

Texas has not adopted general legislation that would impose a uniform commercial building energy code at the local government level. Texas has, nonetheless, provided technical support and assistance to localities seeking to develop or adopt commercial building energy codes. While the Texas Energy Conservation Design Standard for New State Buildings applies only to state-owned buildings, it effectively serves as a model energy standard for local code jurisdictions. Indeed, several municipalities, for example the City of Austin, are considering adoption of the state energy design standard. The state has acted within the limits of its authority and is in compliance with the Act.

Pursuant to the Texas Government Code, Title 4, Chapter 447, §447.004, the former Energy Management Center of the Governor's Office, now the State Energy Conservation Office is authorized to adopt and implement energy conservation design standards for all new state buildings, including state-supported institutions of higher education, new residential state buildings and major renovation projects. Section 447.007 further invests the Governor's office with authority to recommend model energy conservation building codes to municipalities for use in enacting or amending municipal ordinances. Responsibility for implementation of these provisions has been delegated to the General Services Commission/State Energy Conservation Office pursuant to the authority vested in the Governor under Government Code, Chapters 447 and 2305.

The General Services Commission/State Energy Conservation Office will conduct a public meeting during which members of the public will have an opportunity to be heard and to present relevant information. The meeting will be held from 8:00 a.m. to 10:00 a.m. on October 13, 1994 in Room 106 of the Regan Building, West 15th Street and Congress Avenue. A summary of the information presented during the meeting will be available beginning October 20, 1994. Contact: Mary-Jo Woodall, State Energy Conservation Office, 221 East 11th Street, Austin, Texas 78711-3047, (512) 305-9383.

Issued in Austin, Texas, on September 27, 1994.

Filed: September 27, 1994

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**Texas Department of Housing and
Community Affairs**

Notice of Application Workshops

The Texas Department of Housing and Community Affairs (TDHCA) invites you to attend one of six application workshops for Program Year 1994 HOME Investment Partnership Program. Because we anticipate a larger interest than last year, we are requesting that you register no later than October 7, 1994. We can then ensure adequate materials and facilities. Walk-ins will be welcome; however, materials will be limited. Locations and dates for the workshops are listed below. Workshops will begin at 9:00 am.

Application Activity Time

Tenant-Based Rental Assistance 9-10:30 a.m.

Break 10:30-10:45 a.m.

Housing Innovation Fund 10:45-11:45 a.m.

Lunch 11:45 a.m.-1:00 p.m.

First-Time Homebuyer Assistance 1:00 p.m.-2:30 p.m.

Break 2:30 p.m.-2:45 p.m.

Owner-Occupied Housing Assistance 2:45 p.m.-5:00 p.m.

The Rental Project Assistance workshop will be an all-day workshop, held only in Austin, and will be concurrent with the other sessions.

The workshop locations and sites:

October 11, 1994 Austin

Holiday Inn (512) 448-2444

3401 S IH-35, Austin, Texas 78741

October 12, 1994 Abilene

Quality Inn (915) 676-0222

505 Pine Street, Abilene, Texas 79601

October 13, 1994 Amarillo

Harvey Hotel (806) 358-6161

3100 I-40 West, Amarillo, Texas 79102

October 18, 1994 Paris

Holiday Inn (903) 785-5545

73560 NE Loop 286, Paris, Texas 75464

October 19, 1994 El Paso

Radisson Suite Inn (915) 772-3333

1770 Airway Boulevard, El Paso, Texas 79925

October 20, 1994 South Padre

South Padre Island Convention & Business Bureau 1-800-343-2368

7355 Padre Boulevard, South Padre Island, Texas 78597

Requests for applications should be mailed to: HOME

Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or fax to (512) 475-3287.

Note: Applications will not be available for the public until the first workshop. For additional information call Teo Gomez at (512) 475-3108.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

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

TRD-94-8630

Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: September 26, 1994

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**Texas Department of Insurance
Company License Applications**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Southern Farm Bureau Property Insurance Company, a foreign fire and casualty company. The home office is in Ridgeland, Mississippi.

Application for a name reservation in Texas for Memorial Sisters of Charity Health Plans, a domestic health maintenance organization. The home office is in Houston, Texas.

Application for name change by Markel Rhulen Insurance Company, a foreign fire and casualty company. The proposed new name is Markel American Insurance Company. The home office is in Glen Allen, Virginia.

Application for name change by General Electric Guaranty Insurance Corporation, a foreign fire and casualty company. The proposed new name is Peninsula Property and Casualty Company. The home office is in Wilmington, Delaware.

Application for name change by The Universe Life Insurance Company, a foreign life, accident and health company. The proposed new name is Farmers Health Alliance Insurance Company. The home office is in Lewiston, Idaho.

Application for name change by American Transcontinental Life Insurance Company, a foreign life, accident and health company. The proposed new name is Healthy Alliance Life Insurance Company. The home office is in St. Louis, Missouri.

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 27, 1994.

TRD-9448759

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

Filed: September 28, 1994

Notice of Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2116 scheduled for 9:00 a.m., November 7, 1994 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal filed on behalf of the Texas Automobile Insurance Service Office (TAISO). TAISO's petition proposes amendments to the Texas Automobile Rules and Rating Manual (the Manual). These amendments were proposed in a petition (Reference Number A-0494-09), filed by TAISO on May 12, 1994.

The proposed changes to Manual Rule 136 segregate the physical damage coverages shown in the rate section of the rule and more clearly designate each paragraph and section by adding the appropriate Roman numeral, number or letter. These are editorial changes, which improve the rule's clarity, as well as adding uniformity to this section of the Manual.

The proposed changes to Manual Endorsement 585 (to be redesignated 585A) add a new paragraph to specify that motorhome coverage is provided by the attachment of a miscellaneous type vehicle endorsement to the Personal Auto Policy. Further, the proposed changes add a phrase clarifying that "the exclusions [listed] below are deleted from the Miscellaneous Type Vehicle Endorsement." The language presently contained in Endorsement 585 may cause confusion by implying that the designated exclusions are to be deleted from the policy rather than from the endorsement.

The present numbering sequence of the exclusions contained in Part D to Endorsement 583B (to be redesignated 583C)-Coverage for Damage to Your Auto contains an error in that it inadvertently labels two separate provisions exclusion 11. The 1992 revisions to the Personal Auto Policy include an exclusion 11 relating to coverage for the seizure of an auto. Separate and independent exclusions 11 and 12 were added by Endorsement 583B. The proposed changes to Endorsement 583B eliminate the sequencing error by renumbering exclusions 11 and 12 contained in Part D of Endorsement 583B to exclusions 12 and 13 respectively. These proposed editorial changes are needed in order to eliminate the conflict of having two provisions labeled exclusion 11 in Part D relating to coverage for damage to an auto. Further, the proposed changes are needed in order to insure proper interpretation and application of proposed Endorsement 585A, which references and affects exclusions 12 and 13.

A copy of the petition containing the full text of these proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147; refer to Reference Number A-0494-09.

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public meeting on November 7, 1994. The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-8448757

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

Filed: September 28, 1994

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas for Health Systems Integration, Inc., a foreign third party administrator. The home office is in Bloomington, Minnesota.

Application for admission to Texas for Association Service Office, Inc., a foreign third party administrator. The home office is in Wyncote, Pennsylvania.

Application for incorporation in Texas of Alliance Administrative Services, Inc., a domestic third party administrator. The home office is in Fort Worth, Texas.

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 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

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

TRD-8448758

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

Filed: September 28, 1994

Commission on Jail Standards Correction of Errors

The Commission on Jail Standards submitted proposed new §§259.400-259.460. The rules appeared in September 20, 1994, issue of the *Texas Register* (19 TexReg 7361).

In §259.401 it should read "§259.401. Facility Concept. Low risk facilities shall be designed only in conjunction with facilities which meet the requirements of Chapter 259, §§259.100-259.169 of this title (relating to New Jail Design) or Chapter 261, §§261.100-261.171 of this title..."

The Commission on Jail Standards submitted proposed new §§263.50-263.56. The rules appeared in the September 20, 1994, issue of the *Texas Register* (19 TexReg 7391).

The section numbers on page 7393 reads as follows: "§§259.52, 259.53, 259.54, 259.55, and 259.56" it should read "§§263.52, 263.53, 263.54, 263.55, and 263.56."

Texas Rehabilitation Commission Request for Proposals

Propose: The purpose of this grant is to award funds to an organization which will provide administrative support to the State Independent Living Council (SILC). In compliance with Title VII, Part B, of the Rehabilitation Act of 1973, as amended, the Texas Rehabilitation Commission (TRC) and the Texas Commission for the Blind (TCB) are making these funds available.

It is anticipated that \$96,000 will be available for this purpose for FY 1995. Costs incurred for FY 1995 by the SILC prior to award of the grant will be deducted from the funds available for grant award. These funds are not intended to be the sole funding source for these activities, but are TRC's and TCB's contribution to the SILC resource plan, as outlined in the State Plan for Independent Living.

The Texas Rehabilitation Commission is authorized by Title 7, Section 111.052, Human Resources Code, Texas Civil Statutes, to enter into these contracts with public and private organizations and with individuals for the purpose of providing rehabilitation services.

Eligibility: Proposals will be accepted from non-profit organizations located in the State of Texas who: have at least two years' experience administering programs of service to people with a wide variety of significant disabilities, promote and practice a philosophy of consumer control and cross-disability regarding the organization's decision-making, service delivery, and management, and are governed by a Board that is the principal governing body of the organization and is composed of a majority (at least 51%) of persons with significant disabilities.

Description of Services: The organization that receives the grant award is expected to provide all services necessary for the effective and efficient administrative support of the SILC including, but not limited to: staff (support personnel), travel expenses for support staff and SILC members (including personal assistant expenses if applicable), office space, supplies and utilities, office equipment, computer equipment, and/or other necessary equipment, printing, copying, fax, postage, liability insurance, contracted legal services (as necessary), communication between SILC members (telephone and correspondence) and other external organizations, meeting arrangements (space, scheduling, coordination), maintaining records and working files for SILC, other activities as determined by the SILC.

The functional oversight of all support activities will be conducted by the SILC. Day-to-day personnel management, purchasing and accounting functions will be the responsibility of the organization that receives the award.

Application Evaluation Criteria: All applicants must meet the requirements set forth in the Eligibility section of this RFP. All information provided in the application is subject to validation. Applications may be modified only to correct technical inaccuracies.

Applications will be evaluated by a Review Panel composed of TRC staff, TCB staff, and appointed members of the SILC (a total of five members). The Review Panel will evaluate all applications for cost efficiency and effectiveness in providing these support services to the SILC:

Evaluation criteria will include:

Management Experience 35 points;

Consumer controlled Philosophy 30 points;

Cost 35 points Maximum 100 points;

The recommendations of the review panel will be submitted to the Commissioner of TRC and the Executive Director of TCB for final review and approval.

Additional Information: Any or all applications may be rejected by the Review Panel, if it is determined to be in the best interest of the SILC. All applications will be kept confidential until the award is made. This award shall be in effect from December 1, 1994, to September 30, 1995. The grant will be renewed (continued) on an annual basis based on the performance of the grantee and SILC's continuing need for the services. The grantee will be required to submit a continuation application (budget proposal) for approval by TRC and TCB each year. This award will be governed and administered under regulations related to the Rehabilitation Act of 1973, as amended, and Department of Education regulations related to the administration of grants (34 CFR 74-85, as applicable) and applicable grant administration and monitoring policies and procedures of TRC and TCB.

Application Transmittal Instructions: TRC is coordinating the application process on behalf of the SILC. Applications must be received by TRC before Monday, November 7, 1994, 4:00 p.m. to Vernon Dement, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751.

Faxed applications will not be accepted.

Award and Notification Procedures: All applicants will be notified of the outcomes of the completed application review process within ten days of the review date. The decisions resulting from the completed application review process will be final.

Questions regarding this RFP should be directed to Vernon Dement, (512) 483-4422.

Issued in Austin, Texas, on September 23, 1994.

TRD-9448723

Charles W. Schlessor
Associate Commissioner for Legal Services
Texas Rehabilitation Commission

Filed: September 27, 1994

Texas Department of Transportation Public Notice

The Texas Department of Transportation will hold a meeting October 14, 1994, at 1:00 p.m., in Room 118 of the Stephen F. Austin Building located at 1700 North Congress Avenue, Austin. The purpose of the meeting is to hear presentations from certain state agencies, industry groups, and organizations about how issues before the Land Transportation Standards Subcommittee (LTSS) will affect Texas. The LTSS is a body created by the North American Free Trade Agreement (NAFTA) to address implementation and compatibility issues among the United States, Mexico and Canada, including driver and vehicle standards, vehicle weights and dimensions, traffic control devices for highways, certain rail standards, and hazardous materials standards.

For further information, contact Henry Nevares, International Relations Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 475-0716.

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

TRD-9448842 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: September 26, 1994



Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineering consultant, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services: bridge inspection (general inspection and rating) of all on-system bridges in Webb and Duval counties.

Deadline for Proposals: A letter of intent notifying TxDOT of the engineering consultant's intent to submit a proposal will be accepted at the TxDOT Laredo District Office, P.O. Drawer 2219, Laredo, Texas 78044-2219 until 5:00 p.m., October 18, 1994.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Fitzgerald G. Sanchez, P.E. (210) 712-7400 or FAX (210) 712-7401.

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

TRD-9448843 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: September 26, 1994



The University of Texas System Consultant Contract Award

The University of Texas M.D. Anderson Cancer Center (UTMDACC) has filed an award for consultant services under the provisions of the Government Code, Chapter 2254.

The consultant proposal request appeared in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8480).

The consultant will be responsible for developing an equitable compensation program which will emphasize internal equity, market competitiveness, and career and salary growth opportunities. Specific tasks include collecting and analyzing position information and evaluating position relationships utilizing computer assisted techniques; gathering market data and developing salary structures; developing compensation policies for administration and maintenance of the program, meeting with institutional leadership to discuss recommendations; and program implementation to include education of users and communicating the program to the employee population in administrative staff positions and UTMDACC management.

The consultant selected is Towers Perrin, 1221 McKinney, Suite 2600, Houston, Texas 77010. The contract award is for \$83,500. The contract began July 15, 1994 and will continue through June 14, 1995.

Deliverables are to be delivered to UTMDACC no later than June 14, 1995.

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

TRD-9448696 Arthur H. Dilly
Executive Secretary to the Board of
Regents
The University of Texas System

Filed: September 27, 1994



1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. 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