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- Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposed publication date.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

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 "TexasReg" 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 request 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
2. Agriculture
3. Banking and Securities
4. Community Development
5. Cultural Resources
6. Economic Regulation
7. Education
8. Examining Boards
9. Health Services
10. Insurance
11. Environmental Quality
12. Natural Resources and Conservation
13. Public Finance
14. Public Safety and Corrections
15. Social Services and Assistance
16. Transportation

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

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

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

TITLE 40, SOCIAL SERVICES AND ASSISTANCE
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year). Update by Fax: An up-to-date Table of TAC Titles Affected is available by fax upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 663-5561.
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Texas Department of Transportation

Correction of Error
Public Notice

The University of Texas at Brownsville

Request for Proposals for the Development and Implementation of a Non-Faculty Compensation Program.
Name: Byron McQueary
Grade: 8
School: Bowman Middle School, Holland ISD
Name: J. Fagner
Grade: 7
School: Bowman Middle School, Holland ISD
Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the Texas Register at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 10. COMMUNITY DEVELOPMENT
Part I. Texas Department of Housing and Community Affairs
Chapter 49. Low Income Housing Tax Credit Rules

• 10 TAC §49.15

The Texas Department of Housing and Community Affairs (the Department) Low Income Housing Tax Credit (LIHTC) Program proposes new §49.15, pursuant to the action by the Board of Directors of the Texas Department of Housing and Community Affairs at the November 10, 1994 meeting. The Department is proposing the new section in order to allow it to issue reservations and forward commitments of tax credits to applicants in the 1994 cycle or to carry forward applications on a waiting list to 1995 pursuant to an additional cycle.

This action is being undertaken to expedite the 1995 tax credit allocation process as well as to capture the efforts expended to date by the Department’s staff and the tax credit applicants.

Kelly Elizondo, Director of Housing Programs, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Elizondo also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to enhance the Department’s ability to provide safe and sanitary housing for Texans through the tax credit program administered by the Department. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kelly Elizondo, Director of Housing Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

The new rule is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; Acts of the 73rd Legislative Regular Senate Bill 45, Chapter 141, effective May 16, 1983; and Acts of the 73rd Legislative Senate Bill 1358, Chapter 725, effective September 1, 1993, and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas.

The Government Code, Chapter 2306, is affected by this new rule.

§49.15. Forward Reservations; Binding Commitments.

(a) Anything in §49.4 of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) or elsewhere in this chapter to the contrary notwithstanding, the Department may determine to issue reservations and commitments of tax credit authority with respect to projects from the state housing credit ceiling for the calendar year following the year of issuance (each a “forward commitment”). The Department may make such forward commitments:

(1) with respect to projects placed on a waiting list in any previous application cycle during the year or;

(2) pursuant to an additional application cycle.

(b) If the Department determines to make forward commitments pursuant to a new application cycle, it shall provide information concerning such cycle in the Texas Register. In inviting and evaluating applications pursuant to an additional allocation cycle, the Department may waive or modify any of the set-asides set forth in §49.5(a) and (b) of this title (relating to Set-Asides, Reservations and Preferences) and make such modifications as it determines appropriate in the threshold criteria, evaluation factors and selection criteria set forth in §49.6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects) and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional application cycle, include projects previously evaluated within the calendar year and rank such projects together with those for which applications are newly received.

(c) Unless otherwise provided in the reservation notice or commitment notice with respect to a project selected to receive a forward commitment or in the announcement of an application cycle for projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this §49.15 shall be made subject to the availability of state housing credit ceiling in the calendar year with respect to which the forward commitment is made. No more than 45% of the per capita component of state housing credit ceiling anticipated to be available in the State of Texas in a particular year shall be allotted pursuant to forward commitments. If a forward commitment shall be made with respect to a project placed in service in the year of such commitment, the forward commitment shall be a “binding commitment” to allocate the applicable credit dollar amount within the meaning of the Code, §42(b)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible projects which received a forward commitment, in which event the forward commitment shall be canceled with respect to such project.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s authority to adopt.
The amendments and new sections are proposed under Texas Civil Statutes, Article 8886, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act. The Article that is affected by the amendments and new rules is Article 8886, §§3, 6, 8, and 10.

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

Cheating—Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception while taking a qualification examination.

§66.20. Registration Requirements—General.

(a)-(e) (No change.)

(f) Individuals who are registered under Texas Revised Civil Statutes, Article 8886 (the Act) shall certify that the registrant has read and submits to the code of ethics as follows:

(1)-(12) (No change.)

(13) shall not solicit or advertise property tax consulting services by claiming a specific result or stating a conclusion regarding such services without prior analysis of the facts and circumstances pertaining thereto.

(g) (No change.)

§66.21. Registration Requirements.

(a) (No change.)

(b) The registration application must:

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

(7) also include, if initial application for senior property tax consultant:

(A)-(B) (No change.)

(C) the requirements of Texas Revised Civil Statutes, Article 8886, §3(c)(3); if requesting waiver of the examination, a copy of the applicant’s CMI designation certificate from the Institute of Property Taxation, or, if verifiable resume indicating the applicant’s primary occupation for at least 25 years preceding the date of the application involved the performance or supervision of property tax consulting services or property appraiser, assessment, or taxation, and who has performed or supervised the performance of property tax consulting services as the applicant’s primary occupation for the seven years preceding the date of application];

(8)-(9) (No change.)

(c)-(d) (No change.)

§66.61. Responsibilities of Department—Examinations.

(a)-(c) (No change.)

(d) Cheating on an examination is grounds for denial of a license.


(a) (No change.)

(b) Each educational program, course offering, or seminar shall be reviewed bi-annually. [The commissioner may approve courses and seminars, for upgrade credit and initial continuing education classroom hours, after the provider satisfies the department that the course subject matter is appropriate for the continuing education for property tax consultant registrants and that the information provided in the course will be current and accurate.]

(1) The provider must submit for evaluation an instructor’s manual for each proposed course, proposed course change, or seminar change. Each manual must contain the following:

(A) course description;

(B) learning objectives;

(C) evaluating techniques;

(D) outline of the subject matter;

(E) instructional strategies;

(F) course participant handouts;

(G) bibliography or source of update subject matter;

(c) Multiple recognized provider’s educational programs, course offerings or seminars may be submitted under a single recognized private provider application.

(d) Each educational program, course offering or seminar shall be considered individually.]

§66.63. Responsibilities of the Department—Recognizing Courses and Programs.

(a) The commissioner may approve courses and seminars, for upgrade credit
and initial continuing education classroom hours, after the provider satisfies the department that the course subject matter is appropriate for the continuing education for property tax consultant registrants and that the information provided in the course will be current and accurate.

(1) The provider must submit for evaluation an instructor's manual for each proposed course, proposed course change, or seminar change. Each manual must contain the following:

(A) course description;
(B) learning objectives;
(C) evaluating techniques;
(D) outline of the subject matter;
(E) instructional strategies;
(F) course participant handouts; and
(G) bibliography or source of update subject matter.

(b) Multiple recognized provider's educational programs, course offerings or seminars may be submitted under a single recognized private provider application.

(c) Each educational program, course offering or seminar shall be considered individually.

(d) The commissioner may recognize any appropriate course or program that is currently recognized by a department or agency of the State of Texas.

§66.64. Responsibilities of Department—Enforcement.

(a) The department shall investigate complaints which allege acts constituting violations of these sections.

(b) The department may conduct on-site audits of any course offered by a recognized private provider. An audit report indicating noncompliance with these sections shall be appropriately referred for enforcement.

§66.65. Advisory Council.

(a)-(g) (No change.)

(h) Members of the council serve for staggered three-year terms with the terms of a property tax consultant member and a consumer member expiring February 1 of each year. Initial terms under this rule will be established so that one property tax consultant position and one consumer position will expire on February 1 of the years [1995], 1996, [and] 1997 and 1998.


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

(c) A participant [Course] roster shall be provided to the Department [upon request] and shall include actual hours attended.

(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 November 17, 1994.

TRD-941060
Jack W. Garlson
Executive Director
Texas Department of Licensing

Early possible date of adoption: December 28, 1994

For further information, please call: (512) 483-7357

♦ ♦ ♦ ♦

16 TAC §66.63

(EDITOR'S NOTE: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation proposes the repeal of 16 TAC §66.63, concerning property tax consultants. The section is being repealed to allow for the adoption of a new section and renumbering the existing §66.63.

James D. Brush, II, Director, Policies and Standards Division of the Texas Department of Licensing and Regulation, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Mr. Brush has determined that for each of the first five years the repeal is effective the public benefit anticipated as a result of enforcing the repeal will be a net benefit of sections. There will be no net effect on small businesses. There is no economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 8886, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The Article that is affected by the repeal is Article 8886, §6.

§66.63. Responsibilities of the Department—Enforcement.

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

Issued in Austin, Texas, on November 17, 1994.

TRD-941061
Jack W. Garlson
Executive Director
Texas Department of Licensing and Regulation

For further information, please call: (512) 483-7357

♦ ♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Board of Veterinary Medical Examiners

Chapter 571. Licensing Examinations

♦ 22 TAC §571.4

The Texas Board of Veterinary Medical Examiners proposes an amendment to §571.4, concerning Special Licenses. This amendment will qualify "board-approved veterinary programs" as cited in the Veterinary Licensing Act, §10, Article 8886, as programs recognized and accredited by the appropriate authority of the American Veterinary Medical Association.

Ron Allen, Executive Director of the Board, has determined that this amendment will have no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Allen also has determined that for each year of the first five years the section is in effect, the public benefit will be to clarify what veterinary programs are approved by the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments concerning this amendment must be received by December 1, 1994, and may be addressed to Ron Allen, Executive Director, Texas Board of Veterinary Medical Examiners, 1448 South IH-35, Suite 306, Austin, Texas 78704, (512) 447-1183, Fax (512) 442-3443.

The amendment is proposed under Texas Civil Statutes, Article 8886, §7(e), which provide the Texas Board of Veterinary Medical
Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

This amendment affects §10A of the Veterinary Licensing Act, Article 8860, which provides the Board with authority to issue special licenses to individuals employed in a Board-approved veterinary program at an institution of higher education.

§571.4. Special Licenses.

(a) Section 10A provisions. Under the provisions of the Veterinary Licensing Act, §10A, the State Board of Veterinary Medical Examiners shall offer the State Board Jurisprudence Examination to applicants for Special Licensure at least annually under the following conditions:

(1) Candidates for Special Licensure must be identified to the Board, in writing, from the employing or controlling authority as meeting the provisions of §10A, A board-approved program at an institution of higher education shall mean any program which is recognized and accredited by an appropriate body of the American Veterinary Medical Association. The letter shall state the candidates name, mailing address, and specific official duties that require a Special License.

(2)-(6) (No change.)

(b)-(e) (No change.)

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

Issued in Austin, Texas, on November 17, 1994.

TRD-8451085 Ron Allen Executive Director Texas Board of Veterinary Medical Examiners

Proposed date of adoption: February 8, 1995

For further information, please call: (512) 447-1183

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Chapter 573. Rules of Professional Conduct

Prescribing and/or Dispensing Medications

• 22 TAC §573.44

The Texas Board of Veterinary Medical Examiners proposes new §573.44, concerning Compounding Drugs. This rule will provide veterinary practitioners with guidelines for compounding drugs. The guidelines are based on the Federal Drug Administration’s Compliance Policy Guide (CPG) concerning compounding drugs and illegal manufacturing of drugs.

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

The public benefit will be to ensure that veterinarians exercise sound medical judgment when compounding drugs for administration to patients. There is no anticipated economic costs to persons required to comply with the rule as proposed.

Comments concerning this amendment must be received by December 1, 1994, and may be addressed to Ron Allen, Executive Director, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 308, Austin, Texas 78704, (512) 447-1183, Fax (512) 442-3443.

The new rule is proposed under Texas Civil Statutes, Article 8860, §7(e), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

The new rule affects §8(a) of the Veterinary Licensing Act, Article 8860, which provides the Board with authority to adopt rules appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

§573.44. Compounding Drugs.

(a) Policy Preamble. The Board acknowledges the medical need for compounding, within certain aspects of veterinary practice, to enable the profession to use drugs in a responsible manner. The current state of veterinary medicine requires products to treat hundreds of conditions in more than 100 species, some of which are known to have unique physiological characteristics. While efforts have and are being made to expand the number of drug approvals for all applications of new animal drugs, only a fraction of the products explicitly labeled for each of these indications have U.S. Federal Drug Administration (FDA) approved. Consequently, veterinarians are required to relieve pain and suffering, treat diseases or conditions, and save animal lives in clinical situations in which no FDA approved product is properly formulated and labeled to address the specific medical need. However, there is a potential for harm to the public end health of animals when drug products are compounded, distributed and used on a large scale in the absence of adequate safeguards and practices. Therefore, the Board will implement and enforce the following guidelines regarding veterinarians who find the need to compound. These guidelines are based on the FDA’s Compliance Policy Guide (CPG) on compounding and illegal manufacturing that were developed for use by veterinarians and pharmacists. CAUTION: VETERINARIANS SHOULD BE AWARE THAT FEDERAL AND STATE DRUG LAWS CAN CHANGE. THIS RULE IS ADOPTED BY THE BOARD TO ENABLE PRACTITIONERS TO COMPOUND DRUGS WHEN DOING SO IS NOT IN CONFLICT WITH FEDERAL AND STATE DRUG LAWS OR REGULATIONS.

(b) Definition of "drug". When used in this rule, the definition of drug shall be as defined in Texas Food, Drug, and Cosmetic Act, §431.002(14). Section 431.002(14) currently reads: "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure of any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with §403(r) of the federal Act, and for which the claim is approved by the secretary, is not a drug solely because the label or labeling contains such a claim.

(c) Definition of Compounding. Any manipulation to produce a dosage form drug, except for that manipulation which is provided for in directions for use on the labeling of an approved drug product, e.g., reconstitution of a sterile powder with water for injection.

(d) Definition of Illegal Manufacturing. Any such manipulation that occurs outside the confines of a legitimate practice, e.g., a veterinarian-client-patient relationship does not exist.

(e) Illegal Manufacturing or Unacceptable Compounding Prohibited. The following situations would likely be considered illegal manufacturing, or, if within the confines of a legitimate practice, unacceptable compounding. These situations will be considered of high regulatory priority by the Board and would likely result in an enforcement action against the person or persons responsible for such violative behavior and reporting to the FDA:

(1) preparation for sale of large quantities of unapproved new animal drugs on an ongoing basis and where no valid medical need or veterinary/client/patient relationship exists;

(2) promotion and/or distribution of compounded medications that are essentially similar to FDA-approved products;

(3) preparation for sale of unapproved new animal drugs which employ fanciful or trade names, colorings or other
additives, or that in any way imply that the compounds have some unique effectiveness or composition;

(4) advertising, promotion, display, resale, or other means of marketing prepared unapproved new animal drugs; and

(5) offering compounded medications at wholesale to other state licensed veterinarians, pharmacists or other commercial entities for resale.

(f) Acceptable Compounding. Limited compounding by a veterinarian (or pharmacist on a veterinarian’s prescription) is acceptable within the following guidelines. The practitioner would utilize the following decision process to determine whether or not compounding is necessary and justifiable. This process is designed to ensure that compounding is initiated only in those situations where the needs of the patient are great and the risks to the patient and consumer are small.

(1) The first question or step of the process is a determination as to whether the health of the animal would be threatened or whether suffering would result from a failure to treat. If the answer to this question is in the affirmative, then the second consideration of the practitioner should be whether there is a need to create an appropriate dosage form for the species, age, anatomy, size, medical conditions, or safety of the patient or practitioner, or whether compounding is necessary because of a desire to increase effectiveness, decrease side effects or minimize the need for restraint of dangerous animals.

(2) If the answer to this question is also in the affirmative, the practitioner should consider whether there is a marketed approved animal drug dosage form which, when used as labeled, or used in an extra-label manner, might acceptably treat the condition. The practitioner should also consider whether there is a human-labeled drug available that can be used in accordance with CPG 7125.35 to acceptably treat the condition. The use of approved animal drugs in an extra-label manner or the use of human-labeled drugs would both be preferred over the use of compounded products due to the concern that compounded products may pose purity, potency and stability problems.

(3) All of the questions in this decision process should be answered in the affirmative before a decision is made by the practitioner to compound. A negative answer to any one of the questions would negate the need to compound. When a decision is made to compound, all the following criteria and precautions must be met by the practitioner.

(A) Compounding can only be performed by the veterinarian or by a pharmacist on the receipt of a valid prescription from a veterinarian. Compounding can only be performed within the confines of a legitimate veterinarian-client-patient relationship.

(B) Veterinarians must exercise professional judgement to determine when compounding requires the services of a pharmacist. Professional assistance is necessary when the complexity of compounding exceeds the veterinarian’s knowledge, skill, facilities, or available equipment.

(C) The safety and efficacy of the compounded drug product is consistent with current standards of pharmaceutical and pharmacological practices, that is, known incompatibilities and inappropriate combinations are avoided and minimum current good compounding practices for the preparation of drug products by State-licensed pharmacies is met.

(D) The veterinarian is responsible for ensuring, when a compounded drug product is used in a food-producing animal, that no violative tissue residues occur from such use.

(E) Procedures are instituted to assure that appropriate patient records for the treated animal are maintained.

(F) All drugs dispensed to the animal owner by the veterinarian or pharmacist must bear labeling information and an expiration date which is adequate to properly use the product. A complete label should bear the following information:

(i) name and address of the attending veterinarian;

(ii) date dispensed and expiration date. The expiration date should not exceed the length of the prescribed treatment;

(iii) medically active ingredients;

(iv) identity of treated animals;

(v) directions for use;

(vi) cautionary statements if needed;

(vii) withdrawal/withholding times if needed;

(viii) condition or disease to be treated.

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 November 16, 1994.

TRD-9451004  Ron: Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Proposed date of adoption: February 8, 1995
For further information, please call: (512) 447-1183

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 23. Prepaid Legal Service

§ 23.1, § 23.3
The Commissioner of Insurance of the Texas Department of Insurance proposes amendments to §§23.1, concerning definitions and §§23.3, concerning general provisions for Chapter 23 corporations. These proposed amendments clarify and update the existing rules by implementing legislative changes to the Insurance Code, Articles 1.02, 23.01, and 23.22, enacted by the 73rd Texas Legislature. The proposed amendment to §23.1(b)(3) allows services to be rendered by any attorney licensed to practice law in the jurisdiction in which the legal services are to be provided by nonprofit legal services corporations. The proposed amendment to §23.3(g) provides that the department shall refer complaints against an attorney connected with a nonprofit legal services corporation to the appropriate grievance official in this state for attorneys licensed in this state, and shall refer complaints regarding attorneys licensed in other jurisdictions to the appropriate licensing agency of the other jurisdiction. Section 23.3 is also proposed to be amended by adding a new subsection (i) to indicate the effective date of these amendments. The proposed subsection (i) provides that the amendment to §23.1(b)(3) will apply only to contracts entered into or renewed by a nonprofit legal services corporation on or after the effective date of this section. It also provides that a contract that is entered into or renewed before the effective date of this section is governed by the regulations in effect prior to the effective date of these amendments and that the regulations are continued in effect for that purpose. Proposed amendments to §§23.1(b)(6), and §23.3(a), (c)(5), (d)(1), (f), (g) change references from the "board," which was defined as the State Board of Insurance, to the "department," which is proposed to be defined as the Texas Department of Insurance.

Beth Hill, director of the life, annuity and credit division, Texas Department of Insurance, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these amendments and there will be no effect on local employment or the local economy. There is no anticipated loss or increase in revenue to state or local government as a result of these amendments. Based upon the cost per hour of labor, there will be no difference between the cost

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of compliance for small businesses as compared with the cost of compliance for large businesses affected by the rule.

Mu. Hill also has determined that for each year for the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments is the ability of enrollees of nonprofit prepaid legal services corporations to obtain coverage for legal assistance which needs to be performed by an out-of-state attorney. The anticipated economic cost to persons (entities) required to comply with the section as proposed is a one time cost of $100 to $300 per policy during the first five years the proposal is in effect.

Comments on the proposal, to be considered by the Commissioner of Insurance, must be submitted in writing within 30 days after publication of the proposed section in the Texas Register, to the Chief Clerk's Office, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Beth Hill, Director of Life, Annuity and Credit Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 116-1E, Austin, Texas 78714-9104. Any request for a public hearing on this proposal should be made separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code, Articles 23.01, 23.14, 23.16, 23.19, 23.22, 23.23, 1.02(a), and 1.03(a), and the Government Code, §§2001.004, et seq. The Insurance Code, Article 23.01, expands the definition of "attorney" to include those licensed in the jurisdiction in which the legal services were provided. Article 23.14 authorizes the department to approve the plan of operation and to retain continuing supervision over the plan of operation of nonprofit legal services corporations. Article 23.16 authorizes the department to approve benefit certificates, application forms, and prepaid legal services contracts to be used by nonprofit legal services corporations, and to issue rules concerning the forms. Article 23.19 authorizes the department to regulate participation contracts and agreements with insurers entered into by nonprofit legal services corporations. Article 23.22 authorizes the department to file complaints concerning the performance of attorneys connected with nonprofit legal services corporations. Article 23.23 authorizes the department to promulgate rules necessary to license and control agents of nonprofit legal services corporations. Article 1.02(a) states that all references to the State Board of Insurance in any Texas insurance law mean the Commissioner of Insurance or the Texas Department of Insurance as consistent with their respective powers and duties. Article 1.03A provides the commissioner with authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §§2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

The following are the statutes that are affected by these rules: §23.1 Insurance Code, Articles 23.01, 23.26, 5.13-5.24, 3.01-3.95-15, 1.02, 1.03A, §23.3 Insurance Code, Articles 1.02, 1.03A, 1.01, 1.04, 1.08, 1.09, 1.09-1, 1.11-1.25, 1.29, 3.12-3.14, 21.21, 21.21-2, 21.25, 21.28, 21.28A, 21.47, 1.10, 23.01-23.28

§23.1. Scope and Definitions.

(a) (No change.)

(b) Definitions. As used in these sections, unless the context of its use clearly indicates otherwise:

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

(3) Attorney-A person [currently] licensed [by the Supreme Court of Texas] to practice law in the jurisdiction in which the legal services are to be provided. [; provided,] For [for] insurance companies issuing contracts pursuant to the Insurance Code, Article 5.13-1, attorney is limited to [includes] any person licensed to practice law in any jurisdiction of the United States, or any of its possessions or territories or the District of Columbia.

(4)-(5) (No change.)

(6) Department [Board]-[the] Texas Department [State Board] of Insurance.

(7)-(12) (No change.)


(a) Supervision. All corporations organized under the provisions of these regulations are under the direct supervision of the department [board].

(b) (No change.)

(c) Books, records, and annual statement.

(1) (No change.)

(2) Each corporation shall file a statement of its operations for the year ending December 31, each year, said statement to reach the department [board] not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the department [board]. Such statement shall be accompanied by a filing fee of $50.

(d) Financial procedures.

(1) Each corporation shall maintain solvency in each of its funds, i.e., the admitted assets of each fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by the Insurance Code, Article 23.15) and it shall be a continuing condition of licensing by the department [board] that such solvency be maintained.
TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

§ 3.563

The Comptroller of Public Accounts proposes new §3.563, concerning savings and loan associations. This section contains guidelines for determining the taxable capital and earned surplus of a savings and loan association. This section is the result of the repeal of the savings and loan association exemption from franchise tax by the 72nd Legislature, 1991.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government beyond that anticipated in the legislation's fiscal note.

Mr. Reissig also has determined that for each year of the first five years the rule will be in effect the public benefit anticipated as a result of enforcing the rule will be in clarification of comptroller rules regarding savings and loan associations. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new section may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, Chapter 171, including but not limited to, §§171.054 (repealed), 171.001, 171.101, 171.1031, 171.259, and 171.317.

§3.563. Savings and Loan Associations.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due after January 1, 1992.

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

(1) Commercial domicile—The principal place from which the trade or business of the entity is directed.

(2) Net worth—

(A) Net worth for a savings and loan association shall include the amount of issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the association's net worth under generally accepted accounting principles) plus any retained earnings and paid in surplus as well as such other items as the Texas savings and loan commissioner may approve in writing for inclusion in the association's net worth.

(B) Net worth for a mutual association shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the Texas savings and loan commissioner may approve in writing for inclusion in its net worth.

(3) Savings and loan association—An entity that qualifies as a savings and loan association under the Internal Revenue Code, §7701(a)(9). This includes, but is not limited to:

(A) state savings and loan association—any savings and loan association organized under the laws of this state;

(B) federal savings and loan association—any savings and loan association organized under the laws of the United States of America;

(C) state-chartered savings bank—any savings bank organized under or subject to the Texas Savings Bank Act, §1, Senate Bill 396, Acts of the 73rd Legislature, 1993;

(D) federal savings bank—any savings bank organized under the laws of the United States of America; and

(E) mutual savings bank—a savings bank not authorized to issue capital stock.

(c) Subject to tax. All savings and loan associations or savings banks that are chartered, authorized to do business, or doing business in Texas are subject to Texas franchise tax, in the same manner as other corporations, beginning January 1, 1992.

(d) Other franchise tax provisions apply. All provisions of this section, concerning the Texas franchise tax, are applicable to savings and loan associations and savings banks. However, this section will control if it conflicts with another section of this subchapter.

(e) Apportionment of dividends and interest.

(1) If a savings and loan association or a savings bank has its commercial domicile in Texas, all dividends and interest received, including interest from the federal government unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation), are considered to be Texas gross receipts and gross receipts everywhere.

(2) If a savings and loan association or a savings bank does not have its commercial domicile in Texas, dividends and interest received are not considered to be Texas gross receipts but all are considered to be gross receipts everywhere unless otherwise excluded by §3.555(k) of this title (relating to Earned Surplus: Computation).

(3) Interest received by a savings and loan association for mortgages owned by the savings and loan association are considered Texas receipts if the savings and loan association's commercial domicile is in Texas.

(f) Mortgage loans.

(1) The sale of mortgages by a savings and loan association are apportioned based on the legal domicile of the payor.

(2) Receipts from servicing loans are apportioned based on where the servicing activities occur.

(g) Enforcement.

(1) The Texas Savings and Loan Commissioner shall revoke the charter of a savings and loan association; or a savings bank certified by the comptroller as delinquent in the payment of its franchise tax.

(2) Except as provided in paragraph (1) of this subsection, no savings and loan association or savings bank will have its corporate privileges or charter forfeited by the comptroller for not paying its franchise tax.

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 November 18, 1994.

TRD-9451088  Martin Cherry  Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: December 26, 1994

For further information, please call: (512) 463-4028
TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
Chapter 96. Certification of Long-Term Care Facilities

• 40 TAC §96.7

The Texas Department of Human Services (DHS) proposes an amendment to §96.7, concerning appeals, in its Certification of Long Term Care Facilities rule chapter. The purpose of the proposal is to add to the rule the circumstances under which DHS will or will not provide an informal reconsideration.

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

Mr. Rainford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that providers and consumers will have a clearer understanding of the informal reconsideration process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-5111 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-096, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (SO2), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

§96.7. Appeals.

(a) Informal reconsideration (IR). [for facilities other than intermediate care facilities for the mentally retarded]

[(1)] Prior to the effective date of any termination of certification, the Texas Department of Human Services (DHS) gives [(department) shall give] the facility an opportunity for an IR [informal reconsideration].

[(1)[(2)] Elements of the informal reconsideration are as follows:

(A) DHS gives [The department shall give] the facility written notice of the proposed termination of certification and the findings upon which the action is based.

(B) The facility will [shall] have the opportunity to refute DHS's [the department's] findings in writing. If the facility does not respond during the specified period, the action will be taken. If there is no response by the facility, DHS [the department] is not required to take any other action on the appeals process prior to the proposed action.

(C) If the facility does respond as required in subparagraph (B) of this paragraph, DHS [the department] will give the facility a written affirmation or reversal of the proposed action.

(2) DHS will provide IRs for an immediate termination of certification as follows:

(A) The facility must submit a written request for an IR and provide all supporting documentation within five calendar days after receipt of DHS's written notice of the proposed termination of certification. Long Term Care-Regulatory staff will provide a written response to the facility within seven calendar days after receipt of the request.

(B) If, as a result of a credible allegation visit, the immediate termination is changed to a 90-day termination, an IR will be offered based on the findings of this visit. This second IR will follow the procedures in paragraph (4) of this subsection.

(3) DHS will not provide an IR for an immediate termination of certification if, as a result of a credible allegation visit, DHS's proposal to immediately terminate the facility's certification is not changed.

(4) DHS will provide IRs for a 90-day termination of certification as follows:

(A) The facility must submit a written request for an IR and provide all supporting documentation within seven calendar days after receipt of DHS's written notice of the proposed termination of certification. Long Term Care-Regulatory staff will provide a written response to the facility within ten calendar days after receipt of the request.

(B) After the 45-day visit, DHS will provide the following IRs for a 90-day termination of certification:
Part XI. Texas Commission on Human Rights

Chapter 327. Administrative Review

§ 327.11 Disposal of Files and Related Documents

The Texas Commission on Human Rights proposes an amendment to §327.11, concerning Disposal of Files and Related Documents. This section describes retention and/or disposal of case files and records.

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

Mr. Hale 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 negligible. There will be no affect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments may be submitted to William M. Hale or Brooks William (Bill) Conover, Ill, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

The amendment is proposed under the Texas Civil Statutes, Article 5221k, §3.02(10), which provide authorization for the commission to modify or delete any of the Disposal of Files and Related Documents section.

The following are the statutes that are affected by this rule: Texas Civil Statutes, Article 5221k, §51.01 et seq (as amended by House Bill 860, Acts 1993, 73rd Legislature Chapter 276 effective September 1, 1993).

§ 327.11. Disposal of Files and Related Documents. The commission shall retain case files and related documents which have not been forwarded to FEOC for a period of two years [one year] after the administrative review procedures have been completed, except when a civil action has been filed in state court under the Texas Commission on Human Rights Act. At the conclusion of the two years [one year], the case file and related documents shall be disposed of by the commission. When a civil action has been filed in state court, case files and related documents shall be retained until the final disposition of the lawsuit. Prior to disposing of case files and related documents, authorization shall be obtained from the state auditor's office and the state librarian. In a private cause of action under the Texas Commission on Human Rights Act, the commission shall be held harmless for disposing of case files and related documents when the parties to the lawsuit or their attorneys of record fail to notify the commission by certified letter that a lawsuit has been filed in state court.

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 November 17, 1994.

TRD-8450170

William M. Hale
Executive Director
Texas Commission on Human Rights

Earliest possible date of adoption: December 25, 1994

For further information, please call: (512) 837-8534

PROPOSED RULES November 25, 1994 19 TexReg 9341
An agency may take final action on a section 30 days after a proposal has been published in the Texas Register. The section becomes effective 20 days after the agency files the correct document with the Texas Register, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

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

TITLE 1. ADMINISTRATION

Part I. Advisory Commission on State Emergency Communications

Chapter 252. Administration

• 1 TAC §252.4

The Advisory Commission on State Emergency Communications (ACSEC) adopts new §252.4, concerning the provision of and payment for copies of public records on file with the ACSEC, with changes to the proposed text as published on July 29, 1984, issue of the Texas Register (19 TexReg 5813).

The new rule specifies the charges for providing copies of public records and defines words and terms used in the text. The rule is amended to reflect changes in charges for public information and for consistency with those recommended by the General Services Commission.

The only public comment received was from Common Cause Executive Director, Susie Woodward, through Representative Bill Carter’s Office. Her recommendation was that the 15-minute reference be deleted from the rule in order to comply with adopted rule by the General Services Commission on charges for open records requests. The ACSEC agreed and made further changes, including adding definitions, in order to conform with those adopted by the General Services Commission.

The new section is adopted under Government Code, Chapter 552, Subchapter F, and Acts 1983, 73rd Legislature, Chapter 428, §5, which requires state agencies to promulgate rules setting out charges for open records requests.

§252.4. Charges for Open Records Requests.

(a) The fees for copies of the records of the Agency which are subject to public examination pursuant to the Texas Open Records Act shall be as follows:

(1) $0.10 per page for readily available information for less than 50 pages of standard-size paper up to 8-1/2 inches by 14 inches;

(2) an additional $15 per hour personnel charge for processing a request for readily available information of 50 pages or more which takes a minimum of one-hour;

(3) $0.10 per page, plus $15 per hour personnel charge, plus 20% of total personnel charges for overhead charge for any quantity of information that requires over one hour to process and is not readily available;

(4) $0.50 per minute if computer resources are required to obtain the requested information;

(5) actual postage and shipping charges are added to all requests;

(6) $0.10 per page for a local facsimile transmission, $0.50 per page for a long distance facsimile transmission in the same area code, and $1.00 per page for a long distance facsimile transmission in a different area code;

(7) nonstandard-size copies would consist of a diskette at $1.00 each, an audio cassette at $1.00 each, and paper larger than 8-1/2 inches by 14 inches at $0.50 per page;

(8) if certification is requested of any item, a charge of $5.00 will be added to the total charges;

(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and

(10) a reasonable deposit may be required for requests where the total charges are over $100.

(b) All requests will be treated equally. The Director may waive charges at his/her discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Agency and will be at the discretion of the Director.

(d) Confidential or proprietary documents whose distribution is limited by law will not be made available for examination or copying except under court order or other directive.

(e) All open records requests pursuant to Open Records Act shall be directed to the Executive Director.

(f) All requests under the Open Records Act must be in writing.

(g) 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. To determine full costs, governmental bodies may utilize the cost methodology adopted by the Council on Competitive Government.

(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. Governmental bodies should compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, governmental bodies should take into account not only whether the information is in fact readily available but also whether, in the exercise of their discretion, there is a reasonable expectation that the agency will receive multiple requests for copies of such information.
of efficient recordkeeping, it could and should have been readily available.

(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.

(5) State agency—Any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or statute, including a university system or institution of higher education as defined in Texas Education Code, §61.003, other than a public junior college.

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 November 21, 1994.

TRD-9451198
Mary A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

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Proposal publication date: July 29, 1994
For further information, please call: (512) 305-6911

TITLE 25. HEALTH SERVICES
Part II. Texas Department of Mental Health and Mental Retardation
Chapter 403. Other Agencies and the Public
Subchapter O. Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases

§ 25 TAC §§403.391-403.426

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§403.391-403.425, concerning practice and procedure with respect to administrative hearings of the department in contested cases, without changes to the proposed text as published in the October 14, 1994, issue of the Texas Register (19 TexReg 5593). The new sections are adopted contemporaneously with the repeal of existing Chapter 403, Subchapter O, concerning practice and procedure with respect to administrative hearings of the department in contested cases, which this new subchapter replaces.

Language has been added to §403.451 which states one purpose of the subchapter is to fulfill the requirements of the Administrative Procedures Act. In §403.453, definitions for "commission to examine witnesses," "default judgment," "summary judgment" have been added. Definitions for "adverse party's case," "decision," "pardons," "Texas Rules of Civil Procedure," "Texas Rules of Civil Evidence," "rules of privilege or privileges," "serve, serve upon, service notice, service," and "trial de novo" have been revised. Throughout the subchapter, minor language has been added for clarity or redundant language deleted. Portions of the text have been rearranged for clarification.

In §403.455, the subsection referring to department representation has been incorporated in the subsection describing party representation. Language has been added which directs the administrative law judge to provide a copy of the subchapter to all parties involved in a pending proceeding. The information contained in the "short and plain statement" of the notice referred to in §403.455(c)(4) has been clarified to mean the action complained of by the party requesting the administrative hearing. Language regarding the confidentiality of employees as a reason for closing an administrative hearing to the public has been deleted, also deleted is the language which describes the situations in which an administrative law judge lacks authority. Language which prohibits a lay representative from being an employee who has provided direct services to a person receiving services who is also a party in the contested case has been deleted. Language which describes persons may represent a party in certain situations has been deleted. Portions of the language in the subsection which describes pleadings has been deleted, expanded, or rearranged for clarification.

In §403.458, language has been added which gives the administrative law judge the authority to conduct hearings on motions and other proceedings and to administer affirmative. Language has also been added which puts the burden of proof on the department in all contested cases and allows a party to participate in a hearing via telephone/conference. Instruction for specific action to be taken when filing certain types of pleadings have been deleted. The subsection which allows a pleading to adopt and incorporate by specific reference any part of any document or entry in the official files and records of the department has been moved to the subsection which describes pleadings. Language has been added which allows for the identity of an individual receiving services to be revealed without consent only if consent cannot be obtained due to the individual's incompetence or lack of a legal guardian and the identity of the individual has been determined to be relevant and material to the proceeding. However, in those instances the administrative law judge must close the hearing to the public and any transcript of the record may not identify such individual. The consequences of a party who breaches confidentiality has been revised providing the administrative law judge authority to strike the party's pleading from the record. Language has been deleted which require lay representatives to observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas because lay representatives would be unfamiliar with those standards.

The language in §403.457 which describes the information transmitted by each party to all other parties has been moved to §403.455 for clarity. Language has been added which gives the administrative law judge authority to control the time limits for the admission of facts and genuineness of documents. Language regarding the number of questions and answers allowed for interrogatories has been deleted.

Language in §403.458(a)(1) and (2) has been reorganized and modified for clarity.

Language has been added to §403.459 which imposes an absolute time limit (60 days) for objection of a decision by the administrative law judge subsequent to the close of the administrative hearing. In §403.460, the term "final decision" has been changed to "administrative hearing decision." Language which
describes when an administrative hearing decision is final has been clarified and rearranged within the section. The term "order" in §403.461 has been deleted. The language which states that the provisions of the Persons with Mental Retardation Act, Texas Health and Safety Code, Subtitle D, take precedence has been deleted because that language is contained in the department rules governing state agencies which arise under the Persons with Mental Retardation Act. Clarifying language has been added regarding when a motion for a rehearing has been overruled by operation of law in the event of extension.

Subsections (b) and (c) of §403.461 has been renumbered for clarity. Advocacy organizations has been added to the distribution list in §403.452 and the references have been revised to reflect the changes made to the text, in §403.463.

Comments were received from an attorney for a provider of MHMR services; a parent of a state school resident; and the Dallas County MHMR Center, Dallas.

One commenter requested clarification on the responsibility of payment for a transcript of a hearing. The department responds that language has been added clarifying that the party requesting the transcript would be responsible for the costs.

The same commenter suggested language which would impose an absolute time limit for the rendition of a decision by the administrative law judge subsequent to the close of the administrative hearing. The department responds by adding the suggested language.

One commenter expressed appreciation for the improved language and increased number of definitions added since the previous proposal; however, the commenter still felt the procedures described in the subchapter were difficult to understand and extremely biased in the department's favor. The commenter opposed referencing additional rules governing state court procedures, (e.g., Texas Evidence Code and Rules of Civil Procedure) without actually attaching them to the subchapter because it would pose a hardship on persons required to comply with the subchapter but who could not afford an attorney to represent them and provide them with the referenced information. The department responds by advising the commenter that the rules referenced are available for review at most public libraries and at the office of any county attorney or district attorney. The rules referenced are literally hundreds of pages in length and subject to amendment at any time; therefore, attaching them to the subchapter would be neither financially nor legally prudent.

The same commenter felt the department had an unfair advantage because it was determining the entire administrative hearings process, including the selection of the administrative law judge, the development of the rules which would be followed, and the evaluation of the evidence submitted. The department responds that this process is not unique to the Texas Department of Mental Health and Mental Retardation, all of the large health and human service agencies in Texas follow this approach. The subchapter was originally adopted to fulfill the requirements of the Administrative Procedures Act (APA) which directs state agencies to adhere to the APA's administrative hearing procedures. The APA provides specific procedures and language regarding the department's authority when conducting administrative hearings in contested cases. Should the department contract with the State Office of Administrative Hearings (SOAH) to conduct its hearings, the administrative law judge at SOAH would have the same authority (but no knowledge of mental health and mental retardation issues). Administrative law judges are selected to conduct impartial hearings, not to rule in favor of the department. They are bound by the rules of civil procedure and Texas Rules of Evidence. This means that after each party has provided its evidence (e.g., exhibits, oral testimony, cross-examination) to prove his or her case, the administrative law judge makes a decision based solely on that evidence. The decision must include finding of fact and conclusions of law. This provision prevents the decision from being arbitrary or biased toward the department or any party. The department reminds the commentor of the cases at second level of appeal, a judicial review, is available to parties dissatisfied with the decision of an administrative hearing.

The commenter also objected to the language which allows that "[officials] notice may be taken of generally recognized facts within the area of the department's specialized knowledge," questioning why this language is stated in the department's behalf and not stated in any of the other parties' behalf. The commenter thought this information should only be discussed during the hearing. The department responds that this language, which originates in the Administrative Procedures Act, expedites the hearing by eliminating unnecessary procedures when accepting into the record indisputable facts relating to issues of mental and health and mental retardation, the area of the department's specialized knowledge. For example, these generally recognized facts may include a statement that state hospitals operate under the Mental Health Services Division of the department; that the department's priority population for mental retardation services in 1994-1995 consists of 73,225 persons; or that department rules governing interstate transfer adopted by the Texas Board of MHMR became effective on December 12, 1995. Facts within the area of another party's specialized knowledge are not considered generally recognized, but would be officially noticed nevertheless, as evidence submitted by the party during the proceeding. The department points out that language is in place which requires the notification of all parties of material officially noticed and all parties are provided an opportunity to contest it.

The commenter believed that the presence of an attorney to represent the department would intimidate other parties if those other parties have无力 to retain representation by an attorney as well. The department responds that the rule does not require an attorney to represent the department. Program staff may represent the department in some cases. In all likelihood, the department would choose a program staff member if the other party were not represented by an attorney. However, the department reserves the right to select an attorney if it so desires. The intention would be to have proper representation, not to intimidate other parties.

The same commenter requested clarifying language in §403.460 regarding when a decision is final and appealable and in §403.460 regarding the filing of a petition for a judicial review. The department responds by providing clarifying language to reflect the commenter's concerns.

One commenter requested the definition of "contested case" be refined to include personnel matters involving an employee and the department, duties, and privileges of a position. The department responds by clarifying the definition of "contested case" so that it parallels the definition in the Administrative Procedures Act. The Administrative Procedures Act provides procedures for administrative hearings granted by state or federal statute for which procedures are not otherwise provided for in applicable department rules. Statutes identify specific situations for which an administrative hearing is granted. This would not include any and all areas of perceived legal rights, duties, and privileges of any person.

The same commenter requested that a time frame be provided for filing a request for an administrative hearing. The department responds that statutes prescribe the time frames for each situation for which it grants an administrative hearing. Those time frames are included in the applicable department rule for which that situation would apply. This subchapter would then define the procedures for the administrative hearing.

The commenter inquired about the relationship of the administrative law judge with the department questioning who would be responsible for paying the administrative law judge. The department responds that the administrative law judge may be an employee of the department or an employee of another state agency with whom the department contracts. The department would pay the administrative law judge either directly or via contract with another state agency.

The same commenter asked who would be responsible for the costs associated with recording the hearing and/or transcribing the recording if the party who was assessed the cost refused to pay. The department responds that the department likely would pay the costs; however, failure to comply with the orders of an administrative law judge is grounds for the administrative law judge to strike any of the party's pleadings from the record with or without prejudice.

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking authority.

§403.451. Purpose. The purpose of this subchapter governing administrative hearings of the department in contested cases is:

(1) to provide a simple, efficient, and uniform set of procedures for all departmental administrative hearings in-
volving contested cases, which will ade-
quaely protect the rights of all parties
involved and will be consistent with due
process requirements of the Texas and fede-
rnal constitutions;

(2) to provide and to ensure
uniform standards, practices, and proce-
dures with respect to hearings held in con-
nection with such administrative
procedures;

(3) to provide a procedure
which will result in fair and expeditious
determination of causes governed by this
subchapter and adequately protect the pro-
cedural rights of all parties; and

(4) to fulfill the requirements
of the Administrative Procedures Act, Texas

§403.452. Applicability and Scope of Rules.

(a) The provisions of this
subchapter shall apply in all contested
cases.

(b) The provisions of this
subchapter shall not be construed so as to
enlarge, diminish, modify, or alter the jurisdic-
tion, powers, or authority of the depart-
ment or the substantive rights of any
person.

(c) The provisions of this
subchapter shall be given a liberal inter-
pretation in order that a just, fair, equitable,
and impartial judgment of the rights of the
parties under the established principles of
substantive law, as determined by appropri-
ate statutes or department rules, may be
attained in a timely manner and at the least
expense to all parties.

§403.453. Definitions. The following
words and terms, when used in this
subchapter, shall have the following mean-
ings, unless the context clearly indicates
otherwise.

Administrative hearing or adjudi-
cated hearing—An oral proceeding before
the department in which the rights and du-
ties of particular persons are judged after
notice and opportunity to be heard.

Administrative law judge or
ALJ—The attorney designated or appointed
by the commissioner to conduct and preside
over an administrative hearing.

Commission to examine
witnesses—A commission issued to direct
the taking of depositions of witnesses.

Commissioner—The commissioner
of the Texas Department of Mental Health
and Mental Retardation or designee.

Contested case—A proceeding
granted by statute for which procedures are
not otherwise provided for in applicable
department rules, including rate making or
licensing proceedings, in which the legal
rights, duties, or privileges of a party are to
be determined by the department after an
opportunity for an adjudicated hearing, ex-
cept in matters related solely to the internal
personnel policies and procedures of the
department.

Days—Calendar days, unless other-
wise specified.

Decision—A decision made by
the ALJ regarding the administrative hearing
over which the ALJ is presiding.

Default judgment—A judgment en-
tered against a party who has failed to
appear at the administrative hearing.

Department—The Texas Department
of Mental Health and Mental Retardation
(TMHMR) or its designee.

Exception—A party’s objection to an
order or ruling.

Findings of fact—Determinations
from the evidence submitted in the case
concerning facts asserted by one party and
denied by another.

Hearings Office—The Legal Services
Division of the department’s central office.

Interrogatories—A discovery device
consisting of written questions about the
proceeding submitted by one party to an-
other party or witness.

Motion—A request made to the ad-
mnistrative law judge for the purpose of
obtaining a ruling or order directing some
act to be done in favor of the movant.

Movant—The party making a motion.

Order—A command for action by the
administrative law judge as a result of a
ruling or decision.

Petitioner or party or agency named
or admitted as a party, pursuant to depart-
ment rules and statutes under which such
hearings are requested or held.

Person—An individual, partnership,
corporation, association, governmental sub-
division, or a public or private organization
of any character other than the department.

Person receiving services or person
served by the department—A person who is
receiving mental health or mental retarda-
tion services funded by or through the
department.

Pleadings—Written statements filed
by parties concerning their respective posi-
tions, claims, and rights in administrative
hearings, (e. g., applications, objections, pe-
titions, complaints, answers, replies, mo-
tious, etc.).

Preponderance of the evidence—Evi-
dence which is of greater weight or more
convincing than the evidence which is of-
ered in opposition to it.

Proceeding—The regular and orderly
progress in form of law, including all possi-
ble steps in an action from its beginning to
the final decision. A proceeding includes,
but is not limited to, the initiating docu-
ment, certificates of service, pleadings, mo-
tions, orders, prehearing conference, hear-
ing, the record, rulings, decisions, evidence,
testimony, and exhibits.

Proposed findings of fact—Findings
of fact as proposed by a party.

Texas Rules of Civil Proce-
dure—Those rules adopted by the Texas Su-
preme Court which govern procedure in
state courts involving all civil suits.

Texas Rules of Civil Evi-
dence—Those rules adopted by the Texas
Supreme Court which govern the admissi-
bility of evidence in state courts involving
all civil suits.

Privileged information—Information
(i.e., communications, written or verbal,
made by persons with a protected relation-
ship such as husband/wife, attorney/client,
doctor/patient, priest/penitent, etc.) which
the law protects from forced disclosure at
the option of the spouse, client, patient,
penitent, etc.

Ruling—A judicial determination by
the administrative law judge of the admissi-
ability of evidence, allowance of a motion,
etc.

Serve, serve upon, serve notice, ser-
vie—To mail or deliver a copy of a design-
nated document to a party or to the party’s
attorney/representative, if any.

Statute—State or federal law.

Summary judgment—A judgment en-
tered when there is no genuine issue of
material fact and a party is entitled to judg-
ment as a matter of law.

Trial de novo—A new trial held as if
no administrative hearing had been held.

With prejudice—Refusal of the ALJ
to accept the refiling of a pleading or re-
quest for an administrative hearing.

§403.454. Administrative Law Judge. An
administrative law judge is an attorney ap-
pointed by the commissioner or designee
who conducts the proceeding. An attorney
who has, directly or indirectly, participated
in or given advice on issues that are the
basis for a particular hearing may not be the
administrative law judge in that hearing.

§403.455. Hearing Guidelines.

(a) Requesting an administrative
hearing. A written request for an adminis-
tative hearing must be filed with the Hear-
ings Office addressed to: Hearings Office,
TXHMR, P.O. Box 12668, Austin, Texas
78711-2668. Upon the receipt of the written
request for an administrative hearing which
complies with this subchapter as to form
and content, the Hearings Office shall
enclosed the document as a pending proceed-
ing.

(b) Administrative Hearing Date. If
the ALJ determines that the written request
was filed within the time frames specified in
applicable department rules and statutes,
the ALJ shall select an administrative hear-
ing date.

(1) The administrative hearing
date shall be no sooner than 20 days nor
later than 45 days after the written request
is received by the Hearings Office, unless
otherwise provided in department rules or statutes.

(2) After the administrative hearing date has been set, the ALJ may subsequently postpone or continue the administrative hearing date until a later date if, in the ALJ’s discretion, good cause requires a later date. Good cause includes, but is not limited to, the consideration that a later date will result in a fairer and more just determination of the issues and that the welfare of any person served by the department will not be substantially endangered by reason of the postponement. The ALJ is not precluded from ordering a postponement or continuance of the hearing upon the showing of good cause.

(c) Notice of an administrative hearing. In a contested case, all parties shall be afforded an opportunity for an administrative hearing after reasonable notice. At least 20 days before the administrative hearing date, the ALJ must serve written notification to the department and the party who requested the hearing. A copy of this subchapter must accompany the written notification sent to the parties involved in the administrative hearing. The ALJ may mail notice by certified or registered mail to the last known place of address of the person entitled to receive such notice or may hand-deliver such notice. Notice shall be delivered in the manner most likely to assure prompt receipt. Notice shall include:

(1) a statement of the time, place, and nature of the administrative hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the action complained of by the party requesting the administrative hearing.

(d) Statement of issues. After a timely written motion from the department’s representative, the ALJ may require the party requesting the administrative hearing to deliver to the department representative a concise written statement of the issues, statutes, and rules asserted by that party. This statement must be delivered at least ten days before the administrative hearing date.

(e) Nature of the administrative hearing. All hearings conducted in any proceedings shall be open to the public, but may be ordered to be closed upon a finding of the ALJ of possible breach of confidentiality of persons receiving services.

(f) Location of the administrative hearing. All hearings shall be held in Austin, Texas, in the case of proceedings arising out of actions, events, or omissions alleged to have been taken by the central office of TXMHP; and at the location of each facility of the department, in the case of proceedings arising out of actions, events, or omissions alleged to have been taken by that facility, unless for good and sufficient cause, in which case the ALJ, in the ALJ’s discretion, shall designate another place to hold the hearing which would be in the interest of the public.

(g) Representation.

(1) Parties may appear on their own behalf, be represented by an attorney, or by a lay representative of the party’s choosing.

(2) The commissioner shall appoint an attorney and/or appropriate program staff to represent the department in contested cases.

(h) Filing of Documents. All documents relating to any proceeding which is pending must be submitted to the ALJ with a copy served on each party under a certificate of service as described in subsection (l) of this section. The documents shall be considered filed only when actually received by the ALJ accompanied by the filing fee, if any, required by statute or department rules.

(i) Agreements between parties. No stipulation or agreement between the parties, their attorneys/representatives, with regard to any matter involved in any proceeding, shall be in force unless:

(1) it is in writing and signed by the parties involved or their attorneys/representatives; or

(2) it has been dictated into the record by the parties involved during the course of a hearing, or incorporated in an order with their written approval. This subsection does not limit a party’s ability to waive, modify, or stipulate any right or privilege provided by this subchapter.

(j) Pleadings. Pleadings shall be submitted to the ALJ.

(1) Pleadings shall be typewritten or printed with exhibits, if any, attached. Copies of pleadings are acceptable, provided all copies are clear and permanently legible. The original of every pleading shall:

(A) be signed in ink by the party filing the pleading or by the party’s attorney/representative;

(B) contain the address of the party filing it; and

(C) contain the name, telephone number, and business address of the party’s attorney/representative, if any.

(2) Pleadings shall include:

(A) the name of the party requesting the administrative hearing;

(B) the names of any other known parties;

(C) a statement of the pleading’s objective which contains a concise statement of facts in support of the objective;

(D) the relief, action, or order sought by the pleader and the specific reasons and grounds for such;

(E) any matter required by other rules of the department with respect to the proceeding;

(F) the certificate of service as described in subsection (l) of this section; and

(G) an affidavit(s) if based upon matters which do not appear on the record.

(3) Upon submission of any pleading to the ALJ, it shall be examined by the ALJ to determine its sufficiency under this subchapter. While a liberal interpretation shall be to be given to all pleadings, if the pleading does not comply with this subchapter, it shall be returned to the person filing it along with the statement by the ALJ of the reason for rejecting it. A corrected pleading may then be filed if it will not unduly delay the hearing. Regardless of any error in the identification of a pleading, its true status shall be recognized.

(4) In order to amend its pleading, a party must file a motion, no later than five days before a hearing, and obtain a ruling by the ALJ.

(5) Any party who submits a pleading to the ALJ after a request for an administrative hearing has been filed must, at the same time, serve a copy of the pleading upon all other parties or their attorney/representative, if any, under a certificate of service. The willful failure of any party to make such service shall be sufficient grounds for the ALJ to enter an order striking the pleading from the record.

(6) All pleadings must be filed no less than five days prior to the administrative hearing date.

(7) Any pleading may adopt and incorporate by specific reference any part of any document or entry in the official files and records of the department.
(k) The ALJ may direct that one or more of the following be transmitted by each party to all other parties or their attorney/representative, and to the ALJ, by the date established by the ALJ:

1. list of witnesses the party desires to testify and a brief narrative summary of their expected testimony;
2. a written statement of the disputed issues for consideration at the hearing;
3. a copy of any written statements to be offered at the hearing; or
4. a copy of other written testimony or documentary evidence the party intends to use at the hearing.

(l) Certificate of service. A certificate by the party or the party’s attorney/representative who submits a pleading stating that it has been served upon the other parties or their attorney/representative will be sufficient proof of such service. The following form of certificate is sufficient: I hereby certify that I have, on this day (date of month numeral) (day of month), (year), served copies of the attached document upon all other parties to this proceeding by (state here the type of delivery/service). (signature)

(m) Computing timeframes. The following procedure is to be used to compute any period of time governing hearings procedures and which is allowed or prescribed by this subchapter or by order of the ALJ: the period shall begin on the day after the act, event, default, or controversy and conclude on the last day of such computed period, unless that day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

(n) Extension of timeframes. The time for the doing of any act may be extended by order of the ALJ, upon written motion submitted to the ALJ prior to the expiration of the period of time for the doing of such act, showing that there is good cause for such extension of time and that the need is not caused by neglect, indifference, or lack of diligence of the movant. A copy of the written motion shall be served upon all other parties to the proceeding at the same time that it is submitted to the ALJ.


(a) The ALJ shall be in charge of proceedings. The ALJ has the authority to:

1. administer oaths or affirmations;
2. examine witnesses;
3. issue subpoenas and commissions;
4. rule on admissibility of evidence and amendments to pleadings;
5. conduct hearings on motions and other pleadings;
6. establish reasonable time limits for conducting hearings;
7. request additional information; and
8. issue any orders necessary to enforce the ALJ’s rulings, which include, but are not limited to:

(A) exclusion of evidence or witnesses;
(B) exclusion of oral argument;
(C) continuance or dismissal of the hearing with or without prejudice; and
(D) summary or default judgment on any issues.

(b) The department has the burden of proof in all contested cases.

(c) At the discretion of the ALJ, a hearing may be conducted by telephone/teleconference.

(d) Subject to the ALJ’s rulings and orders, opportunity shall be given to all parties to respond to and present evidence and argument on all issues involved.

(e) Subject to limits set by the ALJ, all parties shall have an opportunity to call any witnesses desired.

(f) If a party or the party’s attorney/representative is notified of the hearing and neither is present at the hearing, all matters stated in evidence introduced at the hearing may be considered as undisputed by the party failing to appear.

(g) The ALJ may entertain motions for the dismissal of a contested case without a hearing for any of the following reasons:

1. failure of the party who requested the administrative hearing to go forward with the proceeding within a reasonable period of time;
2. unnecessary duplication of proceedings;
3. withdrawal from the proceeding by the party who requested the administrative hearing;
4. moot issues; and
5. lack of departmental jurisdiction.

(h) A record shall be made of the proceedings and include:

1. all pleadings, motions, and intermediate rulings;
2. evidence received or considered;
3. a statement of matters officially noticed;
4. objections and the rulings on them;
5. proposed findings of fact and exceptions;
6. any decision, order, opinion, or report made by the ALJ; and
7. all department staff memoranda or data submitted to or considered by the ALJ in making the final decision.

(i) Exhibits.

1. The original of each exhibit offered shall be submitted to the ALJ for identification and a copy served to each party.

2. In the event an exhibit has been identified, objected to, and excluded, the ALJ shall return the exhibit to the offering party.

3. No exhibit will be permitted to be submitted after the conclusion of the hearing, unless specifically directed by the ALJ. In the event the ALJ allows the exhibit to be submitted after the completion of the hearing, copies of the face-filed exhibit shall be served upon all parties.

(j) All hearings shall be recorded either stenographically or electronically at the department’s expense. The ALJ shall decide whether a stenographic record or an electronic recording will be made and shall make the necessary recording arrangements accordingly. If requested by the ALJ, the hearing must be transcribed, at the department’s expense, with a transcript given to the ALJ. The costs associated with recording the hearing may be assessed to one or more parties if a recording method, other than the one chosen by the ALJ, is requested by the party or parties. If a party wants a transcript of the hearing, that party must pay all costs associated with providing the transcript.

(k) Parties to the hearing may conduct cross-examination for a full and true disclosure of the facts.

(l) Before or during the hearing, the ALJ may call or request any party to call a witness or witnesses the ALJ believes necessary to make the final decision.

(m) The ALJ may not communicate directly or indirectly in connection with any issue of fact or law with any person, party, or their attorney/representative, except after
serving notice which provides an opportunity for all parties to participate. The ALJ may communicate with other members of the department who have not participated in the proceeding of the contested case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence in accordance with the Texas Government Code, §§2001.061 and 403.458(a)(4) of this title (relating to Evidence and Depositions).

(n) In all procedural matters not specifically governed by these sections, the Texas Rules of Civil Procedure shall apply unless the ALJ determines there is good cause for waiving any and all such rules.

(o) Records of the hearing shall be kept in department files for four years after a final decision is made or until any subsequent litigation arising from the hearing has been resolved.

(p) In any hearing or other proceedings conducted by the department, the identity of an individual with mental illness or mental retardation shall not be revealed or made a matter of public record in any way unless the person who has the right of confidentiality waives that right in open hearing or the party or person desiring or attempting to reveal the identity of such individual has:

(1) established the identity of the ALJ and others participating in or observing the hearing. The ALJ is authorized to act as the ALJ considers necessary and appropriate to maintain proper decorum and conduct. Actions may include, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney/representative, or other person for a period and under the conditions that the ALJ considers fair and just. The ALJ, attorneys of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

§403.457. Prehearing Procedure.
(a) Prehearing conference.

(1) In any proceeding governed by this subchapter, the ALJ, on the ALJ's own motion or on the motion of any party, may direct the parties or their attorney/representatives to appear before the ALJ or participate by telephone/teleconference at a specified time and place for a conference prior to the administrative hearing date for the purpose of considering:

(A) the possibility of making admissions of facts or stipulations to avoid the unnecessary introduction of proof;

(B) the simplification of issues;

(C) the procedure at the hearing;

(D) the limitation, when possible, of the number of witnesses; and

(E) such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(2) Actions taken at the conference shall be recorded in an order by the ALJ unless the parties enter into a written agreement, incorporating issues addressed at the prehearing conference, signed by the parties involved or their attorney/representative.

(b) Joint hearing. A motion for the consolidation of two or more proceedings shall be in writing, signed by the party making the motion or that party's attorney/representative, and submitted to the ALJ at least five days prior to the administrative hearing date. Two or more proceedings may not be consolidated or heard jointly without the agreement of all parties to such proceedings, unless the ALJ finds that:

(1) the two or more proceedings involve common questions of law and fact; and

(2) separate hearings would result in unwarranted expense, delay, or substantial injustice.

(c) Discovery and production of documents and things for inspection, copying, or photographing. In all discovery matters not specifically governed by these sections, the Texas Rules of Civil Procedure shall be followed.

(1) Upon the timely motion of any party showing good cause, with notice served upon all other parties, and subject to any limitation provided for discovery under the Texas Rules of Civil Procedure, the ALJ may order any party to:

(A) produce and permit the inspection and copying or photographing by or on behalf of the movant any of the following items that are in the party's possession, custody, or control and not considered privileged information, as defined in §§403.253 of this title (relating to Definitions), which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action:

(i) documents;

(ii) papers;

(iii) books;

(iv) accounts;

(v) letters;

(vi) photographs;

(vii) objects; and

(viii) tangible things.

(B) permit entry upon designated land or other property in the party's possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any specific object or operation which may be relevant to any matter involved in the action.

(2) The ALJ shall limit the order described in paragraph (1) of this subsection, as justice may require, to protect any party or witness from undue annoyance, embarrassment, oppression, or expense. The order must specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(3) The identity and location of any potential party or witness may be obtained from any communication or other paper in a party's possession, custody, or control. Any party may be required to produce and permit the inspection and copying...
of reports, including factual observations and opinions of an expert to be called as a witness. The rights granted in this paragraph may not extend to other written statements of witnesses or other written communication passing between agents, representatives, or the employees of any party to the proceeding or to other communications between any party and the party’s agents, representatives, or other employees, that were made subsequent to the occurrence or transaction upon which the proceeding is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which the claim arose.

(d) Statement previously made. Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement that person has previously made concerning the occurrence or transaction upon which the proceeding is based which is in the possession, custody, or control of any party. If the request is refused, the person may make a motion for a departmental order to obtain a copy of the statement. For the purposes of this subsection, a statement previously made is:

1. A written statement signed or otherwise adopted or approved by the person making it; or

2. A stenographic, mechanical, electrical, or other recording or a transcription of the same statement, which is a substantially verbatim recital of an oral statement by the person making it and which is recorded at the same time.

(e) Admission of facts and of genuineness of documents. After a request for an administrative hearing has been filed any party may deliver or have delivered to any other party a written request for admission of facts and genuineness of documents. The provisions of Rule 169 of the Texas Rules of Civil Procedure govern, except that filing and enforcing shall be controlled by the ALJ.

(f) Interrogatories to parties. After a request for an administrative hearing has been filed any party may serve interrogatories upon any other party. The provisions of Rule 168 of the Texas Rules of Civil Procedure govern, except that filing and enforcing shall be controlled by the ALJ.

§403.458. Evidence and Depositions.

(a) Evidentiary procedures.

1. The Texas Rules of Civil Evidence shall apply except as follows:

(A) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(B) Evidence inadmissible under those rules may be admitted if the evidence is:

(i) Necessary to ascertain facts not reasonably susceptible of proof under those rules;

(ii) Not precluded by statute; and

(iii) Of a type on which a reasonably prudent person commonly relies in the conduct of the person’s affairs.

(C) Any part of the evidence may be received in written form if a hearing will be expedited and if the parties’ interest will not be substantially prejudiced.

(2) Objections to offers of evidence may be made and shall be noted in the record.

(3) The prepared testimony of a witness upon direct examination, either in narrative or question-and-answer form, may be incorporated in the record as if read or received as an exhibit after the witness has been sworn and has identified that the prepared testimony is as true and accurate as the witness’s oral testimony would be. The witness is subject to clarifying questions and cross-examination. The prepared testimony may not be stricken from the record in whole or in part.

(4) Documentary or written evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(5) Official notice may be taken of all facts judicially known. In addition, notice may be taken of generally recognized facts within the area of the department’s specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data. Parties shall be given an opportunity to contest the material so noticed.

(6) All testimony in a hearing by a witness shall be taken under oath or affirmation as prescribed by law.

(7) The department or any other party may apply for permission to obtain the testimony of a witness by telephone when it is impossible or impractical to obtain the physical presence of a witness in the hearing room due to the witness’s age, illness, custodial restrictions, or residence more than 100 miles from the site of the hearing.

(A) Application for permission to secure testimony by telephone shall be submitted to the ALJ with a copy sent to other parties at least 10 days prior to the hearing. The application must state the reasons for the request. If the ALJ finds that good cause exists to permit testimony to be obtained by telephone, the ALJ must grant the application and immediately advise the parties. The ALJ must rule on the application at least five days prior to the hearing.

(B) If testimony by telephone is allowed, the hearing room must be equipped with a speaker phone or other telephone equipment which will allow everyone present to hear the testimony of the witness simultaneously and will also allow the witness to hear all parties and the ALJ. The testimony by telephone provided by a witness shall be taken under oath or affirmation as if the witness were physically present at the hearing.

(8) If a party or witness is deaf, the department shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that party or witness. In this paragraph, "person who is deaf" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person’s comprehension of the proceedings or communication with others.

(9) If a party or witness speaks a language other than English, the department shall provide an interpreter of the language spoken by the party or witness.

(b) Subpoenas. The department shall have the powers of subpoena granted under the Texas Government Code, §2001.089. The department shall, on its own motion or on the written motion of any party, on a showing of good cause, and on the monetary deposit of sums which will reasonably ensure payment of the amounts estimated to accrue, issue a subpoena in accordance with law to require the attendance of witnesses and the production of documents as may be necessary and proper for the purposes of the proceedings before it.

(c) Commissions/depositions. The issuance of commissions to examine witnesses and the taking of depositions shall be in accordance with the provisions of the Texas Government Code, §§2001.094-2001.103.

(d) Requests for commissions or subpoenas. Requests for commissions or subpoenas shall be submitted to the ALJ.

§403.459. Deliberation. After all evidence has been heard, the ALJ shall adjourn the hearing. Within 60 days from the date of adjournment, the ALJ shall make a final decision in the contested case. The ALJ may prescribe a longer period of time within which the final decision or order shall be issued, but such extension, if so prescribed, shall be announced at the com-
pletion of the hearing, but in no event shall be longer than 90 days unless a longer period of time is agreed on by all parties to the proceeding.

§403.460. Decisions.

(a) The administrative hearing decision of the ALJ shall be based solely upon the record of the contested case. The decision shall be in writing and include the findings of fact and conclusions of law separately stated.

(b) Issues must be proven by a preponderance of the evidence.

(c) Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(d) Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits a proposed finding of fact, the decision must include a ruling on each proposed finding.

(e) The ALJ shall enter into the record orders that are necessary to implement the administrative hearing decision. The ALJ may also make other recommendations as the ALJ considers appropriate.

(f) The following provisions determine when an administrative hearing decision in a contested case is final.

(1) If a motion for a rehearing is not filed in the time frame as described in subsection (h) of this section, the administrative hearing decision is final on expiration of the period for filing a motion for a rehearing.

(2) If a motion for a rehearing is filed in the time frame described in subsection (h) of this section, the administrative hearing decision is final and appealable through a judicial review on the date:

(A) the order was filed; or

(B) the order overrules the motion for a rehearing.

(3) If the ALJ finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, the administrative hearing decision is final on the date the decision is made. In this event, the ALJ must recite or record into the record the finding of such imminent peril as well as the fact that the decision is final and effective on the date recited or recorded into the record. The final decision is appealable on the date recited or recorded into the record and no motion for rehearing is required as prerequisite for an appeal.

(g) The ALJ shall send the administrative hearing decision by first class certified mail, return receipt requested, to the attorneys/representatives, or, if a party is not represented by an attorney/representative, to that party. The ALJ shall keep an appropriate record of that mailing. A party or attorney/representative notified by mail of an administrative hearing decision is presumed to have been notified on the date such notice is mailed.

(h) Any party may file a written motion for rehearing. The motion must be addressed to the ALJ and must be filed so that it is received by the ALJ within 20 days after the date the administrative hearing decision was mailed to the party or the party's attorney/representative. Replies to a motion for rehearing from other parties involved must be filed so as to be received by the ALJ within 30 days after the date of mailing of the administrative hearing decision. The ALJ shall either grant or deny the motion for rehearing within 45 days after the date the administrative hearing decision was mailed. If the ALJ does not rule on the motion for rehearing, the motion is overruled by operation of law 45 days after the date the administrative hearing decision was mailed.

(i) The period of time for the filing of motions for rehearing and replies may be extended by written order of the ALJ but such extension may not extend the period for action beyond 90 days after the date the administrative hearing decision was mailed. In the event of extension, if the ALJ does not rule on a motion for a rehearing, the motion for rehearing is overruled by operation of law on the date prescribed in the extension order, or in the absence of a prescribed date, 90 days after the date the administrative hearing decision was mailed.

§403.461. Judicial Review.

(a) Unless otherwise specifically provided by statute, a party who has exhausted all administrative remedies available within department rules and who is dissatisfied with a final decision in a contested case is entitled to a judicial review.

(b) Proceedings for a judicial review are initiated by filing a petition within 30 days after the date complained of is final and appealable. Unless otherwise provided by statute, the petition must be filed in a district court of Travis County, Texas. A copy of the petition must be served upon the department and all parties involved in the administrative hearing.

(1) The filing of the petition prevents enforcement of a final decision or order for which trial de novo is the manner of review authorized by law. If the manner of review authorized by law is by trial de novo, then the reviewing court shall try all issues of fact and law in a manner applicable to other civil suits in the state.

(2) The filing of the petition does not prevent enforcement of a final decision or order if the manner of review authorized by law is other than trial de novo. If the manner of review authorized by law is other than by trial de novo and, in the absence of other specific statutory provisions, the provisions of the Texas Government Code, §2001.175 shall be applicable.

§403.462. Distribution. This subchapter governing administrative hearings of the department in contested cases shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation;

(2) the commissioner and deputy commissioners;

(3) associate and assistant deputy commissioners;

(4) management and program staff of the central office;

(5) superintendents/directors of all department facilities;

(6) persons designated as administrative law judges;

(7) upon request, any party to an administrative hearing conducted under this subchapter; and

(8) advocacy organizations.

§403.463. References. Reference is made to the following statutes:

(1) Texas Government Code, Chapter 2001;

(2) Texas Rules of Civil Procedure; and

(3) Texas Rules of Civil Evidence.

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 November 21, 1994.

TRD-94S1159

Ann K. Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

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

Chapter 404. Protection of Clients and Staff

Subchapter H. Criminal History Clearances of Applicants for Employment

25 TAC §§404.301-404.312

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§404.309 and 404.311 of Chapter 404, Subchapter H, governing criminal history clearances of applicants for employment,
The Federal Bureau of Investigation (FBI) has been referenced in §404.304(a) as a secondary source for criminal history information. A technical amendment to subsection (b) of that section substitutes the article "A" for "The." Another technical amendment to subsection (c)(2) of that same section corrects the reference to the title of another section within the subchapter. A final technical amendment to subsection (f) of that section involves the deletion of a phrase as unnecessary verbiage.

In §404.305(e), language has been added clarifying that conviction clearances of persons who have lived outside of the State of Texas for any length of time during the previous two years will be conducted through the FBI. Throughout §404.306, language has been added clarifying that the required written notices will be distributed to applicants and prospective employers by the Criminal History Unit in Central Office. In subsection (e)(2) of that same section, language has been added clarifying that applicants may request an administrative review if they have been convicted of certain offenses.

A new paragraph has been added to subsection (f) of §404.308 along with new subsections (g) and (h) to describe the actions to be taken if an applicant requests the opportunity for a personal appearance before the administrative review panel.

During the public comment period, written comments were received from the following: Lubbock Regional Mental Health and Mental Retardation Center; Mental Health and Mental Retardation Authority of Harris County, Houston; Texas Mental Health Consumers, Austin; Pecan Valley Mental Health and Mental Retardation Center, Stephenville; Central Counties Center for Mental Health and Mental Retardation Services, Temple.

One commenter suggested that the department should include accommodations for consumers who may have convictions, particularly for criminal trespassing and public indecency, on their record related to a past illness. The department responds that the law does not provide for such accommodations to be made. However, such information could be presented as mitigating circumstances before an administrative review panel for those offenses for which a review is permitted by law.

One commenter requested that community centers which can access criminal history information directly and more expeditiously through alternative source be allowed to do so. The department declines to permit the exception and explains that while the information theoretically could be more readily accessible, the relevant statutes charge the department with the responsibility for managing conviction clearance information and making employability decisions. In addition, the department notes that the commenter later discovered that the alternative source being considered would not be able to provide statewide criminal conviction information.

A commenter noted that the subchapter as proposed would require community centers to conduct clearances of the thousand or more employees of a large hospital with which the center contracts for emergency, psychiatric, and other medical services. The commenter also suggested that if the hospital were a component of a national corporation, then the corporation's employees throughout the country would have to be cleared. The department responds that the proposed subchapter applies only to the employees of those providers which deliver residential services; although a person may be in a hospital for more than 24 hours, the department does not consider inpatient hospital care to constitute residential services.

Regarding the definition of provider in §404.305, a commenter noted that while the relevant statute includes loughs or discharges from both facilities and community centers the definition references only facilities. The department acknowledges the oversight and has added "community centers" to the definition in the subchapter. The same commenter questioned whether the reference to persons who have been loughed or furloughed from a facility or community center applied to anyone who has ever been discharged or furloughed or who has been discharged or furloughed to the unit. The department responds that it is the former.

In §404.305(e), a commenter questioned whether the language regarding "applicants who are not from Texas" referred to persons who were not native Texans or persons who had not lived in Texas for the past several years. The department acknowledges that the language is much too vague and has specified that persons who have lived outside the State of Texas during the past two years are to be criminal history checks conducted through the FBI.

Regarding §404.306(d)(4), a commenter questioned from whom are facilities and community centers to obtain information to give to applicants about correcting errors of fact or identity in criminal history reports. The department responds that the subchapter clearly states that the information will be included in the notice sent to the applicant. The language in the subsection has been modified to clearly indicate that those notices are sent by the Criminal History Unit in the department's Central Office.

A commenter asked whether the prospective employer will be provided with information regarding the exact offense. The department responds that the employer will be told only whether the applicant is employable or not based on the report from TDPS/FBI.

A commenter questioned whether a community center could disagree with an administrative review panel decision that an applicant is employable. The department responds that the review panel's decision is final, although a criminal history clearance is only one criteria for employability. The community center does not have to hire the applicant if another applicable position for that position is found to be more qualified.

The new sections are adopted under the Texas Health and Safety Code, §250.004(4), which requires the Texas Mental Health and
§404.301. Purpose. The purpose of this subchapter is, first and foremost, to protect individuals receiving services provided by a facility, community center, or provider of residential services and the property of those individuals. To do so, this subchapter:

(1) describes the process by which criminal history clearances are conducted of applicants for employment with facilities, community centers, and those providers of residential services which contract with facilities or community centers;

(2) describes the composition, role, and functions of the administrative review panel; and

(3) requires community centers and providers to conduct a one-time criminal history clearance of all their employees in direct contact positions upon the effective date of this subchapter with subsequent self-reporting.

§404.302. Application.

(a) The provisions of this subchapter apply to:

(1) department facilities, including Central Office in Austin;

(2) community centers; and

(3) providers which contract with facilities or community centers to deliver residential services to individuals with a mental illness or mental retardation.

(b) For residences certified by the intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) program which are owned and operated by a community center, applications for criminal history clearances shall be submitted to the department through the community center.

(c) For residences certified as ICF/MR or ICF/MR/RC which are owned by a community center but operated under contract by a private provider, the private provider is responsible for conducting criminal history clearances as provided in rules of the Texas Department of Human Services (TDHS).

(d) The provisions of this subchapter do not apply to ICF/MR or ICF/MR/RC residences which are privately owned and operated. Criminal history clearances of persons applying for employment with those entities should be conducted as provided in TDHS rules.

(e) The provisions of this subchapter do not apply to professional clinical interns at facilities or community centers.

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

Applicant—At the employer’s discretion, a person:

(A) who has applied for a position as an employee;

(B) who is one of a select number of final candidates for a position as an employee; or

(C) to whom the employer intends to offer a position as an employee.

Board—The Texas Mental Health and Mental Retardation Board.

CHU (Criminal History Unit)—A unit of the department’s Central Office in Austin which is responsible for administering the process described in this subchapter.

Community center—A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534.

Department—The Texas Department of Mental Health and Mental Retardation.

Facility—Any state hospital, state school, or state center operated by the department, including the department’s Central Office in Austin.

Professional clinical intern—A person who is enrolled in a formal clinical rotation at a university/college in a professional training program accredited by the appropriate licensing authority or board of examiners, or is engaged in a recognized graduate level, clinical professional degree program. Professional degree programs include, but are not limited to nursing, pharmacy, physical therapy, occupational therapy, medicine, clinical psychology, social work, and dentistry. A memorandum of understanding or affiliation agreement (MOA) must exist between the facility or community center and the university/college that specifically states that:

(A) responsibility for the care of individuals receiving services is retained by the facility or community center; and

(B) the university/college is responsible for conducting a reasonable background check of the person. To facilitate this check, the university/college may elect to include a provision in the MOA which requires the department to conduct a criminal history clearance.

Provider—Any entity or person which contracts with a facility or community center to deliver residential services to individuals with a mental illness or mental retardation who have been furloughed or discharged from a department facility or community center as described in the Texas Government Code, §411.115(b). This does not include private ICF/MR or ICF/MR/RC providers; TDHS is responsible for conducting criminal history clearances for those entities.

§404.304. Pre-employment Criminal History Clearance.

(a) Persons applying for employment with a facility, community center, or provider must have a pre-employment criminal history clearance conducted by the department through the Texas Department of Public Safety (TDPS) or the Federal Bureau of Investigation (FBI), as appropriate.

(b) A facility, community center, or provider shall not employ an applicant who has been convicted of one of the offenses listed in:

(1) subsection (d) of this section;

(2) subsection (e) of this section and has not obtained a clearance from an administrative review panel as described in §404.308 of this title (relating to Administrative Review Panel).

(c) An applicant may be employed on a temporary basis without a criminal history clearance if an emergency exists in which there is a risk to the health and safety of individuals receiving services as a result of unfilled positions or in which the operations of the organization are severely impaired as determined by the chief executive officer of the facility, community center, or provider.

(1) The applicant shall furnish the employer with an affidavit stating that the applicant has not been convicted of any of the offenses listed in subsections (d) or (e) of this section. A sample affidavit may be obtained by contacting the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

(2) Within 72 hours of the time the applicant is employed on a temporary basis, the facility, community center, or provider shall apply for a criminal history clearance as described in §404.305 of this title (relating to Requesting a Criminal History Clearance).

(3) If the results of the criminal history clearance reveal a conviction for any of the offenses listed in subsections (d) or (e) of this section, the facility, community center, or provider shall dismiss the person as unemployable immediately upon receipt of the notice from the Criminal History Unit ("CHU") in the department’s Central Office in Austin.
(d) Offenses which constitute a bar to employment and for which an administrative review is not available except as described in §404.309 of this title (relating to Correction of Errors of Fact or Identity in Criminal History Record) include:

1. criminal homicide (Penal Code, Chapter 19);
2. kidnapping and false imprisonment (Penal Code, Chapter 20);
3. indecency with a child (Penal Code, §21.11);
4. agreement to abduct from custody (Penal Code, §25.031);
5. solicitation of a child (Penal Code, §25.06);
6. sale or purchase of a child (Penal Code, §25.11);
7. arson (Penal Code, §28.02);
8. robbery (Penal Code, §29.02); and
9. aggravated robbery (Penal Code, §29.03).

(e) Offenses which may constitute a bar to employment and for which an administrative review may be requested include:

1. assaultive offenses (Penal Code, Chapter 22);
2. burglary and criminal trespass (Penal Code, Chapter 30);
3. theft (Penal Code, Chapter 31);
4. weapons offenses (Penal Code, Chapter 46);
5. felony violation of a statute intended to control the possession or distribution of a substance described in the Texas Government Code, Chapter 481 (Texas Controlled Substance Act);
6. fraud (Penal Code, Chapter 32);
7. public lewdness (Penal Code, §21.07);
8. indecent exposure (Penal Code, §21.08); and
9. public indecency (Penal Code, Chapter 43).

(f) Consistent with the Texas Government Code, §411.115(e), conviction information obtained through TDPS or the FBI shall be destroyed after an employment decision or personal action has been taken.

§404.305. Requesting a Criminal History Clearance.

(a) The CHU shall act as the clear-housing for all criminal history clearance requests. Only the CHU may submit a request for criminal history information to TDPS or the FBI.

(b) The department may charge a fee to community centers which equals the fee which TDPS or the FBI charges the department to conduct a criminal history clearance.

(c) The Criminal History Record Information Request Form HR-44 shall be used to submit requests for criminal history clearances. The request shall be submitted via electronic mail, confidential fax, or mail. Copies of the HR-44 form may be obtained by contacting the Criminal History Unit, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The form may be duplicated.

(d) Each facility and community center shall submit criminal history clearance requests for applicants for employment with:

1. that facility or community center;
2. providers which contract with that facility or community center.

(e) Applicants who have lived outside the State of Texas for any length of time during the two years preceding the application for employment shall be cleared through the FBI using a complete set of fingerprints on the official FBI card which may be obtained from the CHU. There is a charge for obtaining this information. The applicant's name, address, date of birth, sex, and race should be indicated on the fingerprint card as well as the name of the facility or community center requesting the information, and the name and address of the provider, if applicable.


(a) When the TDPS or FBI report contains a record of a criminal conviction of any kind, the information shall be reviewed by the CHU to determine if the conviction is for one of the offenses listed in this subchapter.

1. The CHU shall notify both the prospective employer and the applicant of the results of the criminal history clearance. If the prospective employer is a provider, the CHU shall also send a notice to the facility or community center with which the provider contracts.

2. When the TDPS or FBI report contains a record of an arrest for any of the offenses listed in this subchapter, the CHU shall contact the appropriate local law enforcement agency to determine the disposition of the arrest.

(b) Notification normally will be made within 20 calendar days of the date the request was received by the CHU. The notice from the CHU to the:

1. employer shall be sent via electronic mail, confidential fax, or certified mail, return receipt requested; and
2. applicant shall be sent by certified mail, return receipt requested.

(c) When the TDPS or FBI report contains:

1. no record of a conviction for any of the offenses listed in this subchapter and any arrests reported by TDPS or FBI for offenses listed in this subchapter are determined by the CHU to have been disposed of without a conviction, the notice from the CHU to the potential employer and applicant shall state that the applicant has been determined to be employable; or
2. only a record of a class C misdemeanor conviction for any of the offenses listed in §404.304(e) of this title (relating to Pre-employment Criminal History Clearance), the notice from the CHU to the potential employer and applicant shall state that the applicant has been determined to be employable as provided in the Texas Health and Safety Code, §250.006(a).

(d) When the TDPS or FBI report contains a record of a conviction for any of the offenses listed in this subchapter, except as described in paragraph (c) of this section, the written notice from the CHU to the applicant shall:

1. state that the finding is preliminary;
2. state that the applicant may submit a written request, no later than 20 calendar days after the date the notice is received, for an administrative review of the criminal history report;
3. state that the prospective employer has the discretion to employ another person in the position and, therefore, that the position may not be available if the applicant is found to be employable by the administrative review panel;
4. provide information on how the applicant may correct any errors of fact or identity contained in the TDPS or FBI report; and
5. provide information on how to request an administrative review as described in §404.307 of this title (relating to Requesting an Administrative Review) including:
(A) the address and fax number to which the request must be submitted; and

(B) notice that the failure to request an administrative review will cause the applicant to be designated as "unemployable" by any facility, community center, or provider.

(e) When a conviction reported by TDPS or the FBI is for any of the offenses listed in:

(1) §404.304(d) of this title (relating to Pre-employment Criminal History Clearance) as an absolute bar to employment, the notice from the CHU required in subsection (d) of this section also shall state that the applicant may request an administrative review only to contest errors of fact or identity in the report or the CHU finding that the offense is one that bars employment. See §404.309 of this title (relating to Correction of Errors of Fact or Identity in Criminal History Record) for additional information.

(2) §404.304(e) of this title (relating to Pre-employment Criminal History Clearance) for which mitigating factors must be considered as required in the Texas Health and Safety Code, §250.006, the notice from the CHU required in subsection (d) of this section also shall state that the applicant may request an administrative review and submit documentation of mitigating circumstances to be considered by an administrative review panel concerning:

(A) the misdemeanor classification of the offense;

(B) the age of the applicant when the offense was committed;

(C) the length of time since the offense was committed;

(D) evidence of rehabilitation including employment history with a facility, community center, provider, or one of the facilities listed in subsection (g)(1) of this section; or

(E) other mitigating circumstances which existed at the time when the offense was committed.

(f) When the TDPS or FBI report contains a record of a conviction for any of the offenses listed in this subchapter, except as described in paragraph (c)(2) of this section, the notice from the CHU to the prospective employer shall state that the:

(1) finding is preliminary;

(2) applicant may submit a written request, no later than 20 calendar days after the date the notice is received, for an administrative review of the criminal history report; and

(3) position for which the applicant applied may be filled by another applicant at the employer’s discretion.

(g) The applicant may not request an administrative review if the conviction was for an offense involving the abuse, neglect, or mistreatment of an individual receiving services from:

(1) one of the facilities listed in the Texas Health and Safety Code, §250.001, including:

(A) a nursing home, custodial care home, or other institution licensed by the TDHS under the Texas Health and Safety Code, Chapter 242;

(B) a personal care facility licensed by TDHS under the Texas Health and Safety Code, Chapter 247;

(C) a home health agency licensed by the Texas Department of Health;

(D) an adult day care facility or adult day health care facility licensed by TDHS under the Texas Human Resources Code, Chapter 103;

(E) a facility for persons with mental retardation licensed or certified by TDHS;

(F) an unlicensed attendant care agency that contracts with TDHS;

(G) an ICF/MR facility that is certified to participate in the Medicaid program under Title XIX of the Social Security Act (42 United States Code, §§1396 et seq); or

(H) an adult foster care provider that contracts with TDHS;

(2) a state hospital, state school, or state center;

(3) a community center; or

(4) a non-ICF/MR or ICF/MR/RC provider of residential services.

(h) If the applicant for whom a conviction has been reported does not request an administrative review within the allotted timeframe, the CHU shall notify the prospective employer via electronic mail, confidential fax, or certified mail, return receipt requested, that the applicant is unemployable.

(i) If the applicant for whom a conviction has been reported requests an administrative review within the allotted timeframe, the CHU shall notify the prospective employer of such via electronic mail, confidential fax, or certified mail, return receipt requested.

§404.307. Requesting an Administrative Review.

(a) An applicant may request an administrative review of the findings of a TDPS or FBI report concerning a conviction. The request must be submitted in writing by mail or fax to the CHU no later than 20 calendar days after the date the notice of the findings is received by the applicant.

(b) If the reported conviction was for one of the offenses listed in:

(1) §404.304(d) of this title (relating to Pre-employment Criminal History Clearance), the applicant may submit documentation which contests the accuracy of the report concerning fact or identity.

(2) §404.304(e) of this title (relating to Pre-employment Criminal History Clearance), the applicant may submit documentation which contests the accuracy of the report concerning fact or identity and/or which provides evidence of mitigating circumstances as described in §404.306(e)(2)(A)-(E) of this title (relating to Report of a Criminal Conviction).

(c) If the documentation appears questionable, the CHU shall verify its authenticity and accuracy before the information is submitted to the review panel. If the documentation is determined to be false, inaccurate, or misleading, the request for an administrative review panel shall be rejected and the applicant shall be declared unemployable.

§404.308. Administrative Review Panel.

(a) The administrative review panel shall comprise at least five members with representation from facility, community center, or provider management, employees, and consumers. The panel need not include members representing the management, employees, or consumers of the facility, community center, or provider at which the applicant applied for employment.

(b) Central Office shall establish and maintain a statewide list of prospective panel members approved by the board. The statewide list shall be compiled from lists of management personnel, employees, and consumers supplied by each facility, community center, and provider.

(c) The panel shall convene at least monthly, as needed, to consider the documentation submitted by applicants who request administrative reviews. At the discretion of the CHU staff, one or more of the panelists may participate in the review by telephone.
(d) The review panel’s decision shall be made solely from the documentation submitted by the applicant. The panel may not make an independent investigation of the applicant’s allegations. To deem the applicant “employable,” a majority of the panel members must agree that the documentation submitted is sufficient to remove the bar to employment because either the:

(1) report of the conviction was incorrect and the applicant had not been convicted of that offense; or

(2) mitigating circumstances indicate that the applicant is unlikely to be a threat to individuals receiving services from a facility, community center, or provider of residential services and to the property of those individuals.

(e) The CHU shall send written notice of the panel’s decision to the applicant by certified mail, return receipt requested, within ten working days of the date the panel met. At the same time, the CHU shall notify the potential employer via electronic mail, confidential fax, or certified mail, return receipt requested.

(f) If the review panel finds that the applicant is unemployable, the applicant shall be provided the opportunity to appear before the panel in person to offer additional information.

(1) The written notice to the applicant of the panel’s decision shall include information on how to request a personal appearance including:

(A) a statement that the request must be submitted in writing within ten days of receipt of the written notice of the panel’s decision;

(B) the address and fax number to which the request must be submitted; and

(C) a statement that failure to request the personal appearance in a timely manner will result in the decision of the panel becoming final

(2) The notice to the prospective employer shall advise that the panel’s decision is not final unless the applicant fails to request a personal appearance before the panel in a timely manner.

(3) If the applicant requests an opportunity to appear in person, the CHU shall notify the prospective employer of such via electronic mail, confidential fax, or certified mail, return receipt requested.

(g) Following the personal appearance by the applicant, the review panel’s shall make a decision based on the documentation submitted by the applicant and the applicant’s personal testimony. The panel may not make an independent investigation of the applicant’s allegations. To deem the applicant “employable,” a majority of the panel members must agree that the documentation and the personal testimony is sufficient to remove the bar to employment because either the:

(1) report of the conviction was incorrect and the applicant had not been convicted of that offense; or

(2) mitigating circumstances indicate that the applicant is unlikely to be a threat to individuals receiving services from a facility, community center, or provider of residential services and to the property of those individuals.

(h) The CHU shall send written notice of the panel’s decision to the applicant by certified mail, return receipt requested, within ten working days of the date the panel met. At the same time, the CHU shall notify the potential employer via electronic mail, confidential fax, or certified mail, return receipt requested.

§404.310. One-time Criminal History Clearance of Current Community Center and Provider Employees.

(a) Upon the effective date of this subchapter, community centers and providers shall initiate a one-time criminal history clearance of all current employees following the procedures described in §404.305 of this title (relating to Application for Criminal History Clearance.)

(1) The clearance shall be conducted for criminal convictions of those offenses listed in this subchapter.

(2) If the community center or provider has been conducting criminal history clearances of applicants and employees and has what it considers to be a valid self-reporting system, then this one-time clearance is not required.

(b) After this one-time clearance, or after an applicant is employed by the community center or provider following the pre-employment clearance mandated by this subchapter, each employee shall report any subsequent convictions of those offenses listed in this subchapter to a person designated by that community center or provider.

(c) Each community center and provider shall develop written policies and procedures describing how it will respond to information obtained through the one-time clearance or employee self-reporting. The administrative review process is not available to current employees.

(1) Consistent with the Texas Health and Safety Code, §533.007(b), adverse personnel action shall not be taken if the information received pertains to arrest warrants, deferred adjudications, or wanted persons notices.

(2) If the information reflects a conviction for an offense listed in:

(A) §404.304(d) of this title (relating to Pre-employment Criminal History Clearance), consideration shall be given to any contention by the employee concerning errors of fact or identity in the report.

(B) §404.304(e) of this title (relating to Pre-employment Criminal History Clearance), consideration shall be given to the following factors, as applicable:

(i) the accuracy of the report concerning errors of fact or identity;

(ii) the misdemeanor classification of the offense;

(iii) the age of the applicant when the offense was committed;

(iv) the length of time since the offense was committed;

(v) evidence of rehabilitation including employment history with a facility, community center, provider, or one of the facilities listed in §404.306(g)(1) of this title (relating to Report of a Criminal Conviction); or

(vi) other mitigating circumstances which existed at the time the offense was committed.

§404.312. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Texas MHMR Board;

(2) members of the Mental Retardation Advisory Council;

(3) members of the Mental Health Planning and Advisory Council;

(4) deputy commissioners, associate deputy commissioners, and assistant deputy commissioners in Central Office;

(5) program and management staff in Central Office;

(6) superintendents and directors of facilities;

(7) board chairpersons and executive directors of all community mental health and mental retardation centers;

(8) all advocacy organizations; and

(9) those individuals who have requested to receive copies of departmental rules.
(b) A copy of this subchapter shall be made available upon request to:

(1) any person who applies for employment at a facility, community center, or provider;
(2) any employee of a facility, community center, or provider;
(3) the counsel of record of the applicant or employee;
(4) any individual with a mental illness or mental retardation;
(5) the legally authorized representative of an individual with a mental illness or mental retardation;
(6) the counsel of record of any individual with a mental illness or mental retardation; or
(7) any interested party.

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 November 21, 1994.

TRD-94ST1163
Ann K. Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Effective date: December 12, 1994
Proposal publication date: July 26, 1994
For further information, please call: (512) 206-4516

Chapter 406. ICF/MR Programs

Subchapter D. Reimbursement Methodology

• 25 TAC §406.157

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts an amendment to §406.157, governing rate setting methodology, with changes to the proposed text as published in the October 14, 1994, issue of the Texas Register (19 TexReg 8095).

The amendment describes two temporary rate setting methodologies for Level V alternative children’s facilities in the Texas intermediate care facilities for the mentally retarded (ICF/MR) program. The amendment also requires that the facility have a capacity reduction plan in place which is acceptable to the department’s Office of Medicaid Administration and the Texas Health and Human Services Commission (THHSC), and that the temporary rate setting methodology would not remain in effect beyond June 1, 1996.

During the public comment period, written comments were received from the parent of a child residing in the Ada Wilson Children’s Center in Corpus Christi. A public hearing was held in Austin on November 1, 1994. Oral testimony was offered by the president and chief executive officer of the Ada Wilson Children’s Center.

Both commenters offered support for the amendment as proposed.

The amendment is adopted under the Health and Safety Code, Title 7, §532. 015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4419(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§406.157. Rate Setting Methodology.

(a) Classes of providers. Reimbursement rates are determined separately by level of care within each of the four classes of ICF/MR providers.

(b) Classes of service. A separate set of reimbursement rates corresponding to classes of service is determined within each provider class. The classes of service for state schools are ICF/MR I, ICF/MR V, and ICF/MR VI. The classes of service for community-based providers are ICF/MR I, large ICF/MR V facilities, small ICF/MR V facilities, large ICF/MR VI facilities, small ICF/MR VI facilities, and small ICF/MR VIII facilities. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds.

(c) Rate determination. The Texas MHMR Board determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 409 Subchapter A of this title (relating to Reimbursement Methodology). The Texas MHMR Board determines particular reimbursement rates for each class of ICF/MR provider by class of service based on the consideration of the recommendations by TXMHMR staff or TXMHMR’s authorized agent. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, TXMHMR or its authorized agent applies the following procedures.

(1) For each class of service, a cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. In calculating the median day of service, days of service delivered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.

(2) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by class of service to calculate the recommended total reimbursement rates. The Texas MHMR Board determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(3) Alternative children’s facility reimbursement rates for selected children’s facilities are determined as follows, effective January 1, 1992.

(A) Definition of children. When referred to in this section, children are persons under 22 years of age.

(B) Determination of eligibility. To be considered eligible for alternate children’s facility reimbursement rates, a facility must be one of the selected facilities listed in clause (i) of this subparagraph and must meet the definition of a large children’s facility as defined in clause (ii) of this subparagraph.

(i) Selected facilities. Selected facilities must be one of the following facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement.

(I) Ada Wilson Hospital, Vendor Number 3730;

(II) The Children’s Center of Austin, Vendor Number 3731;

(III) Thomas Care Center, Vendor Number 3747;

(IV) Human Development Center, Vendor Number 3751; and

(V) Denton Development Center, Vendor Number 3764.

(ii) Definition of children’s facility. When referred to in this section, a children’s facility is a facility which maintains a census of no less than 85% children and maintains at least seven Medicaid-contracted beds. A selected facility will automatically lose eligibility and be paid under the uniform statewide reimbursement rate when the facility’s census falls below 85% children, or when the facility’s number of Medicaid-contracted beds falls below seven.

(C) Determination of alternative children’s facility rates. An eligible children’s facility is reimbursed in the following manner:

ADOPTED RULES November 25, 1994 19 TexReg 9357
(i) Facilities with projected total per diem costs which are less than the total uniform rate for the facility's class of service are reimbursed at that uniform rate.

(ii) Facilities with projected total per diem costs which are greater than the total uniform rate for the facility's class of service, but less than or equal to 110% of that uniform rate, receive their projected total per diem costs multiplied by an incentive factor of 1.03.

(iii) Facilities with projected total per diem costs which are greater than 110% of the total uniform rate for the facility's class of service receive their projected total per diem costs only, with no incentive factor, up to a maximum of 150% of the total uniform rate for the facility's class of service.

(iv) Facilities with projected total per diem costs which are greater than 150% of the total uniform rate for the facility's class of service are reimbursed at 150% of the total uniform rate for that class of service.

(D) Additional supplemental reimbursement. Since provision is made to ensure that reasonable and necessary costs are covered, and an opportunity for an incentive is provided, the selected children's facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement do not qualify for additional supplemental reimbursement for heavy care clients as determined under subsection (c) of this section.

(E) Temporary method for determination of ICF/MR Level V alternative children's facility rates for the period beginning October 1, 1994. An eligible children's facility is reimbursed in the following manner.

(i) Rates are based on projected per diem costs, not to exceed the ICF/MR level V alternative children's facility rate as of September 30, 1994. The cost-based rates will not include a mark-up or incentive factor.

(ii) Reimbursement for fixed capital assets is in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and building equipment lease expense calculated as 14% of the appraised value of buildings, improvements, and land, as determined by local taxing authorities. If such an appraisal is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to the ICF/MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The per diem use fee is calculated by dividing the annual use fee by anticipated facility days of service.

(iii) In calculating the projected costs, historical costs are adjusted to reflect anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by TXMHR to deliver quality services.

(iv) The portion of the Medicaid rate to a provider that represents administrative costs, as collected on the administrative cost are of the Medicaid cost report, is limited to the 90th percentile in the array of administrative costs for all large Level V ICF/MRs.

(v) Any Medicaid payments not expended on Medicaid allowable costs will be recouped by the state.

(vi) This temporary method remains in effect until December 1, 1994.

(F) Method for determination of ICF/MR Level V alternative children's facility rates for the period beginning December 1, 1994. A facility must have an acceptable facility capacity reduction plan approved by the TXMHR Office of Medicaid Administration and the Texas Health and Human Services Commission (THHSC) to remain eligible for payment at the ICF/MR Level V alternative children's facility rates after December 1, 1994. Any extensions or modifications to this plan must be approved by TXMHR and THHSC. An eligible children's facility is reimbursed in the following manner:

(i) Rates are based on projected allowable cost-based expenses not to exceed the aggregate cost for services for the facility provided as of September 30, 1994. Projected costs will be calculated by using pro forma estimates based on historical costs adjusted to reflect the anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by TXMHR for the particular children's population served. The cost-based rates will not include a mark-up or incentive factor.

(ii) Fixed capital assets are reimbursed in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and equipment lease expense. The annual use fee is calculated as 14% of the appraised value of buildings, improvements, and land, as determined by local taxing authorities. If such an appraisal is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to the ICF/MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The use fee will include only that part of the building square footage that is used in the provision of ICF/MR residential services. The per diem use fee is calculated by dividing 25% of the annual use fee by anticipated facility days of service during a fiscal quarter.

(iii) Any Medicaid payments not expended on Medicaid allowable costs will be recouped by the state.

(iv) This temporary method remains in effect only as long as the facility continues to reduce the certified capacity in compliance with the capacity reduction plan described in subparagraph F of this subsection.

(d) Experimental class. TXMHR may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas MHR Board and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(e) Supplemental reimbursement rate determination. The reimbursement rate for community based ICF/MR VI individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The level-of-care assessment form must indicate the client meets the qualifying criteria by having the following scores on all of the items indicated: Item Qualifying Score 51 5 53 4 55 3, 4, or 5 56 3, 4 or 5 59 3, 4 or 5 60 4 or 5

(2) The department determines the appropriate amount of supplemental reimbursement in the following manner.

(A) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental ICF/MR VI rate. Each time estimate is multiplied by a projected hourly wage rate and by class personnel, including a factor for payroll, taxes and benefit expenses. The employee compensation costs are estimated from Medicaid provider cost reports and wage-and-hour survey data.
The portion of the ICF/MR VI class rate which covers employee compensation costs for direct care personnel is determined.

The amount of the ICF/MR VI supplemental reimbursement rate is determined by calculating the difference between the amounts in subparagraphs (A) and (B) of this paragraph.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451180
Ann K. Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Effective date: December 12, 1994
Proposal publication date: October 14, 1994
For further information, please call: (512) 206-4516

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty
Subchapter E. Texas Catastrophe Property Insurance Association

§5.4001
The Texas Department of Insurance adopts an amendment to §5.4001, the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA), concerning an increase in the maximum limits of liability for property insurance coverage available from the TCPIA for mobile homes and their household goods, with changes to the proposed text as published in the August 9, 1994, issue of the Texas Register (19 TexReg 6196).

Pursuant to the Catastrophe Property Insurance Pool Act (Article 21.49 of the Insurance Code), the TCPIA was created by the Texas legislature in 1971 and is composed of all property insurers authorized to transact property insurance in Texas. The purpose of the TCPIA is to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. Currently the TCPIA provides this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy Counties. The adopted amendment is necessary to increase the maximum limits of liability for mobile homes insured in these counties by the TCPIA. This increase in limits is necessary to bring the maximum amount of insurance offered by the TCPIA for mobile homes and the household goods into line with current mobile home and personal property values. Also, the adopted amendment is necessary to provide consistency that the limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOCOCK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area, and that such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code. As a result of comments opposing the proposed amendment as published from the Texas Catastrophe Property Insurance Association and the Texas Department of Licensing and Regulation, at a hearing held on November 7, 1994, on consideration of the adoption of the proposed amendment, the Farmers Insurance Group opposed the adoption of the amendment as published.

COMMENT: Two commenters objected to the proposed limits as published as being inordinately high, representing a dramatic increase in exposure to TCPIA, and increasing limits in the TCPIA to levels which equal or exceed those written in the voluntary market and, in effect, would make the TCPIA a competitor in the voluntary market, which is not the role the TCPIA as a residual market should play. One of these commenters recommended an alternative of maximum limits of $40,000 for mobile homes and $24,000 for household goods or a single combined limit of $64,000. This alternative, according to the commenter, appears to be more than adequate to cover any mobile homes or manufactured homes based upon information reflecting the values of such structures in the catastrophe area. This same commenter also indicated support for a combined single limit of $75,000 for the mobile home and its household goods.

RESPONSE: The Department agrees that the proposed limits as published are too high and has changed these limits in the adopted amendment to a single combined limit of $84,000 for both the mobile home and household goods. The Department believes that this single combined limit brings the maximum amount of insurance offered by the TCPIA for mobile homes and the household goods into line with current mobile home and personal property values. The single combined maximum limit was also adopted to conform mobile home coverage to coverage for other types of risks insured through the TCPIA, including single family homes and commercial buildings. The single combined limit will also allow more flexibility for coverage options for mobile home owners insured by the TCPIA. There are no other changes to the amendments as published.

The adopted amendment amends 28 TAC §5.4001, the plan of operation of the TCPIA, in subsection (f)(3)(K) relating to underwriting requirements for mobile homes, to increase the maximum limits of liability for mobile homes insured by the TCPIA from $15,000 for the mobile home and $6,000 for household goods, which includes all personal property usual to the mobile home residence, to a single combined maximum limit of $84,000 for both the mobile home and household goods. The adopted amendment also provides in subsection (f)(3)(L) that the limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOCOCK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area, and that such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5. 101 of the Insurance Code.

For: The Department received written comments supporting the proposed amendment as published from the Texas Manufactured Housing Association; ten members of the general public; and two members of Gulf Gate, Inc. Mobile Housing Professionals; and the Recreational Vehicle/Mobile Home Owners Association of the Valley, Inc. (on behalf of its membership in Cameron and Willacy Counties). At a hearing held on November 7, 1994, on consideration of the adoption of the proposed amendment, the Office of Public Insurance Counsel presented comments in support of the amendment as published.

Against: The Department received written comments opposing the proposed amendment as published from the Texas Catastrophe Property Insurance Association and the Texas Department of Licensing and Regulation. At a hearing held on November 7, 1994, on consideration of the adoption of the proposed amendment, the Farmers Insurance Group opposed the adoption of the amendment as published.

COMMENT: Two commenters proposed that the term "mobile home(s)" be updated to "manufactured home(s)" for consistency with the Texas Manufactured Housing Standards Act (Texas Civil Statutes, Article 5221).

RESPONSE: The Department agrees with the commenter; however, the petition before the Commissioner addressed only an increase in limits for mobile homes and additional rules to apply an annual inflation factor to these maximum limits. The Department
intends to work with the TCPIA to update the entire section on mobile homes in the Plan of Operation and to add a new section on mobile homes in the TCPIA Manual. Such amendment will include current definitions, current construction standards, and current rating methods and will be addressed in a separate rulemaking proceeding.

COMMENT: One commenter questioned whether the first tier of counties should include Orange County since recently revised, upgraded wind resistance standards for new HUD-code manufactured homes applies to Orange County along with the 14 counties listed in the preamble to the published rule.

RESPONSE: The Department does not believe that Orange County should be included in the first tier of counties because the eligibility for counties to be placed in the designated catastrophe area is not based on wind zones established by HUD. Counties can only be placed in the designated catastrophe area by petitioning the Commissioner for a hearing to make a determination whether windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within such a county subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Thus, this is not a subject that can be addressed in this rulemaking proceeding.

The amendment is adopted pursuant to the Insurance Code, Articles 21.49 and 2.03A, and the Government Code §§2001.004 et seq Article 21.49, §5(c) of the Insurance Code provides that any Commissioner of Insurance by rule shall adopt the TCPIA plan of operation with the advice of the TCPIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act (Government Code title 10, Subtitle A, Chapter 2001). Section 8(b) of Article 21.49 provides that liability limits for insurable property that is not covered under §30(a) which liability limits for dwellings and buildings and the corporeal movable property shall be established by the plan of operation Article 21.49, §8(c) provides that the Commissioner, as part of the annual rate hearings, shall adjust the liability limits, including any limits set by §80(e), for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Article 21.49, §5, subsections (c) and (f) and §80(e) by their terms delegate the authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Regular Session, Chapter 685, §1.03), provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004 et seq (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency.


(a)-(e) (No change.)

(f) Mobile Homes.

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

(3) Underwriting requirements. In order for a mobile home to be insured by the association, it must meet the following underwriting requirements:

(A)-(J) (No change.)

(K) Catastrophe insurance shall not provide insurance coverage for any one insurable risk in excess of $84,000 on the mobile home and on household goods contained therein, which shall include all personal property usual to a residence of the insured and the insured’s family.

(L) The limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code.

4 (No change.)

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

Issued in Austin, Texas, on November 17, 1994.

TRD-9451979 D. J. Powers
Chief Clerk and General Counsel
Texas Department of Insurance

Effective date: December 8, 1994
Proposal publication date: August 9, 1994
For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY
Part I. Texas Natural Resource Conservation Commission
Chapter 116. Control of Air Pollution for New Construction or Modification


The new §116.13 adds definitions that relate to flexible permits, and the revision to §116.110 adds reference to flexible permits as an applicable requirement. The new Subchapter G has been developed in response to direction from the Commission at the January 21, 1994 policy agenda meeting. The proposal was developed after considering the position papers presented by industry, environmental groups, and local programs under the supervision of Task Force 21. The new subchapter will create a new type of permit called a flexible permit. The flexible permit will function as an alternative to the preconstruction permits that are now authorized in Subchapter B, concerning New Source Review Permits. The flexible permit is designed to exchange flexibility for emission reductions with the final goal being a well-controlled facility.

In the proposed rule preamble, the TNRCC staff requested comments on the following specific issues: in §116.716(c), temporary shutdowns be allowed for up to 12 months
without reducing the emission cap and is 12 months an appropriate amount of time for a shutdown to be considered temporary; should the emission cap more closely reflect the actual emissions over the life of the flexible permit at time of renewal; should readjustment of the emissions cap for individual emission limitation be required as a result of emission reduction activities required by rules pursuant to the Federal Clean Air Act (FCAA); and should the rules allow emission reductions resulting from the installation of controls to be banked for purposes of using as offsets in nonattainment areas.

A public hearing on this proposal was held on October 3, 1994, in Austin. Written testimony was received from the following commenters: Amoco Production Company; the United States Environmental Protection Agency; Exxon Company USA; Phillips 66 Company-Sweeny Refinery; Phillips 66 Company-Borger Facility; Society of the Plastics Industry (SPI); Texas Mid-continent Oil & Gas Association; Eastern Chemical Company; Houston Lighting & Power and Texas Center for Policy Studies. Amoco's comments represent the Task Force 21 Air Issues Subgroup that recommends flexible permits for the gasoline industry. The Texas Mid-continental Petroleum Association commented that the flexible permits would upset the balance between the fixed and floating components of the Title V permit program. Another commenter noted that the ability to claim standard exemptions should be retained under the flexible permit.

The rules provide that emission limits will be established on a pollutant-by-pollutant basis. If only one flexible permit per site is allowed, then re-opening of the permit for modifications should be limited to review of the facilities affected by the change.

One commenter stated that flexible permits should allow emission limits to be established on a pollutant-by-pollutant basis. If only one flexible permit per site is allowed, then re-opening of the permit for modifications should be limited to review of the facilities affected by the change.

The rules provide that emission limits will be established on a pollutant-by-pollutant basis. Each pollutant for which flexibility is sought will have an emission limit established; either an emission cap or an individual emission limitation. All other pollutants will be restricted to the previous permit allowable or granted. When multiple facilities have been consolidated into a single permit, and the consolidated permit is reopened for consideration of an amendment, relating to one or more facilities authorized by that permit, the permit is not considered reopened with respect to facilities for which an amendment, modification, or modification is not sought as provided in the Texas Clean Air Act (TCAA), §382.0511(e).

A commenter noted that the ability to claim standard exemptions should be retained under the flexible permit.

The rules have a very limited restriction on the ability to claim standard exemption. There is no restriction for new facilities; a new facility may be constructed under standard exemption, but it will not be included in the flexible permit unless a permit amendment is requested for that purpose. The rules also allow permits to have a facility included in the flexible permit to claim a standard exemption, provided the emissions from the exempt facility do not cause an exceedance of the emissions cap or individual emission limitation. Any increase above the emission cap or individual emission limitation, whether by standard exemption or otherwise, is a significant increase which requires a permit review. Allowing the emissions cap to float upward with each new standard exemption will eventually invalidate the initial permit review. The Commission must maintain the ability to determine that the facilities under the flexible permit will comply with all existing rules and not cause an ambient impact problem.

Another commenter encouraged TNRCC to continue coordinating with the national new source review committee for future Chapter 116 revisions to assure consistency with the federal regulations.

The TNRCC intends to continue coordinating any needed revisions to the flexible permit rules to be consistent with any changes to the federal Prevention of Significant Deterioration (PSD) and nonattainment review programs.

One commenter made several general comments on the proposed rules. First, that the rules should allow more than one flexible permit per site, since some large facilities may wish to combine functionally related process units into one permit. Second, flexible permits should parallel the Title V program. Finally, the rules should contain a provision outlining how sources may be removed from a flexible permit. Since this action may be needed to resolve enhanced monitoring requirements if the enhanced monitoring provisions are not revised.

The staff's original proposal to the Commission, which initiated the flexible permit rulemaking process was based on the premise that only one flexible permit would be allowed per site. As discussed in the proposed rule preamble, similar process units may be combined by creating separate emissions caps under the flexible permit. The Title V program in Texas has been established as a separate permit, not combined with the state new source review program. Therefore, it would not be possible to combine flexible permits with Title V. A permittee may remove a facility from a flexible permit by requesting an amendment or alteration of the flexible permit. Then, separate Chapter 116 authorization would be required for the facility removed from the flexible permit.

One commenter suggested clarification of the applicability of the enhanced monitoring rules under 40 Code of Federal Regulations (CFR), Part 64 to the flexible permit. The commenter argued that if the federal rule is applied to all emission points under an emission cap, it could result in such excessive monitoring costs that the flexible permit would not be economically feasible.

The applicability of the enhanced monitoring rules under 40 CFR Part 64 is not within the control of the TNRCC. The commenter did not provide any support for its argument related to monitoring costs. This issue is beyond the scope of the proposed rules.

Another commenter stated that a definition of maximum expected capacity is needed. The Commission believes that the term "expected maximum capacity" is adequately defined in §116.13.

A commenter stated that the proposed rules go far beyond the scope of the Task Force 21 work group which originally conceived of the flexible permit concept. The commenter argued that there was no intention in the original work group to include new facilities in the flexible permit. Public notice and opportunity for hearings on each flexible permit is the only way to compensate for this action.

The rule language proposed is within the scope of the Task Force 21 Workgroup as well as the proposal made by staff to the Commission. However, consensus was not reached by the workgroup on all items. New facilities were included because it was generally felt that to exclude them from the flexible permit would not be equitable to facilities that are already well-controlled. Public notice is provided for within the rule language.

A commenter stated that the original mandate of the Task Force 21 work group was to examine rules that would provide incentives for companies to improve controls at grandfathers facilities while not providing for increased protection of the environment and human health. The commenter stated that TNRCC has exceeded this mandate without demonstrating that these changes are necessary or in the public interest.

See the response to the preceding comment. The Commission would reply that the public interest will continue to be served by this new permitting mechanism, since new facilities are required to meet Best Available Control Technology (BACT) and demonstrate acceptable off-site impacts. The Commission believes that the biggest benefit to the state is the reductions achieved by controlling older grandfathered facilities.

One commenter stated that several aspects of the proposed rules violate state law. Examples are emission caps, allowing new facilities to obtain flexible permits, and failure to require BACT for each facility as defined in the TCAA.

The Commission has reviewed the state law relative to these issues and has determined that the proposed rule language complies with the requirements of the TCAA. There is no restriction in the TCAA on the use of an emission cap in an air quality permit. The TCAA requires new facilities to obtain a permit and authorizes TNRCC to issue permits for multiple facilities at the same site. The proposed rules require that the facility, group of facilities, or account utilize BACT as required by the TCAA. The permitting of multiple facilities, as opposed to a single facility, raises additional issues that have been addressed. The TCAA allows the TNRCC to develop different requirements and methodologies to account for the additional complexities found when permitting multiple facilities.

A commenter stated that in order to demonstrate compliance with the proposed rules, it will be necessary to simultaneously and accurately measure emissions from multiple sources to determine, for any point in time, that the total emissions are below the cap. The only way to assure compliance with the cap is to install continuous monitors. The proposed rules do not require Continuous Emission Monitors (CEMs).
The rule language does not require CEMS. The Commission believes that engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing are all appropriate methods to demonstrate compliance with the emission cap or individual emission limitation. The Commission intends to require appropriate methods and in some cases CEMS may be required to ensure compliance with all caps and individual emission limitations.

The following discussion addresses the responses to TNRC's issues list for which TNRC solicited comments in the proposed rule preamble.

Response to the TNRC request for comments regarding temporary shutdowns is as follows.

A commenter noted that the 12-month allowance for temporary shutdowns without adjusting the emission cap is reasonable and should be retained in the final rule. Another commenter stated that the temporary shutdown provision should be expanded beyond 12 months, and recommended the revision of §116.716(c) to specify that shutdowns less than 12 months will not require adjustment of the emission cap, while shutdowns greater than 12 months may require adjustment. Two commenters stated that the shutdown period should be extended to two years. The following reasons were given to support this position. It will improve flexibility for operations which depend on market conditions, such as batch processes and specialty chemicals. Business cycles that influence such shutdowns usually last longer than one year. A two-year shutdown would be consistent with the current policy of examining two previous years of operating and emissions data for setting baselines. Also, permanent shutdowns that are made specifically to achieve the cap should be allowed without reducing the cap. Another commenter stated that a 12-month shutdown is too long to be considered temporary and should be considered a major shutdown.

For purposes of this subchapter, the Commission supports a 12-month time frame in determining whether a shutdown is temporary or permanent. This period of time is sufficient to include most maintenance activities and shutdowns due to upsets without requiring submissions of excessive paperwork. This does not relieve the permit holder of the responsibility of reporting. However, the appropriate 30 TAC Chapter 101 rules. The Commission does not agree that a shutdown lasting more than 12 months should be considered temporary. The Commission has considered all of the comments regarding this issue and believes that 12 months is the most reasonable period of time to allow for a temporary shutdown.

Response to the TNRC request for comments regarding reducing allowable emissions to actual emissions at renewal is as follows.

One commenter stated that resetting emission caps during permit renewal is inconsistent with the goals of flexible permits. Increases in actual emissions would occur only at well-controlled facilities, with acceptable impacts. Another commenter stated that to lower the emission cap would not be consistent with the concept of a flexible permit, because the cap is the mechanism that provides flexibility. A commenter stated that emission caps should be reset only upon installation of additional required controls on sources within the cap. Sources should not be penalized for operating within the cap. This defines the purpose of the flexible permit. One commenter stated that companies should not be punished for achieving emission reductions that are not required if use is made of the cap. Another commenter stated that the emission cap must be reset at renewal to more closely resemble actual emissions over the lifetime of the permit. Emissions abuse may occur if it is not strictly defined and enforced.

The Commission does not believe that an automatic reduction of the emission cap or individual emission limitation is warranted at renewal. However, the Commission does believe that a review at renewal to review the emission cap and individual emission limitation to evaluate whether it has been determined to be a proper level, in accordance with the TNRC air permit renewal guidance document. Automatically reducing the emission cap or individual emission limitation at renewal would unnecessarily limit the flexibility this program was developed to provide. The emission cap and individual emission limitations are subject to an impacts review at the time of permit issuance and renewal. Since the use of standard exceptions cannot be used to increase the emission cap, any additional increase in the emission cap will require a permit amendment and be subject to a health effects review at the time a permit is amended.

Response to the TNRC request for comments regarding adjustments in emission caps for reductions required by FCAA rules is as follows.

One commenter stated that if a facility is already compliant with the rules, no further reduction should be required. However, if a reduction is required, then the facility should be allowed to submit a request to adjust the emission cap 60 days prior to the compliance date of the rule. The commentor stated that the permittee should be required to submit a proposal 60 days prior to the effective date of the rule to readjust the cap in compliance with the new federal standard. Another commenter stated that this appears to be a reasonable requirement, but that it should be performed at permit renewal time to avoid frequent modifications whenever a federal rule is changed or added. A commenter stated that the cap should be adjusted relative to emission reductions mandated by the FCAA.

The Commission believes that the emission cap should be adjusted for emission reductions required by new regulations or changes to existing regulations. Such reductions are generally intended to address specific air quality concerns where an additional reduction in the amount of emissions is needed to improve or maintain air quality. If the emission cap is not reduced, then the emissions reductions required by rule still would be available for other facilities under the cap and no real reduction in emissions would be achieved. Such a result would entirely defeat the purpose of the new regulations and would hinder the state's ability to address an air quality concern, including bringing all nonattainment areas into compliance by the specified deadlines. The adjustment to the emission cap should be made at the time the permit is amended, or within 60 days of making the change if no permit amendment is required.

Response to the TNRC request for comments regarding whether reductions from existing facilities should be available for banking credits applicable to nonattainment area offsets is as follows.

One commenter believes that such credits should be allowed because they provide a greater benefit than one-for-one reduction. Also, nonattainment areas need a mechanism for generating offsets to allow continued development. Another commenter stated that emissions reductions from installation of controls should be allowed as offsets for PSD and nonattainment netting and other banking rules. A commenter stated simply that such credits should be allowed. Another commenter stated that the banking of emission reductions in nonattainment areas should not be allowed. That commenter is concerned over environmental justice issues, because too little attention is given to cumulative area-wide issues.

The Commission feels that it is not appropriate to treat emission reductions obtained through the flexible permit process any different than those obtained under the current regulatory process. If the reductions meet the credibility criteria specified in applicable regulations, the reductions should be available for use.

The following discussion addresses comments regarding §116.13, Flexible Permit Definitions.

One commenter suggested additional language for the definition of individual emission limitation in §116.13. The definition should be revised to clarify that it will provide for future operational and physical flexibility, and that specific air contaminants and facilities not modified in a flexible permit are limited to their grandfathered rate or permit allowable. It may be possible that a modification to a facility will affect only a single pollutant, such as a change in sulfur content in the fuel to a combustion device. The permit for such a modification would authorize the change and provide new permit limits for this pollutant. However, other pollutants, such as oxides of nitrogen (NOx) and carbon monoxide (CO) may remain unaffected by this modification and the existing limitations for these pollutants would remain unchanged. A modification is authorized by a flexible permit, the authorization, and limits for those unaltered pollutants are not included in the flexi-
ble permit. Thus, it is possible that, for some facilities, certain pollutants will be covered by a flexible permit and the unchanged pollutants will be covered by the existing authorization. No change in the rule language is needed to support this interpretation.

One commenter suggested a minor correction to the definition of emissions cap in §116.13 by dropping the "e" from the word "emissions" to be consistent with the use of the term throughout the rule.

The Commission agrees with the proposed change and has revised the rule language as suggested.

A commenter suggested that the term "insignificant emission factor" be defined in §116.13.

The term "insignificant emission factor" is a factor to allow for an insignificant emission increase, not to exceed 9.0%, in the calculation of the emission cap to provide for flexibility in source operations without resulting in adverse off-property impacts. The Commission believes that the term is defined in context by its use in §116.716(d).

A commenter suggested that any differences between the terms "facility" and "individual facility" be clarified in §116.13.

The term "individual facility" in §116.13 is intended to make clear that an individual emission limitation applies to a single facility as opposed to an emission cap applying to multiple facilities.

In addition, the requirement in §116.711(3) to utilize BACT for existing facilities will be based on a facility, a group of facilities, or an account. The term "individual facility" in the last sentence of §116.713(3) is needed to make clear that BACT for new facilities may not be demonstrated on a group of facilities or account basis, but must be demonstrated for each new facility. The Commission does not believe that the suggested change is needed.

The following discussion addresses comments regarding §116.110, Applicability.

One commenter expressed concern about the impact of the addition of flexible permits in §116.110. The commenter argued that there could be serious enforcement problems for this type of permit, and that there is a potential for emissions to creep up due to determinations of insignificant emission factors and cumulative impacts from nearby sources. Also, the permit term for all flexible permits should be limited to five years in subsection (c).

The addition of flexible permits in §116.110 makes it clear that a flexible permit is one of several types of permits that can be obtained to satisfy the TCAA. The Commission disagrees that flexible permits will create serious enforcement problems due to emissions creep or cumulative impacts. Emissions cannot creep up or individual emission limitation without amending the flexible permit and subjecting the changes to a permit review. The TCAA provides that permits are to be renewed every ten years. Except for cause, a shorter term may be imposed. The Commission sees no reason to limit the term of all flexible permits to five years. If a justifiable cause exists for a particular permit, the Commission intends to limit the term of the permit as appropriate.

The following discussion addresses comments regarding §116.710, Applicability.

A commenter suggested revising §116.710(a)(1) to allow for more than one flexible permit per site for nonintegrated units.

As stated previously, the staff's original proposal to the Commission, which initiated the flexible permit rulemaking process, was based on the premise that only one flexible permit would be allowed per site. As discussed in the proposed rule preamble, similar process units may be combined by creating separate emissions caps under the flexible permit. Due to potential complexities in the compliance and permitting areas, as well as the uncertainties of this new program, the Commission strongly believes that the concept of a single flexible permit should be retained in the rule.

One commenter suggested revising §116.710(a) to make it clear that a flexible permit can only cover sources at one geographic location.

The Commission agrees that there should be only one flexible permit per site. The Commission agrees to the suggested clarification by adding new paragraph (4) in §116.710(a).

A commenter contended that §116.710(a)(3) should not allow new sources to obtain a flexible permit, especially in non-tariff areas.

New facilities were included because it was generally felt that to exclude them from flexible permits would not be equitable to facilities that are already well-controlled. The Commission believes that the biggest benefit to the state is the reductions achieved by controlling older, grandfathered facilities. The Commission never envisioned that the flexible permit process would be limited to older facilities. The Commission feels that the public interest will continue to be served by this new permitting mechanism since new facilities are required to meet BACT and acceptable impacts. The flexible permit system is designed to address concerns in nonattainment areas.

The following discussion addresses comments regarding §116.711, Flexible Permit Application.

One commenter suggested that §116.711(1) specify that there can be no exceedance of the National Ambient Air Quality Standards or PSD increments and that it include requirements to address other air quality impacts under the FCAA.

No change to the rule is necessary. These issues are already addressed by §116.711(1), (7), and (8).

A commenter suggested revising §116.711(2) to allow calculation of emission rates as an alternative to stack testing.

The stack testing provision of §116.711(2) does not require stack sampling as the sole means of compliance determination. For the performance demonstration, engineering calculations and other methods can be suitable substitutes to stack testing, as stated in §116.711(6). The Commission will work with the applicant to determine the best means to demonstrate compliance. Section 116.711(2) allows the Executive Director to require stack sampling as deemed appropriate. Therefore, the proposed rule language already addresses the concerns raised by this commenter.

A commenter suggested the following minor changes to §116.711(2), (3), and (6) for consistency with other sections of the chapter: add the word "significant" before "air contaminant" in paragraph 2; "proposed" before "facility" in paragraph 3; and add the word "application" after "permit" at the end of the first sentence in paragraph 6.

The term "significant" has a specific meaning within this subchapter. It would be inappropriate to use this term in paragraph (2), since it may restrict the agency's ability to require a demonstration of compliance. The Commission agrees with the second comment to add the word "proposed" in paragraph (3), and has made the suggested change. However, "proposed" means facilities proposed for inclusion in the flexible permit. Regarding the third comment, the first sentence in paragraph (5) requires demonstration that the source will achieve the performance specified in the permit application. The second sentence of this section requires the applicant to submit additional information to demonstrate the source will achieve the performance specified in the permit. The commission feels these two performance demonstrations are reasonable and necessary and is opposed to the suggested change.

A commenter suggested revising §116.711(3) to clarify that BACT applies to all air contaminants for new facilities covered by the flexible permit. Existing facilities must only apply BACT for the air contaminants and facilities that are given operational flexibility under the flexible permit.

The TNRCC agrees that §116.711(3) applies to all air contaminants for new facilities. Additionally, existing facilities must only apply BACT for air contaminants that are given operational flexibility. However, a demonstration must be made that the facility is not modified for the other pollutants and the applicant must be able to make that demonstration on an ongoing basis. No rule change is necessary to allow for that interpretation.

The TNRCC also suggested the revision of §116.711(4) and (5) to state that individual sources subject to the NESHAP are subject to NESHAP standards. The National Emission Standards for Hazardous Air Pollutants (NESHAP) standards will be considered in compliance with the applicable standards if emissions from all sources covered by the permit are below the emission cap.

The TNRCC does not have the authority to relieve a permittee from meeting applicable federal requirements.

One commenter made several comments regarding §116.711. The commenter stated that paragraphs (1) should consider cumulative impacts at a facility; paragraph (2) should...
require actual measurement of emissions; paragraphs (4) and (5) should not allow exceedences of NSPS or NESHAP standards; paragraph (6) should not allow predictive emissions monitoring; actual emission measuring instruments are needed to assure rate references to emissions; paragraph (9) should consider cumulative impacts from the facility in modeling requirements; and define potential maximum production capacity in paragraph (11).

Paragraph (1) requires a health review to be conducted for all pollutants brought into the permit. Paragraph (2) does require actual measurements when emissions when the Executive Director determines it is necessary. Paragraphs (4) and (5) require compliance with all applicable NSPS and NESHAPs. The Commission does not agree with the comment regarding paragraph (8), since engineering calculations and predictive emissions monitoring are acceptable methods for determining compliance in many cases. See comments in reference to paragraph (1) for comment regarding paragraph (9). Potential maximum production capacity should be the express purpose as defined in §116.13. The Commission agrees to revise the term in paragraph (11) from "potential" to "expected" maximum capacity.

One commenter suggested revising §116.711(6) to clarify that an applicant must demonstrate full compliance with all applicable rules and statutory requirements before a permit can be issued. The commenter recommended that §116.711(9) be revised to clarify that monitoring will not replace modeling and that modeling will be required in all appropriate cases.

Section 116.711(1) requires a demonstration that an applicant will comply with all rules and regulations of the TNRCC and with the intent of the TCAA. The Commission feels that acceptable monitoring data is a valid mechanism for demonstrating approvable impacts. The proposed language does not preclude the Commission from requesting modeling when appropriate.

A commenter suggested revising §116.711(10) to clarify that emission limits can be established on a pollutant-by-pollutant basis as specified by the applicant. Also, the commenter contended that emission rate calculations do not need to be provided for unmodified sources under application for an amendment.

The suggested change is not necessary or appropriate. Section 116.711(10) specifies information to be included in a permit application. Section 116.716 clearly provides that both emission caps and individual emission limitations will be established for specific pollutants. The TNRCC agrees that emission rate calculations do not need to be provided for unmodified sources. However, information may be requested to demonstrate that these sources are not being modified. Therefore, the Commission opposes the suggested language that would preclude requesting such information.

The following discussion addresses comments regarding §116.715, General and Special Conditions.

A commenter suggested revising §116.715 to require the special provisions of a permit to specify the terms for readjustment of an emissions cap whenever a unit is removed from service while under schedule to install emission controls.

The Commission agrees that the terms for readjustment of the cap should appear in the special conditions of the permit and may include such terms on a permit-by-permit basis. However, if they are not included in a permit, the rule language addresses how the Commission intends to readjust the cap. The amount of reduction in the emission cap and the length of time the permit should not be left to negotiations on a case-by-case basis. No change to the proposed rule language is needed.

One commenter made several comments regarding §116.715 in subsection (a), define significant impact and make executive director approval and public input mandatory rather than optional; include local programs in the startup notice in subsection (c)(3), provide for public input in determining equivalency of methods in subsection (c)(6); require in subsection (c)(6) should be required for five years; there was no table provided as referenced in subsection (c)(7); and define reasonable times in subsection (c)(10).

Due to the number of compounds and variety of circumstances that can be involved, it is impossible to define significant impact with any more specificity. All permits do not require a special condition restricting the use of standard exemptions or standard permits beyond the restriction on the use of a standard exemption in §116.721(d). Standard exemptions and standard permits are subject to public notice during rulemaking. The rule language does state that all local programs will be notified of start-up conditions. The Commission will review and perform the evaluations of equivalency of methods. The two-year requirement for recordkeeping is being kept to maintain consistency with current practices. The agency maintains its own records regarding the compliance history of a facility that are sufficient for the compliance history review. The "Emission Sources-Emissions Caps and Individual Emission Limitations" table is not part of the rule language, but will be included in a final permit. The TCAA, §382.015 provides that the TNRCC may enter public or private property at a reasonable time to conduct inspections and investigations related to air quality.

A commenter suggested revising *116.715(c)(5) by adding "required" before "information" in the last sentence.

The Commission feels the change would not enhance the paragraph's intent and, possibly, could confuse the reader.

A commenter suggested revising §116.716(b) (erroneously stated as §116. 716(6)) to allow individual emission limitations to be established for any emission unit covered by the permit. This may help alleviate the concern that the new 40 CFR Part 64 will require enhanced monitoring on all sources within an emission cap if the cap is major for a given pollutant. It would allow an applicant to arrange a source cap for a number of small sources that would not sum up to the threshold that triggers enhanced monitoring.

Based on the Commission's current understanding of the proposed requirements in 40 CFR Part 64, this comment does not accurately reflect the proposed requirements for enhanced monitoring. Thus, the Commission does not believe that the suggested changes are necessary.

One commenter suggested revising §116.716(c)(6) to be consistent with the recommended changes to §116.716(c), i.e., allowing shutdowns in excess of 12 months without readjusting the cap. Another commenter stated that paragraph (8) is an essential part of the rules and must be retained.

These subdivisions were intended to address separate issues and do not need to be revised for consistency. Section 116.715(b)(6) addresses readjustment of an emission cap for a facility subject to scheduled installation of controls. This paragraph addresses the difference in the emissions cap before and after installation of emission controls. Subsection (c) addresses adjustments to the emission cap for shutdowns that exceed 12 months' duration. The Commission agrees with the comment that paragraph (8) should be retained in the adopted rule.

The following discussion addresses comments regarding §116.716, Emission Caps and Individual Emission Limitations.

Two commenters suggested deleting §116.716(b). The sentence could be interpreted to disallow increases in emissions above actual levels even if those increases are within the emission cap or individual allowable levels. That would be inconsistent with the concept of a flexible permit. Since a facility under flexible permit will be required to meet BACT and impacts review, there should be no concern about "emission levels appropriate for the proposed contract or facility.

The intent of the last sentence of §116.716(b) is to place additional restrictions on a facility when proposed controls are not BACT for the facility when operated at its maximum potential capacity. For example, BACT for a sulfur recovery unit (SRU) operating at more than two long tons of sulfur per day is currently more stringent than for an SRU operating at less than two long tons of sulfur per day. If an applicant represented expected maximum sulfur production of less than two long tons per day, TNRCC may enter public or private property at a reasonable time to conduct inspections and investigations related to air quality.

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The intent of the last sentence of §116.716(b) is to place additional restrictions on a facility when proposed controls are not BACT for the facility when operated at its maximum potential capacity. For example, BACT for a sulfur recovery unit (SRU) operating at more than two long tons of sulfur per day is currently more stringent than for an SRU operating at less than two long tons of sulfur per day. If an applicant represented expected maximum sulfur production of less than two long tons per day, TNRCC would include an individual emission limitation for the SRU to ensure that pollution could not exceed 2 tons of sulfur per day without installation of appropriate control technology. Additional restrictions could also be appropriate when unacceptable impacts would result if the facility used all of the flexibility provided by the cap. Such an individual emission limitation may not necessarily prohibit an increase in actual emissions, although it would prohibit an increase in emissions above the individual emission limitation which could prevent that specific facility from using any available emissions under the emission cap.

A commenter suggested adding language to §116.716(b) that would allow an applicant to limit its expected maximum capacity if the
applicant desires to use that capacity to calculate an individual emission limit.

The expected maximum capacity of a facility is determined in part by the planned operation of that facility and is totally within the control of the applicant. (See the response to the preceding comment for the intent of this language.)

One commenter suggested revising §116.716(c) to require that the emissions cap be adjusted downward when rules and regulations mandate new controls on sources under the cap. Another commenter suggested revising subsection (c) to allow only one month for a shutdown of new sources under the permittee to demonstrate that there is no alternative to a longer shutdown. According to that commenter, the existing cap should only be retained for a minimal shutdown, and in no event should it extend beyond a 12-month shutdown. A commenter suggested a revision to subsection (c) for clarification that the emission cap is adjusted only for a new source added under the cap, and stated that existing sources in the cap do not require modification.

The Commission has added a new subsection (e) to clarify the requirement to adjust the emission cap when a facility, under a flexible permit, is affected by a change to an existing regulation. As stated in the response to the issues list portion of this preamble, the Commission has considered all of the comments regarding the temporary shutdown issue and believes that 12 months is an appropriate period for a shutdown allowance in most cases when a new facility is added, the emission cap will be increased as suggested by the commenter. However, the current language provides the Commission the needed flexibility to adjust the cap as appropriate to account for all possible cases.

One commenter suggested revising §116.716(d) by adding the phrase "For the purposes of pollutants and facilities with provisions for operational or physical flexibility" at the beginning of the first sentence. All pollutants brought into the flexible permit will be afforded operational and physical flexibility. For those pollutants for which flexibility is not sought, they will remain outside the flexible permit. Therefore, the Commission believes the proposed change is not needed.

A commenter stated that §116.716 does not address the issue of short term emission caps which is mentioned in the preamble. This issue should be clarified in the rule.

The rule allows for the use of any units or averaging times that are appropriate for the compound and resulting off-site impacts. The Commission expects to continue the current practice of having both short term and long term emission limits.

One commenter stated that the language in §116.716(d) seems to require installation of a level of controls referred to as "BACT plus 9.0%." This may become too stringent a requirement for older and grandfathered units. The commenter appears to be a requirement to install BACT on all sources included in the flexible permit. Such a requirement would impose such an unreasonable economic burden on an applicant, that a flexible permit may not be a viable option. This requirement should be reevaluated within one year of adoption to determine if it is reasonable. Another commenter stated the opposite position that the 9.0% emission allowance in subsection (d) is too high. The commenter believes that the cumulative impacts for a major source could be great.

The flexible permits program is an optional program that may not be suitable for all facilities. The TCAA requires BACT for all new and modified facilities. These rules allow for the calculation of an emissions cap that includes an insignificant emissions factor to provide flexibility. The applicant, then, may propose controls necessary to meet that cap. A fundamental premise of this process is that flexibility would be given in exchange for a well-controlled facility. In response to the comments by the last commenter, the insignificant emission factor may not exceed 9.0%. The impacts will be evaluated at the final emission cap total. An insignificant emission factor will be adjusted accordingly if the health effects review dictates lower emissions. The TNRRG agrees that cumulative impacts could be significant and that it is why all facilities will be evaluated under the flexible permit to ensure acceptable off-site impacts.

The following discussion addresses comments regarding §116.717, Implementation Schedule for Additional Controls.

A commenter stated that the emission cap adjustment in §116.717 should be mandatory, not optional.

Section 116.715(d)(9) requires an adjustment to an emission cap for the shutdown of a facility subject to a schedule to install controls. This provision allows the Executive Director additional authority to place conditions in the permit to address these situations.

One commenter suggested revising §116.717 by adding a statement that prohibits banking, sale, and/or netting of emission reductions made under a flexible permit. The commenter argued that it would be inappropriate, especially in nonattainment areas, for a program which is allegedly designed to reduce emissions.

The Commission does not agree with the suggested change. The Commission feels that it is not appropriate to treat emission reductions obtained through the flexible permit process any differently than those obtained under the current regulatory process. Additionally, if the reductions meet the creditability criteria specified in applicable regulations, the reductions should be available for use.

The following discussion addresses comments regarding §116.718, Significant Emissions Increase.

A commenter suggested revising §116.718 and §116.721(b) to allow replacement facilities which utilize BACT to be constructed under the flexible permit.

New facilities, whether they are replacement facilities or not, may be authorized under a flexible permit without the suggested revisions. As with any new facility, a replacement facility must meet all of the applicable requirements of this subchapter, including the use of BACT, to obtain a flexible permit.

One commenter suggested revising §116.718 to assure consistency with the requirement to protect public health that is stated in §116.711(1). Section 116.711(1) states that the requirement to protect public health is only triggered if an emission increase exceeds the permit allowable by a "significant" amount. The commenter recommended the TNRRG consider using a lower baseline for determining significance whenever modeling includes emissions that are below permit allowances.

The rule requires that impacts be evaluated at the proposed emission cap which includes an insignificant emissions factor. Thus, any increase in emissions above the emission cap or individual emission limitation is a significant increase which would require a permit amendment and reevaluation of the impacts and demonstration that applicable PSD and nonattainment (NA) requirements are met. The Commission believes that all applicable PSD/DNA requirements will be met under these rules. However, the Commission will review the rule further and initiate additional rulemaking if necessary.

A commenter suggested defining insignificant in §116.718 with a numerical figure.

Given the variety of facilities and pollutants anticipated to be authorized through flexible permits, it is impractical to define insignificant in terms of a numerical value.

The following discussion addresses comments regarding §116.721, Amendments and Alterations.

A commenter stated that permit alterations in §116.721 should not be allowed without public notification. Also, the cumulative impacts of multiple alterations should be added to determine if additional controls are needed. Paragraph (3) should require BACT.

Alerations allow minor changes to permits that do not increase emissions, change the method of control, or change the character of emissions; therefore, the cumulative impact and control technology review are not necessary. Because of the minor nature of the alteration process and since the emissions cap cannot be exceeded, cumulative impacts and additional controls are not warranted during the review of an alteration.

A commenter suggested revising §116.721(b) to specify that facility alterations which may change a general or special provision do not require prior approval unless they adversely affect control equipment performance.

The current language provides the Executive Director the opportunity to review a change to a facility made under a permit alteration to determine if the change adversely affects control equipment performance. Additionally, permit conditions may need to be revised by the permit engineer to reflect the change.

One commenter suggested revising §116.721(d) to allow the use of standard exemptions under a flexible permit.

The Commission disagrees with the commenter's suggestion. See the response...
to the second comment in the general com-
ments addressed at the beginning of this pre-
amble.

A commenter stated that §116.721(c) and (d) are examples of the difficulty TNRCC will have in enforcing the flexible permit rules. The TNRCC should explain to the public how enforcement and emissions inventories will be accomplished for facilities operating under a flexible permit. Specific examples should be given.

The Commission expects to have better tools for enforcement, such as recordkeeping and emissions monitoring, under the flexible permit rules, and the compliance staff will continue to enforce the rules as they have in the past. The holder of a flexible permit will be required to maintain data sufficient to demonstrate compliance with the emissions cap and individual emission limitations contained in the flexible permit, and this information will be available to TNRCC field staff and/or local programs.

One commenter suggested revising §116.721 to clarify the time frame for response by TNRCC to a permit amendment or alteration application. The commenter recommended a response time of seven to 14 days. Also, the commenter suggested the rule specify whether any penalties are assessed for exceeding the limitations for an alteration or amendment.

The TNRCC is currently developing proposed rules in a new Chapter 281 that will address time frames for permit review. It would be duplicative to address the same issues within this rulemaking. Whether penalties are assessed for a violation is determined on a case-by-case basis by the enforcement staff. Typically, the staff responds to all alteration requests; however, it is the permit holder's responsibility to verify individual compliance with all applicable rules and regulations.

The following discussion addresses comments regarding §116.750, Flexible Permit Fee.

A commenter stated that, in §116.750, fees should be charged for alterations, ownership changes, location changes, and standard exemptions to recovery staff resources for these activities.

The Commission has developed the flexible permit fee structure to be consistent with the existing fee system for new source review permits.

The following discussion addresses §116.760, Flexible Permit Renewal.

A commenter suggested revising §116.760 to require adjustment, at renewal, of emissions to 10% over the actual maximum emissions that occurred during the period prior to renewal.

This issue was addressed in the portion of this preamble regarding responses to the TNRCC issues list.

Subchapter A. Definitions

• 30 TAC §116.13

The new section is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

(1) Emission cap—Emission limit for a specific air contaminant based on total emissions of that pollutant adjusted by an Insignificant Emissions Factor from all sources that are included in a flexible permit.

(2) Expected maximum capacity—The maximum capacity of a facility according to its physical and operational design and planned operation.

(3) Individual emission limitation—Emission limit for a specific air contaminant not covered by an emission cap for an individual facility adjusted by an Insignificant Emissions Factor.

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 November 16, 1994.

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

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For further information, please call: (512) 239-1966

Subchapter B. New Source Review Permits

Permit Application

• 30 TAC §116.110

The amendment is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

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Subchapter G. Flexible Permits

Permit Application


The new sections are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible permit pursuant to §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

(1) only one flexible permit may be issued at an account site;

(2) modifications to existing facilities covered by a flexible permit may be handled through the amendment of an existing flexible permit;

(3) permitting of a new facility may be handled through the amendment of a flexible permit; and

(4) a flexible permit may not cover sources at more than one account site.

(b) Operations certification. Any person who obtains a flexible permit under this subchapter shall comply with §116.110(b) of this title.

(c) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(c) of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the Texas Natural Resource Conservation Commission (TNRCC). After the sale of a facility or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the TNRCC.
(d) Submittal under seal of registered professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(d) of this title.

(e) Responsibility for flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (c) of this section.

§116.711. Flexible Permit Application. Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit information to the Texas Natural Resource Conservation Commission (TNRCC) which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined pursuant to §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the TNRCC and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people. In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the TNRCC shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the Executive Director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the TNRCC “Compliance Sampling Manual.”

(3) Best Available Control Technology (BACT). The proposed facility, group of facilities, or account will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility. For new facilities, the use of BACT shall be demonstrated for the individual facility.

(4) Federal New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS) and Maximum Achievable Control Technology (MACT). The emissions from each facility as defined in 40 CFR Part 60 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, or any MACT standard, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(7) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements under the designated area concerning nonattainment review in Subchapter B of this chapter.

(8) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements under the designated area concerning PSD in Subchapter B of this chapter.

(9) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the TNRCC Permits Program to determine the air quality impacts from the facility, group of facilities, or account.

(10) Application content. In addition to any other requirements of this chapter, the applicant shall:

(A) identify each air contaminant for which an emission cap is desired;

(B) identify each facility to be included in the flexible permit;

(C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(11) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.


(a) Emission caps. Each emission cap for a specific pollutant will be established as follows:

(1) emissions will be calculated for each facility based on application of current Best Available Control Technology at expected maximum capacity;

(2) the calculated emissions will be summed.

(b) Individual emission limitations. An individual emission limitation will be established in the same permit for each pollutant not covered by an emission cap for facilities covered by the flexible permit. In addition, an individual emission limitation may be established for a pollutant covered by an emission cap when the expected capacity of a facility is less than the expected maximum capacity to prevent a facility from exceeding emission levels appropriate for the proposed controls.

* ADOPTED RULES November 25, 1994 19 TexReg 9367 *
(c) Readjustment of emission cap. If a facility subject to an emission cap is shut down for a period longer than 12 months, the emission cap shall be readjusted by lowering the emission cap by an amount that the shut down facility contributed to the original calculation of the emission cap. If a new facility is brought into the flexible permit, an emission cap shall be adjusted by modifying the emissions cap accordingly.

(d) Insignificant emission factor. The emission caps and individual emissions limitation calculated pursuant to this section may include an Insignificant Emissions Factor which does not exceed 9.0% of the total emission cap or individual emission limitation.

(e) An emission cap will be readjusted downward for any facility covered by a flexible permit if that facility becomes subject to any new state or federal regulation which would lower emissions or require an emission reduction. The adjustment will be made at the time the flexible permit is amended or altered. If an amendment to a flexible permit is not required to meet the new regulation, then within 60 days of making the change, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated.

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

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Director, Legal Division
Texas Natural Resource Conservation Commission

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For further information, please call (512) 239-1966

Chapter 290. Water Hygiene
Drinking Water Standards
Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems

- 30 TAC §§290.109, 290.113, 290.119, 290.120

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§290.109, 290.113, 290.119, and new §290.120, concerning drinking water standards, applicable reporting requirements for public water systems (PWS) and lead and copper standards. Sections 290.109, 290.113, and 290.119 are adopted without changes to the proposed text and will not be republished. Section 290.120 is adopted with changes to the proposed text as published in the September 23, 1994, issue of the Texas Register (19 TexReg 7495).

The Commission received comment letters from the US EPA Region 6 Water Supply Branch, The Light Company (Houston Lighting and Power), Dallas Water Utilities, Fort Worth Water Department and Harris County Municipal Utility District Number 257. The comment is addressed in this order concerning several sections of the proposal.

One commenter recommended the following changes in order to bring the state proposed standards into compliance with federal regulations:

The commenter noted that the proposed rule must indicate that large water systems (serving more than 50,000 people) meet State established water quality parameters before being declared in violation of the Commission's parameters. The Commission agrees and has modified §290.120(h)(4)(B) accordingly.

One commenter noted that the proposed rule did not contain language to allow water systems that continue to exceed lead and copper action levels to be in compliance if they operate within State specified water quality parameters. The Commission agrees and has modified §290.120(h)(4)(D) accordingly.

One commenter pointed out that the State rule must contain language stating that the water system is required to meet specific water quality parameters in each monitoring period in order to remain in compliance. Section 290.120(f)(1)(K) has been so modified.

One commenter notes that §290.120(f)(2)(B) must not only require treatment of source water but also specify a schedule for this activity. The Commission agrees and the section has been so modified.

One commenter contends that §290.120(f)(3) must contain specific language defining the term "control" as used in Table 2 located in §290.120(f)(1)(D). This notation is correct and a change has been made.

One commenter notes that the proposal is correct and a change has been made.

One commenter notes that procedures for delivery of public education materials by non-transient non-community water systems as outlined in §290.120(g)(3) is correct only for community water systems and the citation referring to the federal rule should be changed to 40 C.F.R. §141.85(c)(4). The requirement described in that section of the federal rule are appropriate for non-transient non-community water systems and this change has been made.

One commenter notes that clarification of §290.120(f)(1)(D) is necessary to distinguish between first draw tap monitoring and distribution point of entry monitoring. The Commission agrees with this assertion and a change has been made to correct this point.

One commenter noted that no mention was made of the manner in which new water systems are to be brought into compliance.
with §290.120. Wording has been added to §290.120(a)(1) that will clarify this point.

One commenter feels that the meaning of "system population served", should be clarified as to actual population served or the design population. Throughout §§290.101-290.120 the term "population" refers to actual population. This position is not expressly stated otherwise. Section 290.120 is no exception and no further clarification is required.

One commenter is concerned that the proposed standards do not indicate whether a water system can or should advise the Commission when the system population changes. The Commission is provided with a population figure as part of the site selection information required by §290.120(b) and this number will be used throughout the lead/copper monitoring process. Should new information become available through routine survey procedures, the number of samples to be collected for reduced monitoring will be adjusted as necessary but no change will be made to the initial number of required tap samples. Further clarification of the proposed language appears unnecessary.

One commenter seeks clarification as to whether the public notification requirements of §290.103(5) for treatment technique violations apply to lead and copper monitoring. The commenter also wishes to know if public education requirements outlined in §290.120(g) for lead and copper are enforced in addition to the public notification requirements of §290.103(5). It should be noted that a violation of §290.120(c) is a violation of treatment technique and is therefore subject to the notification requirements of §290.103(5). A wording change has been made in §290.120(a)(9)/(B) to clarify this issue.

One commenter wishes to see assurance that it presently complies with the federal requirements as they are currently implemented by TNRCC for lead and copper regulation and that noncompliance will not occur due to any language proposed for §290.120. Since the proposed §290.120 language does not significantly differ from that of the federal rule, there should be no adverse impact on the City of Dallas unless future conditions or actions by the City of Dallas cause the water system to fall out of compliance. No additional wording is necessary.

One commenter feels that a proposed change to §290.119(1) requiring weekly calibration as opposed to monthly calibration of control and turbidity monitoring devices is excessive and impractical for a large water utility that utilizes numerous devices of this type. It is the commissions intent to require weekly calibration of only the instruments that are used to report regulatory compliance data. This would be only a very few instruments in use, any utility and any turbidimeter being used for process control purposes should be calibrated according to the manufacturers recommendations. The commission feels that no change to the proposed wording is required.

One commenter is concerned that the proposed effective date of July 1, 1991 for lead and copper regulation found in §290.120(a)(1) and the date of July 1, 1993 is greater than 0.015 mg/l for lead or 1.3 mg/l for copper.

(b) Site Selection and Material Survey.

(1) By the applicable date for commencement of tap sample monitoring, each system shall complete a materials survey of its distribution system to identify a pool of tap sampling sites that meet the requirements of this section. All first draw tap samples are to be collected from this pool of sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices.

(2) Information for conducting a materials survey and selecting sampling sites are provided to each system by the commission before initial tap sampling is initiated in accordance with the time schedule shown on Table Number 2 paragraph (8) of this subsection. Procedural requirements set forth in 40 Code of Federal Regulations, §141.86 will be followed for site selection activities except that reporting of tap sampling sites to the Commission shall be conducted using the materials survey and site selection forms supplied by the Commission. Supplemental explanatory correspondence from the system will be considered as part of the materials survey document. Systems must make a good faith effort to conduct a thorough and complete materials survey and submit a valid sample site selection form before initial tap sampling may be conducted.

(c) Tap Sampling.

(1) A first draw tap sample means a one liter sample of tap water collected from a cold water, frequently used interior tap, after the water has been standing in the plumbing for at least six hours and is collected without first flushing the tap. It is recommended that water not be allowed to stand in the plumbing for more than 18 hours prior to collection.

(2) Sample collection may be conducted by either water system personnel or the residents. If the resident is allowed to collect samples for lead and copper monitoring, the water system must provide written instructions for sample collection procedures and the system may not challenge, based on alleged errors in the sample collection process, the accuracy of the sampling results.

(3) A water system shall collect each tap sample from the same sampling site from which it collected a previous sample. If this is not possible, written explanation to the commission must be provided and an alternate site from the system's sampling pool must be selected which meets similar criteria and is within reasonable proximity to the original site.

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(4) Monitoring approved by the commission and conducted by systems in addition to the minimum requirements of this section shall be considered by the commission in making any determination of compliance.

(5) Number of Tap Samples—Initial Monitoring—Systems shall collect at least one set of tap samples during each of two consecutive six-month monitoring periods.

(6) The minimum number of sample sites required for initial monitoring are listed in Table Number 1, as well as the number of sites required of each system conducting reduced monitoring.

Figure 2: 30 TAC §290.120(c)(6)

(7) Initial tap sampling shall be conducted only after the Commission has determined that a system has successfully completed a materials survey and has obtained approval of its sample site selection form which is required to be submitted by subsection (b)(2) of this section.

(8) The first six-month initial monitoring period begins on the dates listed in Table Number 2.

Figure 3: 30 TAC §290.120(c)(8)

(d) Computing 90th Percentile Lead and Copper Levels—Determination of 90th percentile levels shall be obtained by ranking the results of lead and copper samples collected during a monitoring period in ascending order (lowest concentration = sample number 1; highest concentration = sample numbers 10, 20, 30, 40, 50, etc.), up to the total number of samples collected. The number of samples collected during the monitoring period shall be multiplied by 0.9 and the concentration of lead and copper in the number of sample yields by this calculation is the 90th percentile sample contaminant level. The system is in compliance with the lead and/or copper action levels if the 90th percentile sample contaminant level is equal to or less than the action levels specified in subsection (a)(2) of this section. For water systems serving fewer than 101 people, the 90th percentile level is computed by taking the average of the highest two sample results.

(e) Reduced Tap Monitoring.

(1) The commission shall notify each water system that it is eligible for reduced monitoring of first draw tap samples if it is in compliance with the 90th percentile lead and copper action levels after completion of at least six months of initial tap sampling.

(2) Reduced monitoring shall be conducted annually during June, July, August, or September by collecting one set of samples from the appropriate number of reduced monitoring sites, after notification.

(3) The number of reduced monitoring sites required for each system are found in Table Number 1 located in subsection (c)(6) of this section, if not otherwise specified by the commission.

(4) If the system exceeds an action level for lead or copper during any reduced monitoring period, then:

(A) it must follow public education requirements applicable to action level exceedances during initial monitoring found in subsection (g) of this section;

(B) collect the remaining number of samples as required for initial monitoring within 60 days. The results of all samples related to reduced monitoring will be used to determine action level exceedance. Should an exceedance of lead or copper action levels be verified, then procedures of this section applicable to action level exceedances during initial monitoring will be followed.

(5) If after three annual periods of reduced monitoring the system continues to be in compliance with the lead and copper action levels, then the system will be notified to conduct reduced monitoring once every three years.

(f) Monitoring Requirements for Water Quality Parameters (WQP’s) and Source Water.

(1) Water Quality Parameters.

(A) All large water systems (serving populations greater than 50,000) are required to conduct WQP monitoring beginning with the initial period of first draw tap samples and continuing until corrosion control is optimized.

(B) All medium and small systems (serving populations of 3,301 to 50,000 and less than 3,301, respectively) that exceed the lead or copper action level shall conduct WQP monitoring beginning in the first calendar quarter following the end of the period in which the exceedance of the lead and/or copper action level took place and continue as long as the system exceeds the lead or copper action level.

(C) WQP monitoring shall be conducted quarterly for the following parameters: pH; alkalinity; calcium; conductivity; water temperature; orthophosphate (when an inhibitor containing a phosphate compound is used) and silica (when an inhibitor containing a silicate compound is used). Temperature and pH must be measured at the sampling site at the same time of sample collection.

(D) Large systems must conduct WQP monitoring at all entry points and at the number of distribution sites specified in Table Number 3 of this section. Small and medium systems that are required to conduct WQP monitoring must monitor at all points of entry and at the required number of distribution sites as shown in Table Number 3.

Figure 4: 30 TAC 290.120(9)(1)(D)

(E) WQP distribution sites (exclusive of entry points) may be sites normally used for bacteriological monitoring and samples need not be collected inside the home. These sites shall be representative of water quality throughout the distribution system.

(F) After corrosion control treatment is installed, water quality parameters shall be measured at the initial number of distribution sites as indicated in Table Number 3 quarterly and also at entry points biweekly.

(G) WQP monitoring after corrosion control treatment is installed shall be conducted for the following parameters: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), and calcium (when calcium carbonate stabilization is used as part of the treatment). These parameters must be measured at all points of entry and initial distribution sites.

(H) Any water system that maintains the range of values for WQP’s reflecting optimum corrosion control as approved by the commission for one year may collect quarterly distribution samples at the reduced number of distribution sites indicated in Table Number 3. WQP samples shall continue to be measured at points of entry on a biweekly basis and results submitted to the commission.

(I) Any water system that reflects optimal corrosion control treatment during three consecutive years may reduce the frequency at which it collects distribution samples for applicable WQP’s to annually.

(J) Any water system that reflects optimal corrosion control treatment during three consecutive years of annual WQP distribution monitoring may reduce the frequency at which it collects the number of WQP distribution samples for applicable WQP’s to once every three years.
K) Water quality parameter testing must be conducted at a laboratory that uses the methods described in 40 Code of Federal Regulations, §141.89 and it is the responsibility of the water system to collect, submit and report these values. If a water system fails to meet the WQP values/ranges specified by the Commission it is out of compliance with this section. WQP values may be verified by the system in accordance with 40 Code of Federal Regulations, §141.82(g) of the federal regulations. The state requires that the values be reported, but is not responsible for supplying sample bottles and testing services to the water system.

L) Any water system subject to the reduced monitoring frequency that fails to operate within the approved range of WQP values shall resume distribution sampling in accordance with the number and frequency requirements in subparagraph (F) of this paragraph.

(2) Entry Point Water Sampling

(A) Entry point water sampling for lead and copper shall be conducted by systems that exceed the lead or copper action levels in order to determine the lead or copper content of source water. Entry point water samples shall be collected in accordance with the requirements of this section regarding sample location, number of samples, and collection methods as specified in §290.108 of this title (relating to Inorganic Chemical Monitoring and Analytical Requirements) except that one sample shall be collected from each entry point to the distribution system (no compositing) within six months after notification of the exceedance of the lead and/or copper action level. If acceptable entry point water data is not available for large systems, the entry point water lead level shall be considered as zero for purposes of determining whether a corrosion control study is required.

(B) The commission shall complete an evaluation of all entry point water sample results, along with the corrosion control study, to determine if source water treatment is necessary. If source water treatment is deemed necessary by the commission, the system must install it in accordance with the scheduling requirements specified in 40 Code of Federal Regulations, §141.83(a) of the federal regulations.

(C) Any system that installs entry point water treatment shall collect an additional round of source water samples as described above during two consecutive six-month periods within 36 months after source water treatment begins.

(D) The monitoring frequency for lead and copper in source water, after the commission determines that source water treatment is not required, or after the commission has specified the maximum permissible source water levels for lead and copper, shall be in accordance with inorganic chemical monitoring practices and procedures as stated in §290.108 of this title.

(E) Reduced source water monitoring procedures as specified in 40 Code of Federal Regulations, §141.88(e) for lead and copper will be followed by the commission. Source water samples will be submitted by the water system in addition to other inorganic chemical monitoring requirements of these standards.

(g) Public Education Procedures.

(1) A water system that exceeds the lead action level based on first draw tap water sampling shall deliver to the public the public education materials as listed in 40 Code of Federal Regulations, §141.85(a), in accordance with the requirements stated in paragraphs (2) and (3) of this subsection.

(2) A community water system must, within 60 days of notification by the commission:

(A) Insert notices in each customer’s utility bill that includes the information in 40 Code of Federal Regulations, §141.85(a) and print the following alert on the water bill itself or on a bill insert in large print: “SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION.”

(B) Submit the required information in 40 Code of Federal Regulations, §141.85(a) to the editorial departments of the major local daily or weekly newspaper circulated throughout the system.

(C) Deliver pamphlets and/or brochures that contain the public education materials as specified in 40 Code of Federal Regulations, §141.85(a)(2) and (4) to city or county health departments; to public schools or local school boards; Women, Infants and Children (WIC) and/or Health Care Programs when available; public and private hospitals and/or clinics; pediatricians; family planning clinics; and local welfare agencies, within their service area.

(D) Submit the public service announcement in 40 Code of Federal Regulations, §141.85(b) to at least five radio and/or television stations broadcasting to the area served by the water system.

(E) A community water system must repeat the tasks contained in subparagraphs (A), (B), and (C) of this paragraph, every 12 months and the tasks listed in subparagraph (D) of this paragraph, every six months for as long as the system exceeds the action level.

(F) Certain requirements of subparagraphs (C) and (D) of this paragraph may be modified by the commission if justified by local circumstances.

(3) A non-transient non-community water system must within 60 days of notification by the commission, deliver the public education materials in 40 Code of Federal Regulations, §141.85(c)(4) as follows:

(A) post informational posters in drinking water in a public place or common area in each of the buildings served by the system, and

(B) distribute pamphlets and/or brochures in drinking water to each person served by the water system.

(C) A non-transient non-community water system must repeat the tasks contained in (3)(A) and (B) of this paragraph at least once during each calendar year in which the system exceeds the lead action level.

(4) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(5) A water system that fails to meet the lead action level as stated in subsection (a)(3) of this section shall make available to any customer who requests it, information as to how and where water samples may be submitted for lead and copper analysis.

(h) Corrosion Control.

(1) All applicable water systems shall install and operate optimal corrosion control treatment, which means the corrosion control treatment that minimizes lead and copper concentrations at users' taps while insuring that the treatment does not cause the system to violate any other drinking water standard.
(2) Large water systems (serving greater than 50,000 people) are required to conduct corrosion control studies unless they can demonstrate that corrosion control is already optimized to the satisfaction of the commission. If required to conduct a corrosion control study, a large system must complete it by July 1, 1994, and the commission shall designate optimal corrosion control treatment and parameters by January 1, 1995. The system shall install corrosion control treatment by January 1, 1997. Large systems that exceed lead and/or copper action levels must conduct a demonstration study as described in paragraph (4)(B) of this subsection.

(3) Small and medium water systems (serving less than 3,301 or serving between 3,301 and 50,000 people, respectively) are deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods. These systems will be required to conduct a desk-top corrosion control study to optimize corrosion control if at anytime the 90th percentile action level for lead and/or copper is exceeded. The study must be conducted and submitted within 18 months after exceedance notification by the commission for medium sized water systems and within 24 months after exceedance notification for small water systems.

(4) Performance for Corrosion Control Studies.

(A) Any public water system performing a corrosion control study shall evaluate the effectiveness of each of the following treatments (or combinations of treatments) to identify the optimal control treatment:

(i) Alkalinity and pH adjustments;

(ii) Calcium hardness adjustment;

(iii) Addition of phosphate or silicate corrosion inhibitor.

(B) The water system shall conduct this evaluation using either pipe rig/loop tests, metal coupon tests, partial systems tests (demonstration study), or analyses based on treatments in documented analogous systems (desk-top study). Analogous system means a system of similar size, water chemistry, and distribution system configuration.

(C) The water system shall measure the parameters listed in subsection (F)(I)(C) of this section.

(D) On the basis of the evaluation stated in subparagraphs (4) (A) and (B) of this paragraph, the water system shall recommend to the commission, in writing, the treatment option that constitutes optimum corrosion control/treatment along with sufficient documentation as required by the state to establish the validity of the evaluation procedure. Operational WQP ranges shall be proposed to the state where applicable.

(E) The commission will, within six months after submittal of the corrosion control study by the water system, review the study and designate optimal corrosion control treatment and parameters.

(F) The water system shall install optimal corrosion control treatment within 24 months after the commission designates optimal corrosion control treatment and notifies the system.

(G) Large systems that install corrosion control treatment shall conduct first-draw lead and copper tap sample monitoring as in initial monitoring during each of two consecutive six-month periods by January 1, 1998. Small and medium systems shall complete the above stated monitoring within 36 months after the commission designates optimal corrosion control treatment. Small and medium systems are deemed to have optimized corrosion control if action levels for lead and copper are not exceeded in two rounds of subsequent tap sample monitoring. Large systems are deemed to have optimized corrosion control if they have demonstrated through first-draw tap monitoring conducted after treatment installation and water quality parameter sampling conducted in compliance with standards set by the commission for optimum corrosion control that they are operating within commission-designated parameters.

(H) Any system that has installed corrosion control treatment and demonstrates optimal corrosion control and operates in compliance with the commission-designated optimal water quality parameters, may conduct reduced tap sampling as described in subsections (e)(1)-(5) of this section, when written permission is granted by the commission after the commission has evaluated all pertinent data. Systems that do not meet the action levels for lead and copper after installing corrosion control treatment must continue to operate in accordance with WQP requirements established by the commission and follow procedures specified in subsection (e)(4) of this section.

(I) The commission may modify, upon its own initiative or in response to a water system request or a request from interested parties, its designated corrosion control treatment or parameters. The request and commission response pursuant to modification shall be in writing.

(5) Optimization of Corrosion Control.

(A) Any water system may be deemed by the commission to have optimized corrosion control treatment if the system demonstrates, to the satisfaction of the commission, that it has conducted activities equivalent to the corrosion control steps listed in paragraph (4) of this subsection.

(B) Any large water system is deemed to have optimized corrosion control if it submits results of lead and copper tap water monitoring and entry point water monitoring in accordance with this section which demonstrates for two consecutive six-month monitoring periods that the 90th percentile tap sample lead level is less than 0.005 mg/l.

(i) Lead Service Line Replacement.

(1) Systems that fail to meet the lead action level in first-draw tap sampling after installing corrosion control and for source water treatment (whichever occurs last) shall immediately begin to replace annually 7.0% of the lead service lines identified during its materials survey process unless otherwise instructed by the commission.

(2) If the system is in violation for failure to install source water or corrosion control treatment, the commission may require the system to commence lead service line replacement after the date by which the system was required to conduct follow-up monitoring as specified in subsection (h)(4)(G) of this section.

(3) The water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the commission in writing that it controls less than the entire service line. The written statement must indicate that the water system is none of the following forms of control: municipal ordnance, public service contracts or applicable legal authority, authority to set standards for construction, repair or maintenance, or ownership: In such a case, the system shall replace that portion of the lead service line that it controls and notify the owner that it will also replace the building owner's portion of the line. The system is not required to bear the cost of replacing the building owner's portion of the line.

(4) Lead service line means a service line which is made all or in part of lead and connects the water main to the building inlet including any lead pigtail, gooseneck, or other fitting which is connected to such line.
(5) The system may cease replacing lead service lines whenever subsequent 90th percentile first-draw-tap sampling in two consecutive monitoring periods is less than the lead action level. Lead service line replacement shall immediately resume if first-draw-tap samples exceed the 90th percentile lead action level.

(j) Analytical and Sample Preservation Methods.

(1) Analysis for lead and copper shall be conducted using methods stated in 40 Code of Federal Regulations, §141.89, published in the June 7, 1991, Federal Register, in laboratories certified by the Texas Department of Health Bureau of Laboratories. Analysis for pH, conductivity, calcium, alkalinity, or the phosphate, silica, and temperature may be conducted in any laboratory as long utilizing EPA methods prescribed in 40 Code of Federal Regulations, §141.89.

(2) The Practical Quantitation Limits (PQL) and the Method Detection Limits (MDL) shall be as stated in 40 Code of Federal Regulations, §141.89.

(3) The commission has the authority to allow the use of previously collected monitoring data if the data were collected in accordance with 40 Code of Federal Regulations, §141.89.

(4) All lead levels measured between the PQL and the MDL must be reported as measured and all lead levels measured below the MDL must be reported as zero.

(5) First-draw-tap samples must be received in the laboratory within 14 days after the collection date along with correctly completed laboratory submission forms supplied by the commission.

(6) Bottles supplied by the commission or the certified laboratory must be used for collecting the tap samples.

(k) Reporting and Recordkeeping Requirements.

(1) Reporting Requirements.

(A) Report all results of Water Quality Parameter (WQP) analyses including the location/address of each distribution system sampling point. This report must include each WQP specified in subsection (f) of this section, as well as all sample results from entry points to the distribution system.

(B) Where applicable, the first draw tap monitoring shall be reported within ten days following the end of each monitoring period as specified by the commission. (Analysis results from the TDH laboratory are normally provided simultaneously to the water system and the commission.) The water system’s report shall include an explanation as to why a sampling site was changed from the previous round of sampling, if applicable.

(C) As part of the site selection form, each water system shall justify the selection of sites other than Tier I sampling sites as defined on the site selection form and, if lead service lines are present, why the system was not able to locate a sufficient number of make up at least 50% of its required number of sampling sites, should this condition arise.

(D) Where applicable, the system must certify that source water treatment has been installed as recommended by the commission and that installation was done in accordance with the specified time requirements.

(E) Where applicable, the water system must certify that lead service lines have been replaced in accordance with directives of the commission and in accordance with time schedules specified in subsection (i) of this section.

(F) Where applicable, the water system must provide copies of public education materials and certification that distribution of said materials is being conducted in accordance with subsection (g) of this section.

(G) When required by the commission, the system must report any sampling data collected by the water system in addition to the items listed in subparagraphs (A)-(F) of this subsection.

(H) Corrosion control treatment data shall be reported as required by the commission for systems that:

(i) have demonstrated optimum corrosion control;

(ii) are required to specify optimum corrosion control treatment (as part of the corrosion control study);

(iii) install corrosion control treatment as designated by the commission; and

(iv) are required to evaluate effectiveness of corrosion control treatments.

(2) Recordkeeping Requirements—Records of all sampling site data, sample submission forms, analysis results, reports, surveys, letters, evaluations, schedules, commission recommendations, requirements or determinations, and any other information deemed appropriate by the water system shall be retained by the water system for a minimum of 12 years. These records include, but are not limited to, the following items:

(A) tap water monitoring results including the location of each site and date of collection;

(B) certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form;

(C) where residents collected the sample, certification that the water system informed the resident of proper sampling procedures;

(D) the analytical results for lead and copper concentrations (providing to each system by the commission) at each tap sample site;

(E) designation of any substitute site not used in previous monitoring periods.

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 November 16, 1994.

TRD-9451048 Mary Ruth Holder Director, Legal Division Texas Natural Resource Conservation Commission

Effective date: December 7, 1994
Proposal publication date: September 23, 1994
For further information, please call: (512) 239-4640

** TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

Part II. Texas Department of Corrections

Chapter 61. Rules and Regulations and Grievance Procedures Governing Inmate Conduct

* 37 TAC §§61.1-61.3, 61.11-61.16, 61.21-61.32, 61.41-61.45, 61.51-61.63, 61.71-61.75, 61.81-61.90, 61.101-61.106

The Texas Department of Criminal Justice adopts the repeal of Chapter 61, concerning regulations and grievance procedures governing inmate conduct, without change to the proposed text as published in the August
The Texas Department of Corrections was abolished and became the Texas Department of Criminal Justice in 1989, pursuant to House Bill 2335. That legislation provided that the rules and policies of predecessor agencies became the rules and policies of the Department of Criminal Justice. The rules repealed here were all outmoded even then, and are not within the portion of the Texas Administrative Code allotted to the Department of Criminal Justice.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, § 492.013(a), which gives the Board of Criminal Justice the authority to adopt rules.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451164 Carl Reynolds General Counsel Texas Department of Correction

Effective date: December 12, 1994
Proposal publication date: August 12, 1994
For further information, please call (512) 463-9693

Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities


The amendments are permitted by Government Code, Chapter 507 and §492.013(a).

The effect of the amendments is to: change many references from "inmates" to "confinees," in keeping with the language in the Penal Code and Code of Criminal Procedure; clarify the authority of the State Jail Division Director to approve policy and procedure manuals and provide waiver of standards, reconcile use of force policies with state laws; clarify distinctions between disciplinary procedures and special management custody classification procedures; provide adequate timelines for confinee disciplinary hearings; add certain elements to the reception and orientation procedure; rephrase the provision for religious dietary policies; disallow furloughs unless provided for by law or further Board rule; remove references to "qualified" staff where qualifications are not defined; remove exceptions from the physical plant standards that dilute compliance with the Americans with Disabilities Act; eliminate redundancies in the standards; and correct wording irregularities.

The amendments will enable, in operational facilities, the public safety benefit of confineement of felony offenders in facilities funded by the state.

Several comments were received from an Attorney and read as follows.

Section 157.1 Definitions. The comment received stated that the term "State Jail Division" was not defined in the definition section and that this term should be defined.

Section 157.23(k). Waiver. The comment received regarding this section was that it should contain a provision allowing a permanent waiver of particular standards, upon approval of the State Jail Division Director.

Section 157.33(27). Use of force. The comment received expressed that the phrase "maintenance of security in the facility" is unnecessary and should be deleted.

Section 157.35(5). Resolution of minor infractions. The comment received stated the need for a definition of "minor."

Section 157.39(4) and (5). Access to programs and services and administrative segregation. The individual commenting expressed concern that the phrasing suggests that the staff may not take confinees' medical needs or their physical abilities into account when making job assignments. Also, that the term "administrative segregation" is not intended to apply to state jail facilities and is not used in revised standards, therefore should not be used. The term "special management units" should be substituted throughout the provisions. Lastly, concern was expressed as to the lack of a provision stating whether either or both Mode I and Mode 2 state jail facilities are subject to the oversight of the Internal Affairs Division.

Section 157.41(4). Searches of legal material. The comment states that the provision unnecessarily limits application to "incoming confinees" and that the word "incoming" should be eliminated and the provision moved to a more appropriate section of the standards.

Section 157.55(13). Furloughs. The comment states that clarification is needed ... so as not to eliminate the authority of facility administrators to establish programs that allow confinees to participate in job interviews or participate on a speaker panel in the community...

The agency agrees with the comment on §157.1 requesting the definition of "State Jail Division" and therefore incorporates the change in this adoption. The remaining comments are not being rejected, but are being taken under consideration and will not be incorporated at this time.

Subchapter A. Admissions and Allocations

• 37 TAC §157.1

The amendment is adopted under the Government Code, §492.013(a) and Chapter 507, which respectively, give the Board of Criminal Justice authority to adopt rules and govern the implementation of state jail felony facilities.

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

Inmate, confinee and offender—Used interchangeably to mean a person who is convicted of a state jail felony offense whose suspended sentence is revoked or who is required to submit to a term of confinement in a state jail as an initial condition of community supervision, except that in §157.31 of this title (relating to Use of Facility for Transfer Inmates), "in-
Earth's three layers

- Crust
- Mantle
- Core

Water
Land

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mate" means a paper-ready felon eligible for confinement under Government Code, §499.152.

State Jail Division—The State Jail Division of the Texas Department of Criminal Justice.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451168 Carl Reynolds General Counsel Texas Department of Criminal Justice

Effective date: December 12, 1994

Proposal publication date: September 27, 1994

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

• 37 TAC §157.10

The Texas Department of Criminal Justice adopts new §157.10, concerning designation of facilities as state jails, without changes to the proposed text as published in the September 27, 1994, issue of the Texas Register (19 TexReg 7584).

The new section is permitted by the Government Code, §507.026. The new section designates part or all of additional facilities under the control of the Board of Criminal Justice as state jail facilities to fill the gap in a regionally dispersed manner prior to availability of constructed state jail facilities.

The new section will enable timely admissions to state jails, without creating a backlog in counties and regional placement of state jail felons.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §492.013(a), which gives the Board of Criminal Justice authority to adopt rules, and by the Government Code, §507.026, which gives the Board authority to designate as state jails any facilities within its control.

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

Issued in Austin, Texas, on October 24, 1994.

TRD-9451167 Carl Reynolds General Counsel Texas Board of Criminal Justice

Effective date: December 12, 1994

Proposal publication date: September 27, 1994

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

Subchapter B. Operational Standards


The amendments are adopted under the Government Code, §492.013(a) and Chapter 507, which respectively, give the Board of Criminal Justice authority to adopt rules and govern the implementation of state jail felony facilities.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451168 Carl Reynolds General Counsel Texas Department of Criminal Justice

Effective date: December 12, 1994

Proposal publication date: September 27, 1994

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

Subchapter C. Physical Plant Standards

• 37 TAC §157.91, §157.93

The amendments are adopted under the Government Code, §492.013(a) and Chapter 507, which respectively, give the Board of Criminal Justice authority to adopt rules and govern the implementation of state jail felony facilities.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451189 Carl Reynolds General Counsel Texas Department of Criminal Justice

Effective date: December 12, 1994

Proposal publication date: September 27, 1994

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

Part IX. Texas Commission on Jail Standards

Chapter 255. Rulemaking Procedures

• 37 TAC §§255.1-255.5

The Texas Commission on Jail Standards adopts repeal of §§255.1-255.5, concerning Rulemaking Procedures, without changes to the proposed text as published in the September 27, 1994, issue of the Texas Register (19 TexReg 7584).

These rules are being repealed to allow adoption of new rules.

The repeals function to delete vague language and allow for new concise and current rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted 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.

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

Issued in Austin, Texas, on November 21, 1994.

TRD-9451143 Jack E. Crump Executive Director Commission on Jail Standards

Effective date: December 12, 1994

Proposal publication date: September 20, 1994

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

• 37 TAC §§255.1-255.5

The Texas Commission on Jail Standards adopts new §§255.1-255.5, concerning Rulemaking Procedures. Section 255.2 is adopted with changes to the proposed text as published in the September 20, 1994, issue of the Texas Register (19 TexReg 7341). The remaining sections are adopted without changes.

Adoption of these rules revises jail standards to make them concise, current and comprehensible.

The rules function to provide new regulations that encompass the current standards of the commission.

No comments were received regarding adoption of the new sections.

The new rules are adopted 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.

§255.2. Notice. Notice of the proposed or adopted rule, amendment, or repeal shall be given as required by the Administrative Procedure and Texas Register 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 November 21, 1994.

TRD-9451144 Jack E. Crump Executive Director Commission on Jail Standards

ADOPTED RULES November 25, 1994 19 TexReg 9375
Chapter 257. Construction Approval Rules

37 TAC §§257.1-257.11

The Texas Commission on Jail Standards adopts repeal of §§257.1-257.11, concerning Construction Approval Rules, without changes to the proposed text as published in the September 20, 1994, issue of the Texas Register (19 TexReg 7341).

These rules are being repealed to allow adoption of new rules.

The repeals function to delete vague language and allow for new concise and current rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to review and comment on plans for the construction and major modification or renovation of county jails.

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 November 21, 1994.

TRD-9451145 Jack E. Crump Executive Director Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: September 20, 1994
For further information, please call: (512) 483-5505

37 TAC §§257.1-257.10

The Texas Commission on Jail Standards adopts new §§257.1-257.10, concerning Construction Approval Rules. Sections 257.4, 257.8, and 257.9 are adopted with changes to the proposed text as published in the September 20, 1994, issue of the Texas Register (19 TexReg 7341). The remaining sections are adopted without changes.

Adoption of these rules revises jail standards to make them concise, current and comprehensible.

The rules function to provide new regulations that encompass the current standards of the commission.

No comments were received regarding adoption of the new sections.

The new rules are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to review and comment on plans for the construction and major modification or renovation of county jails.

§257.4. Required Submissions. Information shall be furnished by the owner or the owner’s representative to the commission staff at the following stages of planning and construction.

(1) Schematic design. Documents shall illustrate the scale, relationship of project components, and cost estimates.

(2) Design development. Drawings and specification documents shall illustrate and describe the size and character of the entire project as to structural, mechanical, and electrical systems, life safety and detention locking systems, construction materials, cost estimates, and other essentials as may be appropriate.

(3) Construction documents. Drawings and specification documents shall include detail requirements for the construction of the entire project including necessary bidding information, bidding forms, final cost estimates of construction cost, and operation cost. These documents shall include the conditions of the construction contract or contracts.

(4) Addendum, substitutions and changes. Copies of all proposed addendum prepared during the bidding phase shall be forwarded to the executive director prior to being issued. The executive director shall respond in writing, giving approval or disapproval promptly to the architect, not longer than ten working days after receiving the request. Modifications, changes and all substitutions of equal material or equipment for those specified in the approved contract documents must receive written approval by the executive director prior to the change order or substitution approval being issued. Emergency approval of addendum, modifications, substitutions or changes may be sought and obtained by telephone or facsimile from the executive director who will subsequently issue a confirming answer in writing.

(5) Award of construction contract. Upon award of the construction contract, the owner or the owner’s representative shall notify the commission staff of the date construction is to commence, estimated time of completion, and the amount of the contract.

§257.8. Letter of Occupancy. Upon determination that the completed facility meets the requirements of minimum jail standards, the executive director shall issue a letter of occupancy to the owner and sheriff/operator. The facility shall not be occupied before approval by the executive director or his designee.

§257.9. Law Applicable. Facilities constructed prior to subsequent amendments to these rules entailing changes, additions or deletions to the structure of equipment therein shall not be required to meet the changes unless the change also establishes a date by which the change shall be effected. The facility shall conform to the building, safety and health requirements of state and local authority. State standards for a facility which exceed those of the local authority shall take precedence. Where local building codes do not exist, the Uniform Building Code or Standard Building Code, latest editions, will apply.

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 November 21, 1994.

TRD-9451146 Jack E. Crump Executive Director Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: September 20, 1994
For further information, please call: (512) 483-5505

Chapter 259. New Construction Rules

The Texas Commission on Jail Standards adopts repeal of §§259.1-259.4, 259.11-259.97, 259.111-259.192, 259.201-259.274, and 259.201-259.386, concerning New Construction Rules, without changes to the proposed text as published in the September 20, 1994, issue of the Texas Register (19 TexReg 7343).

These rules are being repealed to allow adoption of new rules.

The repeals function to delete vague language and allow for new concise and current rules.

No comments were received regarding adoption of the repeals.

General

37 TAC §§259.1-259.4

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

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 November 21, 1994.

TRD-9451147 Jack E. Crump Executive Director Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: September 20, 1994
For further information, please call: (512) 463-5505


Adoption of these rules revises jail standards to make them concise, current and comprehensive.

The rules function to provide new regulations that encompass the current standards of the commission.

No comments were received regarding adoption of the new sections.

General
• 37 TAC §§259.1-259.3

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

§259.3. Design Concepts. Innovative concepts are encouraged to reduce problems of security and maintenance while creating a safe, sanitary, and secure environment for staff and inmates. The facility shall be structurally sound, fire resistant and not connected to a building that is not fire resistant and shall provide for adequate security and safety. Facility design shall provide for support functions and equipment to insure safe, secure, and efficient operations. 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 November 21, 1994.

TRD-9451148 Jack E. Crump Executive Director Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: September 20, 1994
For further information, please call: (512) 463-5505

New Jail Design, Construction and Furnishing Requirements – 37 TAC §§259.11-259.97

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

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 November 21, 1994.

TRD-9451149 Jack E. Crump Executive Director Commission on Jail Standards

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New Jail Design, Construction and Furnishing Requirements – 37 TAC §§259.100-259.169

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

§259.102. Facility Security Requirements. Facility security shall be planned to protect inmates from one another, protect staff and visitors from inmates, and deter or prevent escapes.

§259.104. Construction Materials. Inmate housing areas and day rooms shall be constructed of metal, masonry, concrete, or other comparable materials. The level of security desired shall determine the selection of appropriate materials.

§259.105. Public Areas. Public areas shall be located outside the security perimeter. Public access to the security perimeter shall be controlled. A public lobby or waiting area shall be provided for the convenience of the public, including seating, drinking fountains, and rest rooms and should include lockers or storage for visitors’ articles. Provisions shall be made for disabled visitors.

§259.113. Emergency Access. Multi-story facilities shall have an elevator or other passageway large enough to accommodate the passage of patient evacuation equipment.

§259.114. Segregation.
(a) Facilities shall provide separate cells and day rooms of varying capacities for inmates to provide adequate segregation of different classifications of male and female inmates as required by Chapter 271 of this title (relating to Classification and Segregation).
(b) Single occupancy cells shall be provided to house inmates classified in administrative, disciplinary, and medical segregation in a quantity to meet the following requirements.

(1) Facilities having an inmate capacity of 200 or less shall provide sufficient separation cells to accommodate not less than 10% of the facility capacity.
(2) Facilities having an inmate capacity of over 200 shall have a minimum of 20 separation cells and a sufficient number of single cells with adjacent day rooms to accommodate a total of at least 10% of the capacity in single occupancy cells. Day rooms provided for these cells shall be arranged to accommodate not more than 12 inmates.
(c) The capacity of each cell and day room shall not exceed 20% of the facility capacity.
(d) Dormitories shall not exceed 40% of the facility capacity.

(e) Facilities initiated prior to May 1, 1992, which provide a sufficient number of single cells to accommodate at least 30% of the facility capacity and sufficient separation cells to comply with the facility classification plan and do not provide dormitory housing which exceeds 40% of the jail capacity are exempt from subsections (b) and (c) of this section.

§259.115. Functions. Minimum space allocations shall provide for the following:

(1) Inmate processing:
   (A) sally port;
   (B) reception and holding;
   (C) shakedown;
   (D) booking;
   (E) identification;
   (F) dressing in and out;
   (G) video taping and intoxilizer programs if such are to be performed in the facility.

(2) Detention:
   (A) inmate housing;
   (B) segregation;
   (C) visiting;
   (D) guard stations.

(3) Support/Services:
   (A) public areas;
   (B) administrative offices;
   (C) squad rooms;
   (D) food service;
   (E) laundry;
   (F) inmate commissary;
   (G) storage;
   (H) sanitation;
   (I) medical examination and treatment;
   (J) multipurpose rooms;
   (K) recreation and exercise;
   (L) inmate programs and activities;
   (M) counseling;
   (N) line-up;
   (O) library.

(4) It is permissible to use the same room or space allocation for more than one of the listed functions where such use will not deny the rights of any individual and will not impair the safety, security, sanitation, or required segregation of the facility.

§259.116. Vehicular Sally Port. A facility shall have a vehicular sally port located inside or abutting the building so that inmates may board or disembark from a vehicle. Space shall be sufficient to accommodate anticipated transportation vehicles. The sally port shall be secured with one or more entrance gates or doors capable of being opened, closed, locked, and unlocked from a remote location within the facility. Means shall be provided for the identification of persons approaching the sally port.

§259.119. Processing Area. Facilities shall have a processing area located inside the security perimeter, but away from the inmate housing areas. The processing area shall be designed to readily permit the booking, shakedown, identification, and dressing of inmates. A telephone shall be available for detainees' use. Processing areas shall be provided with access to drinking fountains and toilets. Panels or partitions may be erected in the booking area to provide privacy and separation of inmates.

§259.123. Kitchen. A kitchen of adequate size and properly equipped shall be provided within the system and shall include the following.

(1) Functions. Kitchen space and equipment shall allow for the efficient operations of receiving, storage, processing, preparation, cooking, baking, serving, dish washing, cleaning, menu preparation, record keeping, personal hygiene, and removal of waste and garbage. Kitchen functions shall be performed without compromising the security of the facility. The kitchen shall not be designed as a passageway for nonfood handling persons.

(2) Storage. Adequate dry and cold storage shall be provided appropriate for the size of kitchen. Separate storage shall be provided for nonfood items.

(3) Surfaces. The kitchen floor shall be properly pitched to adequate floor drains and allow for proper cleaning. Floor finish should prevent slipping. The junction between floors and walls shall be covered. Walls and ceilings shall be finished with smooth washable lightcolored surfaces.

(4) Light. Adequate lighting shall be provided on all work surfaces.

(5) Ventilation. Food service areas shall be adequately ventilated to control disagreeable odors and moisture. All openings to the outside shall be secured and provided with insect screens.

(6) Water. Adequate hot and cold water shall be provided for food preparation, cleaning, and dish washing. Hot water equipment shall be of sufficient size and capacity to meet the needs of the facility.

(7) Codes. Kitchens shall comply with state health codes.

§259.127. Storage Area Capacities. Storage areas based upon facility capacity shall be provided as follows:

(1) Inmate property: two cubic feet per inmate;

(2) Inmate uniforms and linens: three cubic feet per inmate.

(3) Inmate mattresses: raised perforated storage in the amount of five and one-fourth cubic feet per mattress for 25% of total capacity.

§259.129. Medical Space and Equipment. Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the medical services plan. Adequate secure storage for medical supplies and drugs shall be provided.

§259.130. Infirmary. An infirmary should be provided for facilities of 200 or more capacity. When an infirmary is provided, the following minimum components shall be included:

(1) nurses station;

(2) locked medication station with storage for individually filled prescriptions;
(3) utility room with sink and storage for linens and equipment;
(4) refrigerated storage;
(5) utility room with double tub sink and clinical service sink with flushing rim;
(6) 80 square feet of floor space per bed;
(7) at least one single occupancy room or cell with 80 square feet of floor space;
(8) doors, through which patients and equipment are to be moved, of adequate width to allow turning of wheeled chairs and tables normally used in medical facilities;
(9) a lavatory with a gooseneck inlet and wrist controls accessible to each ward;
(10) janitor closet;
(11) toilet, lavatory and shower for use of inmates in the infirmary;
(12) additional elements as dictated by the facility health care director.

§259.131. Multipurpose Rooms. One or more multipurpose rooms having a minimum of 200 square feet of floor space each shall be provided for each increment of 100 inmates based on design capacity. These multipurpose rooms may be used for group assembly, conferences, contact visitation, counseling, religious services, education, or other special uses.

§259.132. Exercise Area. One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a security enclosure. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1,000 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area. Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement.

§259.134. Multiple Occupancy Cells. Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Multiple occupancy cells should not be provided in direct supervision facilities.

§259.136. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 24 inmates, except direct supervision day rooms may be designed for up to 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

§259.137. Separation Cells. Separation cells shall include the following features and equipment.

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell.

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain.

(3) Cell Size. Cells shall contain not less than 40 square feet of clear floor space.

§259.138. Holding Cells.

(a) One or more holding cells shall be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 16 inches to 20 inches above the finished floor and not less than 12 inches wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

(b) Remote Court Holding Cells. Holding cells that are separate from the facility and utilized for direct court holding shall include the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 16 inches to 20 inches above the finished floor, and not less than 12 inches wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories capable of providing drinking water, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

(6) Smoke Detection. Smoke detection capability shall be provided. The alarm shall enunciate at a staffed location in close proximity to the cell. Additional life safety items shall be compatible with the remainder of the building.

(7) Audible Communication. Audible communications shall be provided.
§259.139. Detoxification Cells. Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than eight inches above the finished floor, not less than two feet wide and shall extend the length of the cell.

(2) Plumbing. Cells shall be provided with one or more vandal resistant flushing floor drains with outside controls, or vandal resistant toilet and lavatory and standard floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to 12 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.140. Violent Cells. A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment.

(1) Furnishings. The cell shall be equipped with a hammock, not less than two feet-three inches wide and six feet-three inches long, made of an elastic or fibrous fabric. A bench abutting the wall, the length or width of the cell, at least two feet-three inches wide and six feet-three inches long and not more than eight inches above the floor may be provided in lieu of a hammock.

(2) Plumbing. Flushing type floor drains with outside controls shall be provided.

(3) Cell Size. Cell shall contain not less than 40 square feet of clear floor space.

(4) Padding. Walls, floor, and bench shall be completely covered with a material to protect the inmate from self injury. The type of material used to cover the walls, floor, and bench shall be fire resistant and non Toxic.

§259.141. Dimensions. All cells and day rooms shall be not less than eight feet from finished floor to ceiling and five feet-six inches from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than four feet wide.

§259.143. Furnishings for Inmate Housing Areas.

(a) Bunks. Bunks shall be fire resistant and securely anchored. The mattress surface of the bunk shall measure not less than two feet-three inches wide and six feet-three inches long.

(b) Toilets and Lavatories. Detention type toilets and lavatories shall be provided in cells and day rooms. In direct supervision living areas, they shall be constructed in such manner and of such materials so as to resist vandalism. Based on design capacity, each cell and day room shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower area shall be not less than two feet-six inches square per showerhead and not less than seven feet high. Construction shall be of vandal resistant materials and should be of materials which resist the action of soap and water. Drying areas of not less than two feet-six inches square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each separation cell and day room shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistant, securely anchored, and reasonably remote from toilet areas. Tables and seating in direct supervision day rooms are not required to be anchored. Tables and benches shall be not less than 12 inches wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12 inches in diameter. Seating height of 16 inches to 20 inches shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend from about 15 inches above the finished floor to about four feet-six inches high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.145. Floors. Floors should provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.156. Power Operated Locks. Power operated locks shall be motor, solenoid, or pneumatic type and provide electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position switch and door position indicator shall be provided for all doors equipped with power operated locks. Heavy-duty, detention type door closers should be provided on all swinging doors equipped with power operated locks.

§259.157. Remote Controls. Doors to single cells, multiple occupancy cells, dormitories, and day rooms shall be capable of being locked and unlocked individually by control means located remote from the cell area. Single cells with contiguous day room and separation cells which open directly on an exiting corridor are exempt from this requirement. All remote door controls shall be secure.

§259.162. Plumbing. Plumbing work shall meet the requirements of the Southern Standard Building Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.165. Floor Drains. Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Drain covers shall be provided and securely anchored with vandal proof screws.

§259.166. Lighting. Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. All lighting fixtures in cells and day rooms shall be detention type. Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.
§259.168. Television Monitoring. Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.169. Electrical Power. Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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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New Lockup Design, Construction and Furnishing Requirements

• 37 TAC §§259.111-259.192

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

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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New Lockup Design, Construction and Furnishing Requirements

• 37 TAC §§259.200-259.265

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

§259.202. Lockup Facilities. A facility shall consist of one or more single cells and may include multiple occupancy cells or dormitories.

§259.203. Lockup Security Requirements. Facility security shall be planned to protect inmates from one another, protect staff and visitors from inmates, and deter or prevent escapes.

§259.205. Construction Materials. Inmate housing areas and day rooms shall be constructed of metal, masonry, concrete, or other comparable materials. The level of security desired shall determine the selection of appropriate materials.

§259.208. Administrative Space. The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall not be located within the security perimeter.

§259.214. Emergency Access. Multistory facilities shall have an elevator or other passageway large enough to accommodate the passage of patient evacuation equipment.

§259.215. Segregation. Design shall provide for adequate segregation of inmates in accordance with the facility classification plan as required by Chapter 271 of this title (relating to Classification and Segregation).

§259.216. Functions. Minimum space allocations shall provide for the following:

1. Inmate processing:
   (A) reception and holding;
   (B) shakedown;
   (C) booking;
   (D) identification;
   (E) dressing in and out;
   (F) video taping and intoxilizer programs if such are to be performed in the facility.

2. Detention:
   (A) inmate housing;
   (B) segregation;
   (C) visiting;
   (D) guard stations.

3. Support/Service:
   (A) public areas;
   (B) administrative offices;
   (C) food service;
   (D) laundry;
   (E) storage;
   (F) sanitation;
   (G) line-up.

4. Space may be allocated for a kitchen, inmate commissary, and sally port. It is permissible to use the same room or space allocation for more than one of the listed functions where such use will not deny the rights of any individual and will not impair the safety, security, sanitation, or required segregation of the facility.

§259.217. Vehicular Sally Port. A facility may have a vehicular sally port. If provided, a sally port shall be located inside or abutting the building so that inmates may board or disembark from a vehicle. Space shall be sufficient to accommodate anticipated transportation vehicles. The sally port shall be secured with one or more entrance gates or doors capable of being opened, closed, locked, and unlocked from a remote location within the facility. Means shall be provided for the identification of persons approaching the sally port.

§259.220. Processing Area. Facilities shall have a processing area located inside the security perimeter. The processing area shall be designed to readily permit the booking, shakedown, identification, and dressing of inmates. A telephone shall be available for detainees’ use. Processing areas shall be provided with access to drinking fountains and toilets. Panels or partitions may be erected in the booking area to provide privacy and separation of inmates.
§259.230. Single Cells. Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, table, and seat separate from the bunk.

§259.231. Multiple Occupancy Cells. Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Cells shall contain table and seating if day room space is not provided.

§259.232. Day Rooms. Single cells, multiple occupancy cells, and dormitories may be provided with day rooms. Day rooms shall be designed for no more than 24 inmates except direct supervision day rooms may be designed for up to 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Conventional electrical receptacles with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

§259.234. Separation Cells. Separation cells shall include the following features and equipment.

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Conventional electrical receptacles with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain.

(3) Cell Size. Cells shall contain not less than 40 square feet of clear floor space.

§259.235. Holding Cells. One or more holding cells shall be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 16 inches to 20 inches above the finished floor and not less than 12 inches wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.236. Detoxification Cells. A facility shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than eight inches above the finished floor, not less than two feet wide and shall extend the length of the cell.

(2) Plumbing. Cells shall be provided with one or more vandal resistant flushing floor drains with outside controls, or vandal resistant toilet and lavatory and standard floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to 12 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.
§259.237. Dimensions. All cells and day rooms shall be not less than eight feet from finished floor to ceiling and five feet-six inches from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than four feet wide.

§259.239. Furnishings for Indoor Housing Areas.

(a) Bunks. Bunks shall be fire resistant and securely anchored. The mattress surface of the bunk shall measure not less than two feet-three inches wide and six feet-three inches long.

(b) Toilets and Lavatories. Detention type toilets and lavatories shall be provided in cells and day rooms. Based on design capacity, each cell and day room shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than two feet-six inches square per showerhead and not less than seven feet high. Construction shall be of vandal resistant materials and should be of materials which resist the action of soap and water. Drying areas of not less than two feet-six inches square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each separation cell and day room shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistant, securely anchored, and reasonably remote from toilet areas. Tables and benches shall be not less than 12 inches wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12 inches in diameter. Seating height of 16 inches to 20 inches shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend from about 15 inches above the finished floor to about four feet-six inches high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.241. Floors. Floors should provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.252. Power Operated Locks. Power operated locks shall be motor, solenoid, or pneumatic type and provide electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position switch and door position indicator shall be provided for all doors equipped with power operated locks. Heavy-duty, detention type door closers should be provided on all swinging doors equipped with power operated locks.

§259.253. Remote Controls. Doors to single cells, multiple-occupancy cells, dormitories, and day rooms shall be capable of being locked and unlocked individually by control means located remote from the cell area. Single cells with contiguous day room and separation cells which open directly on an existing corridor are exempt from this requirement. All remote door controls shall be secure.

§259.258. Plumbing. Plumbing work shall meet the requirements of the Southern Standard Building Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.261. Floor Drains. Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Drain covers shall be provided and securely anchored with vandal proof screws.

§259.262. Lighting. Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. All lighting fixtures in cells and day rooms shall be detection type. Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.264. Television Monitoring. Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.265. Electrical Power. Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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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New Low-Risk and Medium-Risk Design, Construction and Furnishing Requirements

• 37 TAC §§259.201-259.274

§259.309(b) These new rules are adopted under Government Code, Chapter 551, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

New Medium-Risk Design, Construction and Furnishing Requirements

• 37 TAC §§259.309-259.364

The new rules are adopted under Government Code, Chapter 551, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

ADOPTED RULES  November 25, 1994  19 TexReg 9383
§259.300. Facility Site. The site shall be of sufficient size to provide for the immediate facility and a reasonable projected expansion. A buffer zone around the facility should be provided.

§259.301. Facility Concept. Medium-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 (relating to Existing Jail Design). Inmates housed in medium-risk facilities shall be assessed according to the provisions of Chapter 271 of this title (relating to Classification and Segregation).

§259.302. Facility Security Requirements. Facility security shall be planned to protect inmates from one another, protect staff and visitors from inmates, and deter or prevent escapes.

§259.303. Construction Materials. Inmate housing areas and day rooms shall be constructed of metal, masonry, concrete, or other comparable materials. The level of security desired shall determine the selection of appropriate materials.

§259.304. Public Areas. Public areas shall be located outside the security perimeter. Public access to the security perimeter shall be controlled. A public lobby or waiting area shall be provided for the convenience of the public, including seating, drinking fountains, and rest rooms and should include lockers or storage for visitors' articles. Provisions shall be made for disabled visitors.

§259.306. Administrative Space. The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall not be located within the security perimeter.

§259.311. Emergency Access. Multistory facilities shall have an elevator or other passageway large enough to accommodate the passage of patient evacuation equipment.

§259.312. Segregation.

(a) Facilities shall provide separate cells and day rooms of capacities for inmates to provide adequate separation of different classifications of male and female inmates as required by Chapter 271 of this title (relating to Classification and Segregation).

(b) Facilities shall provide adequate single cells, separation cells, or holding cells and may provide other special purpose cells.

§259.313. Functions. Minimum space allocations shall provide for the following.

1. Inmate reception:

(A) reception and holding;

2. Video taping and intoxilizer programs if such are to be performed in the facility.

3. Detention:

(A) inmate housing;

(B) segregation;

(C) visiting;

(D) guard stations.

(3) Support/Services:

(A) public areas;

(B) administrative offices;

(C) squad rooms;

(D) food service;

(E) laundry;

(F) inmate commissary;

(G) storage;

(H) sanitation;

(I) medical examination and treatment;

(J) multipurpose rooms;

(K) recreation and exercise;

(L) inmate programs and activities;

(M) counseling;

(N) library.

(4) It is permissible to use the same room or space allocation for more than one of the listed functions where such use will not deny the rights of any individual and will not impair the safety, security, sanitation or required segregation of the facility.

§259.319. Kitchen. A kitchen of adequate size and properly equipped shall be provided within the system and shall include the following.

1. Functions. Kitchen space and equipment shall allow for the efficient operations of receiving, storage, processing, preparation, cooking, baking, serving, dish washing, cleaning, menu preparation, record keeping, personal hygiene, and removal of waste and garbage. Kitchen functions shall be performed without compromising the security of the facility. The kitchen shall not be designed as a passageway for nonfood handling persons.

(2) Storage. Adequate dry and cold storage shall be provided appropriate for the size of kitchen. Separate storage shall be provided for nonfood items.

(3) Surfaces. The kitchen floor shall be properly pitched to adequate floor drains and allow for proper cleaning. Floor finish should prevent slipping. The junction between floors and walls shall be covered. Walls and ceilings shall be finished with smooth washable light colored surfaces.

(4) Light. Adequate lighting shall be provided on all work surfaces.

(5) Ventilation. Food service areas shall be adequately ventilated to control disagreeable odors and moisture. All openings to the outside shall be secured and provided with insect screens.

(6) Water. Adequate hot and cold water shall be provided for food preparation, cleaning, and dish washing. Hot water equipment shall be of sufficient size and capacity to meet the needs of the facility.

(7) Codes. Kitchens shall comply with state health codes.

§259.322. Storage Area Capacities. Storage areas based upon facility capacity shall be provided as follows:

1. Inmate property; two cubic feet per inmate, unless personal property will be maintained in another facility;

2. Inmate uniforms and linens; three cubic feet per inmate;

3. Inmate mattresses; raised perforated storage in the amount of five and one-fourth cubic feet per mattress for 25% of total capacity.
§259.324. Medical Space and Equipment. Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the medical services plan. Adequate secure storage for medical supplies and drugs shall be provided.

§259.325. Infirmary. An infirmary should be provided for facilities of 200 or more capacity. When an infirmary is provided, the following minimum components shall be included:

(1) nurses station;
(2) locked medication station with storage for individually filled prescriptions;
(3) utility room with sink and storage for linens and equipment;
(4) refrigerated storage;
(5) utility room with double tub sink and clinical service sink with flushing rim;
(6) 80 square feet of floor space per bed;
(7) at least one single occupancy room or cell with 80 square feet of floor space;
(8) doors, through which patients and equipment are to be moved, of adequate width to allow turning of wheeled chairs and tables normally used in medical facilities;
(9) a lavatory with a gooseneck inlet and wrist controls accessible to each ward;
(10) janitor closet;
(11) toilet, lavatory and shower for use of inmates in the infirmary;
(12) additional elements as dictated by the facility health care director.

§259.326. Multipurpose Rooms. One or more multipurpose rooms having a minimum of 200 square feet of floor space each shall be provided for each increment of 100 inmates based on design capacity. These multipurpose rooms may be used for group assembly, conferences, contact visitation, counseling, religious services, education, or other special uses.

§259.327. Exercise Area. One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a secure enclosure. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1,000 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area. Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement.

§259.328. Single Cells. Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, table, and seat separate from the bunk.

§259.329. Multiple Occupancy Cells. Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Multiple occupancy cells should not be provided in direct supervision facilities.

§259.331. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 24 inmates, except direct supervision day rooms may be designed for up to 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Conventional electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

§259.332. Separation Cells. Separation cells shall include the following features and equipment.

(1) Furnishings. Each cell shall have one bunk, mirror, table and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell.

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain.

§259.333. Holding Cells. Holding cells shall contain not less than 40 square feet of clear floor space.

§259.334. Detoxification Cells. Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 16 inches to 20 inches above the finished floor and not less than 12 inches wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

ADOPTED RULES November 25, 1994 19 TexReg 9385
(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to 12 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.335. Violent Cells. A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment.

(1) Furnishings. The cell shall be equipped with a hammock, not less than two feet-three inches wide and six feet-three inches long, made of an elastic or fibrous fabric. A bench suturing the wall, the length or width of the cell, at least two feet-three inches wide and six feet-three inches long and not more than eight inches above the floor may be provided in lieu of a hammock.

(2) Plumbing. Flushing type floor drains with outside controls shall be provided.

(3) Cell Size. Cell shall contain not less than 40 square feet of clear floor space.

(4) Padding. Walls, floor, and bench shall be completely covered with a material to protect the inmate from self injury. The type of material used to cover the walls, floor, and bench shall be fire resistive and nontoxic.

§259.336. Dimensions. All cells and day rooms shall be not less than eight feet from finished floor to ceiling and five feet-six inches from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than four feet wide.

§259.338. Furnishings for Inmate Housing Areas.

(a) Bunks. Bunks shall be fire resistive and securely anchored. The mattress surface of the bunk shall measure not less than two feet-three inches wide and six feet-three inches long.

(b) Toilets and Lavatories. Detention type toilets and lavatories shall be provided in cells and day rooms. In direct supervision living areas, they shall be constructed in such manner and of such material so as to resist vandalism. Based on design capacity, each cell and day room shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than two feet-six inches square per showerhead and not less than seven feet high. Construction shall be of vandal resistive materials and should be of materials which resist the action of soap and water. Drying areas of not less than two feet-six inches square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each separation cell and day room shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistive, securely anchored, and reasonably remote from toilet areas. Tables and seating in direct supervision day rooms shall be not required to be anchored. Tables and benches shall be not less than 12 inches wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12 inches in diameter. Seating height of 16 inches to 20 inches shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend from about 15 inches above the finished floor to about four feet-six inches high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.340. Floors. Floors shall provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.351. Power Operated Locks. Power operated locks shall be motor, solenoid, or pneumatic type and provide electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position switch and door position indicator shall be provided for all doors equipped with power operated locks. Heavy-duty, detention type door closers should be provided on all swinging doors equipped with power operated locks.

§259.352. Remote Controls. Doors to single cells, multiple occupancy cells, dormitories, and day rooms shall be capable of being locked and unlocked individually by control means located remote from the cell area. Single cells with contiguous day room and separation cells which open directly on an exiting corridor are exempt from this requirement. All remote door controls shall be secure.

§259.357. Plumbing. Plumbing work shall meet the requirements of the Southern Standard Building Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.360. Floor Drains. Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Drain covers shall be provided and securely anchored with vandal proof screws.

§259.361. Lighting. Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. All lighting fixtures in cells and day rooms shall be made to prevent destruction or removal. Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.363. Television Monitoring. Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.364. Electrical Power. Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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 November 21, 1994.
§259.401. Facility Concept. Low-risk facilities shall be designed only in conjunction with facilities which meet the requirements of §§259.100-259.169 of this title (relating to New Jail Design) or Chapter 261, §§261.100-261.171 of this title (relating to Existing Jail Design). Inmates housed in low-risk facilities shall be assessed according to the provisions of Chapter 271 of this title (relating to Classification and Segregation). Unlike jails or lockups for high-risk and medium-risk inmates, these facilities do not require stringent security measures.

§259.404. Public Areas. Public access to the building shall be through a main entrance. The public shall not have uncontrolled access to inmate areas. A public lobby or waiting area shall be provided for the convenience of the public, including seating, drinking fountains, and rest rooms and should include lockers or storage for visitors’ articles. Provisions shall be made for disabled visitors.

§259.406. Administrative Space. The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall not be located within the security perimeter.

§259.411. Emergency Access. Multistory facilities shall have an elevator or other passageway large enough to accommodate the passage of patient evacuation equipment.

§259.412. Segregation.

(a) Facilities shall provide separate cells and day rooms of capacities for inmates to provide adequate segregation of male and female inmates as required by Chapter 271 of this title (relating to Classification and Segregation).

(b) Facilities shall provide adequate single cells, separation cells, or holding cells, and may provide other special purpose cells.

§259.413. Functions. Minimum space allocations shall provide for the following.

1. Inmate reception:

(A) reception and holding;

(B) video taping and intoxilizer programs if such are to be performed in the facility.

2. Detention:

(A) inmate housing;

(B) segregation;

(C) visiting;

(D) guard stations.

3. Support/Services:

(A) public areas;

(B) administrative offices;

(C) squad rooms;

(D) food service;

(E) laundry;

(F) inmate commissary;

(G) storage;

(H) sanitation;

(I) medical examination and treatment;

(J) multipurpose rooms;

(K) recreation and exercise;

(L) inmate programs and activities;

(M) counseling;

(N) library.

4. It is permissible to use the same room or space allocation for more than one of the listed functions where such use will not deny the rights of any individual and will not impair the safety, security, sanitation, or required segregation of the facility.

§259.419. Kitchen. A kitchen of adequate size and properly equipped shall be provided within the system and shall include the following.

1. Functions. Kitchen space and equipment shall allow for the efficient operations of receiving, storage, processing, preparation, cooking, baking, serving, dish washing, cleaning, menu preparation, record keeping, personal hygiene, and removal of waste and garbage. Kitchen functions shall be performed without compromising the security of the facility. The kitchen shall not be designed as a passageway for nonfood handling persons.

2. Storage. Adequate dry and cold storage shall be provided appropriate for the size of kitchen. Separate storage shall be provided for nonfood items.

3. Surfaces. The kitchen floor shall be properly pitched to adequate floor drains and allow for proper cleaning. Floor finish should prevent slipping. The junction between floors and walls shall be covered. Walls and ceilings shall be finished with smooth washable light colored surfaces.
(4) Light. Adequate lighting shall be provided on all work surfaces.

(5) Ventilation. Food service areas shall be adequately ventilated to control disagreeable odors and moisture. All openings to the outside shall be secured and provided with insect screens.

(6) Water. Adequate hot and cold water shall be provided for food preparation, cleaning, and dish washing. Hot water equipment shall be of sufficient size and capacity to meet the needs of the facility.

(7) Codes. Kitchens shall comply with state health codes.

§259.422. Storage Area Capacities. Storage areas based upon facility capacity shall be provided as follows:

(1) Innate property: two cubic feet per inmate, unless personal property will be maintained in another facility;

(2) Innate uniforms and linens: three cubic feet per inmate;

(3) Innate mattresses: raised perforated storage in the amount of five and one-fourth cubic feet per mattress for 25% of total capacity.

§259.424. Medical Space and Equipment. Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the medical services plan. Adequate secure storage for medical supplies and drugs shall be provided.

§259.425. Infirmary. An infirmary should be provided for facilities of 200 or more capacity. When an infirmary is provided, the following minimum components shall be included:

(1) Nurses station;

(2) Locked medication station with storage for individually filled prescriptions;

(3) Utility room with sink and storage for linens and equipment;

(4) Refrigerated storage;

(5) Utility room with double tub sink and clinical service sink with flushing rim;

(6) 80 square feet of floor space per bed;

(7) At least one single occupancy room or cell with 80 square feet of floor space;

(8) Doors, through which patients and equipment are to be moved, of adequate width to allow turning of wheeled chairs and tables normally used in medical facilities;

(9) A lavatory with a gooseneck inlet and wrist controls accessible to each ward;

(10) Janitor closet;

(11) Toilet, lavatory and shower for use of inmates in the infirmary;

(12) Additional elements as dictated by the facility health care director.

§259.426. Multipurpose Rooms. One or more multipurpose rooms having a minimum of 200 square feet of floor space each shall be provided for each increment of 100 inmates based on design capacity. These multipurpose rooms may be used for group assembly, conferences, contact visitation, counseling, religious services, education, or other special uses.

§259.427. Exercise Area. One or more exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1,000 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area. Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement.

§259.428. Single Cells. Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, table and seat separate from the bunk.

§259.429. Multiple Occupancy Cells. Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Multiple occupancy cells should not be provided in direct supervision facilities.

§259.431. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 24 inmates, except direct supervision day rooms may be designed for up to 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided.

§259.432. Separation Cells. Separation cells shall include the following features and equipment.

(1) Furnishings. Each cell shall have one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell.

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain.

(3) Cell Size. Cells shall contain not less than 40 square feet of clear floor space.

§259.433. Holding Cells. Holding cells shall contain the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 16 inches to 20 inches above the finished floor and not less than 12 inches wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.
(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.434. Detoxification Cells. Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than eight inches above the finished floor, not less than two feet wide and shall extend the length of the cell.

(2) Plumbing. Cells shall be provided with one or more vandal resistant flushing floor drains with outside controls, or vandal resistant toilet and lavatory and standard floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to 12 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.435. Violent Cells. A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment.

(1) Furnishings. The cell shall be equipped with a hammock, not less than two feet-three inches wide and six feet-three inches long, made of an elastic or fibrous fabric. A bench abutting the wall, the length or width of the cell, at least two feet-three inches wide and six feet-three inches long and not more than eight inches above the floor may be provided in lieu of a hammock.

(2) Plumbing. Flushing type floor drains with outside controls shall be provided.

(3) Cell Size. Cell shall contain not less than 40 square feet of clear floor space.

(4) Padding. Walls, floor, and bench shall be completely covered with a material to protect the inmate from self injury. The type of material used to cover the walls, floor and bench shall be fire resistant and non-toxic.

§259.436. Dimensions. All cells and day rooms shall be not less than eight feet from finished floor to ceiling and five feet-six inches from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than four feet wide.

§259.437. Furnishings for Inmate Housing Areas.

(a) Bunks. Bunks shall be fire resistant. The mattress surface of the bunk shall measure not less than two feet-three inches wide and six feet-three inches long.

(b) Toilets and Lavatories. Toilets and lavatories shall be provided in cells and day rooms. They may be conventional type. Based on design capacity, each cell and day room shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than two feet-six inches square per showerhead and not less than seven feet high. Construction should be of materials which resist the action of soap and water. Drying areas of not less than two feet-six inches square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each separation cell and day room shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistant and reasonably remote from toilet areas. Tables and benches shall be not less than 12 inches wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12 inches in diameter. Seating height of 16 inches to 20 inches shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend from about 15 inches from the finished floor to about four feet-six inches high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.439. Floors. Floors should provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.433. Plumbing. Plumbing work shall meet the requirements of the Southern Standard Building Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.456. Floor Drains. Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located.

§259.457. Lighting. Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Inmates should be capable of controlling some lighting; override capability shall be provided. Night lights sufficient to permit continuous observation shall be provided. Control area and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.459. Television Monitoring. Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.460. Electrical Power. Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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 November 21, 1994.

TRD-9451156 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: September 20, 1994
For further information, please call (512) 463-5505

* ADOPTED RULES November 25, 1994 19 TexReg 9389
Temporary Housing

37 TAC §§259.519, §259.619

The Texas Commission on Jail Standards adopts amendments to §§259.519 and §259.619, concerning New Construction Rules, without changes to the proposed text as published in the September 20, 1994, issue of the Texas Register (19 TexReg 7365).

These rules are being amended to make them consistent with other sections of standards.

The amendments function to clarify life safety rule references.

No comments were received regarding adoption of the amendments.

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

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 November 21, 1994.

TRD-9451157 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: December 12, 1994
Proposal publication date: October 20, 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 BB. Changes

40 TAC §3.2801

The Texas Department of Human Services (DHS) adopts an amendment to §3.2801, concerning reporting requirements, in its Income Assistance Services rule chapter, without changes to the proposed text as published in the October 14, 1994, issue of the Texas Register (19 TexReg 8104).

The justification for the amendment is to require Food Stamp recipients to report changes in earned income if the source, wage rate, or employment status changes, and to eliminate the requirement that Food Stamp recipients report changes in the total amount of allowable medical expenses. The income-reporting requirement results from a requested waiver which was recently granted to DHS by the United States Department of Agriculture, Food and Nutrition Service (FNS). Elimination of medical expense reporting results from written authorization from FNS to DHS to proceed with implementation pending proposal of changes in federal regulations.

The amendment will function by ensuring DHS is in compliance with federally sanctioned Food Stamp Program reporting requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.201 and 33.002.

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 November 18, 1994.

TRD-9451132 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Effective date: January 1, 1995
Proposal publication date: October 14, 1994
For further information, please call: (512) 450-3765

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) adopts amendments to §§15.100 and 15.455, concerning definitions and unearned income, in its Medicaid Eligibility rule chapter, without changes to the proposed text as published in the October 4, 1994, issue of the Texas Register (19 TexReg 7889).

The justification for 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.

The amendments will function by ensuring that the support and maintenance policy will be applied correctly on a statewide basis.

No comments were received regarding adoption of the amendments.

Subchapter C. Basic Program Requirements

40 TAC §15.310

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.
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 November 18, 1994.

TRD-9451151 Nancy Murphy Section Manager, Media and Policy Services Texas Department of Human Services

Effective date: January 1, 1995
Proposal publication date: October 4, 1994
For further information, please call: (512) 450-3785

Subchapter E. Income

40 TAC §15.460

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

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

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

Issued in Austin, Texas, on November 18, 1994.

TRD-9451128 Nancy Murphy Section Manager, Media and Policy Services Texas Department of Human Services

Effective date: January 1, 1995
Proposal publication date: October 4, 1994
For further information, please call: (512) 450-3785

Subchapter E. Income

40 TAC §15.455

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

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

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

Issued in Austin, Texas, on November 18, 1994.

TRD-9451129 Nancy Murphy Section Manager, Media and Policy Services Texas Department of Human Services

Effective date: January 1, 1995
Proposal publication date: October 4, 1994
For further information, please call: (512) 450-3785

Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

40 TAC §§301.20, 301.21, 301.23

The Texas Employment Commission adopts amendments to §§301.20, 301.21, and 301.23, concerning claims for unemployment insurance benefits, with changes to the proposed text as published in the September 30, 1994 issue of the Texas Register (19 TexReg 7782).

The rule change will allow the Texas Employment Commission to avail itself of technological communication advances that could be integrated into methods and procedures that will allow for better service delivery in both the Unemployment Insurance and Employment Service systems. Under amendment §301.20 there is also language incorporated to accept a condition of administrative funding added by Public Law 102-152 as signed by the President on November 24, 1983. The language allows for the establishment of a claimant profiling system to identify claimants in need of early intervention to assist them in returning to the workplace.

The amendments will allow for the acceptance of information by other than written methods. These methods could include telephones or electronic means. The additional language under §301.20 will allow for a statistically generated computer profiling system that will be used in coordinating the delivery of human services to those claimants who are identified as having a greater need.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provides the Texas Employment Commission with the authority to adopt such rules as it deems necessary for the effective administration of this Act.

§301.20. Claim for Benefits. An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to an office of the Texas Employment Commission, or to a representative of the commission at an itinerant service point or such other place or in such other manner, including telephonic or electronic means, as the commission may approve, register for work, and file a claim for benefits.

1. (No change.)

2. After an individual files a valid initial claim which fixes his benefit year, he may, during such benefit year, file subsequent continued claims, weekly, or bi-weekly, in person or by mail or by other means, including telephonic or other electronic means, as the commission may approve, unless he must be permitted to file a claim by mail or by other means, including telephonic or other electronic means, as the commission may approve, in accordance with the terms of this rule, but at intervals no less than periods of seven consecutive days. If at any time during such benefit year more than 30 days have elapsed since he filed his last previous claim, he shall again register for work and shall file a claim for benefits. An individual who exhausts his regular benefits may file continued claims for extended benefits in the same manner in which he filed claims for regular benefits, but his claims for extended benefits may be for benefit periods subsequent to the end of his benefit year.

3. An individual who files a claim for benefits shall comply with all
requirements of the public employment office in which he files an application for work that are necessary to establish a valid registration for work in that public employment office and shall do those things requested by a commission representative, either orally or in writing, that are reasonably designed to inform him of his rights and responsibilities in filing a claim for benefits. He shall also:

(A) present evidence, when requested to do so, to establish his correct social security account number;

(B) file all claims in the manner directed by the commission, whether on commission-provided forms or by telephonic or other electronic means approved by the commission for claims purposes;

(C) (No change.)

(D) sign all provided claims forms personally for those claims that are filed in person or by mail;

(E) personally present all claims to a commission representative during the scheduled hours of service at an office of the commission, or at an itinerant service point or such other place as the commission may approve, unless he files them by mail or by other approved means, including telephonic or electronic means, in accordance with the terms of this rule; and

(F) submit all claims filed by mail or by other means, including telephonic or electronic means, as instructed by the commission.

(4) An individual must be permitted to file a claim by mail or by other means, including telephonic or electronic means, as the commission may approve, in any of the following circumstances.

(A)-(D) (No change.)

(5) An individual, other than one who must be permitted to file by mail, may be permitted to file a claim by mail, except that he shall file in person any claim, when requested to do so, because a question about his right to benefits is raised by circumstances such as the following:

(A) the conditions or circumstances of his separation from employment;

(B) his answer to a question on a claim filed by mail or by other approved means indicates that he may be unable to work or that there may be an undue restriction on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(C) his answer to a question on a claim filed by mail or by other approved means creates uncertainty about his credibility or indicates a lack of understanding of the applicable requirements; or

(D) his record shows that he previously has filed a fraudulent claim.

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

(8) An individual shall be eligible to receive benefits with respect to any week only if the individual demonstrates the availability for work required by Texas Labor Code, §207.021(a)(4), by participating in re-employment services, such as, but not limited to, job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and need re-employment services pursuant to a profiling system established by the commission.

§301.21. Interstate Claims. This rule shall govern the commission in its administrative cooperation with other states adopting a similar rule or regulation for the payment of benefits to interstate claimants, any provision of any other rule to the contrary notwithstanding.

(A) (No change.)

(B) Claims shall be filed in accordance with the agent state’s regulations for interstate claims in the local employment offices or at an itinerant service point or by mail or by other means, including telephonic or electronic means, as the commission may approve.

(i)-(ii) (No change.)

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

(7) Canadian Claims. This rule shall apply in all its provisions to claims taken in and for Canada.

§301.23. Record of Work and Wages Required of Claimants. An individual who has registered for work and filed a claim shall keep an accurate record of any work which he has performed during any day within a benefit period regardless of whether such work constitutes "employment" as defined in the Act. Such record shall include the names and addresses of the persons or organizations for whom he worked, the total remuneration earned, and the number of hours worked during such benefit period. All claimants shall provide such information at the time a continued or additional claim is filed, in the manner which the commission may direct.

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 November 16, 1994.

J. Ferris Duhon
Legal Counsel
Texas Employment Commission

Effective date: December 7, 1994
Proposal publication date: September 30, 1994

For further information, please call: (512) 463-2281

19 TexReg 9392 November 25, 1994 Texas Register
### Table

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### Figure 2: §290.120 (c) (6)

**Table No. 1**

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<th>REDUCED MONITORING SITES</th>
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### Figure 3: §290.120 (c)(8)

**Table No. 2**

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Figure 4: §290.120 (f)(1)(D)

Table No. 3

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<tr>
<td>101 - 500</td>
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</tr>
<tr>
<td>&lt; 101</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
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
Monday, November 28, 1994, 9:00 a.m.
400 West 15th, Suite 1010, Texas Cotton Ginners Association
Austin
Texas Boll Weevil Eradication Foundation
AGENDA:
Call to Order
Opening Remarks and Introductions
Executive Session: In accordance with Texas Government Code Annotated, §551.071(2)
Adjourn Executive Session
Call to Order
Discussion and Action:
Executive Session
Animal Plant Health Inspection Service Funding
Discussion:
Other Business
Adjourn
Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212, 1 (915) 672-2800.
Filed: November 18, 1994, 4:23 p.m.
TRD-9451135

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A
Austin
Texas Agricultural Finance Authority Revenue Bond Committee Meeting
AGENDA:
Discussion and action on responses received on the request for proposal for senior managing underwriter for the Revenue Bond program.
Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7636.
Filed: November 18, 1994, 3:51 p.m.
TRD-9451123

Thursday-Friday, December 1-2, 1994, 3:00 p.m. and 8:30 a.m.
Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A
Austin
Texas Agricultural Finance Authority
AGENDA:
December 1, 1994, 3:00 p.m.
Working session on applications and portfolio for Texas Agricultural Finance Authority Loan Guaranty Program.
December 2, 1994, 8:30 a.m.
Discussion and action on: minutes of last meeting;
Restructuring of outstanding guaranty to Wright Fibers, Inc.;
Administrative hearing to review alleged violations of Texas Weights and Measures Law by Don’s IGA.
Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.
Filed: November 17, 1994, 4:43 p.m.
TRD-9451078

Texas Alcoholic Beverage Commission
Monday, November 28, 1994, 8:30 a.m.
5806 Mesa Drive
Austin
AGENDA:
8:30 a.m.–Call to order.
Convene in open meeting
Announcement of executive session
1. Executive session to discuss pending litigation, discuss duties of the general counsel and confer with the general counsel regarding executive session procedures.
2. Take action, including a vote, if appropriate on topics listed under executive session.
9:30 a.m.–Continue open meeting.
3. Approve minutes of October 24, 1994, meeting.
4. Recognition of TABC employees with 20 and above years of service.
5. Administrator’s report.
6. Consideration of petition submitted by the City of Rosenberg.
7. Amendment 16 TAC §31.4 (Public Information Signs)
8. Amendments 16 TAC §45.103 (Regulations of Promotions Pertaining to On-Premise Sales)
9. Discussion and possible action on Mothers Against Drunk Driving request for rule making procedures.
10. Discussion of legislative changes to alcoholic beverage laws.
11. Public comment.
Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, (512) 206-3204.
Filed: November 18, 1994, 8:00 a.m.
TRD-9451083

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons
Thursday, December 1, 1994, 2:00 p.m.
Holiday Inn, Southeast Crossing, 3310 Troup Highway
Tyler
Work Session
AGENDA:
Welcome and opening statement
Acceptance of minutes from June 28, 1994 meeting
Discussion of comments received pertaining to Texas Registry Publication as to naming central nonprofit agency
Discussion and action in Texas Committee mission statement
Discussion and action on procedures for rule changes and additions
Report on review of Texas Committee minutes
Discussion and review of Texas Industries for the Blind and Handicapped (TIBH) procedures in monitoring Community Rehabilitation Program proposed wages versus actual wages
Discussion and review of reporting requirements for TIBH to the Texas Committee Adjournment
Contact: Hollis Pinyan, P.O. Box 12866, Austin, Texas 78711, (903) 561-8146.
Filed: November 17, 1994, 3:25 p.m.
TRD-9451065

Texas Court Reporters Certification Board
Friday, December 2, 1994, 9:00 a.m.
Holiday Inn, Southeast Crossing, 3310 Troup Highway
Tyler
Committee
AGENDA:
Call to order and introduction of committee members and guests
Acceptance of minutes from September 9, 1994 meeting
Public comment
Discussion and action on new services; renewal services; temporary employment services; new products; and product changes and revisions
Discussion and action on Texas Committee dispute resolution process
Discussion and action on Report Subcommittee’s recommendations for the annual report
Discussion and action on Texas Industries for the Blind and Handicapped’s (TIBH) agreement and management fee for fiscal year 1995
Discussion and action on setting meeting dates for 1995
Adjournment
Persons interested in the state use program may submit a written request before the meeting starts to comment publicly. Each person will be allowed a maximum of five minutes to speak. For further information, contact Fred Weber Jr. at TIBH (512) 451-8145.
Contact: Hollis Pinyan, P.O. Box 12866, Austin, Texas 78711, (903) 561-8146.
Filed: November 17, 1994, 3:25 p.m.
TRD-9451063

Texas Court Reporters Certification Board
Friday, December 2, 1994, 2:00 p.m.
1414 Colorado, Texas Law Center, Room 202
Austin
Court Reporting Curriculum Task Force
AGENDA:
According to the complete agenda, the Court Reporting Curriculum Task Force will call the meeting to order; take attendance; hear report from Entrance Exam/Student Tracking Subcommittee; hear report from Curriculum/Levels of Certification Subcommittee; general discussion of future direction of task force; schedule next meeting date; and adjourn.
Contact: Peg Liedtke, 205 West 15th Street, Suite 101, Austin, Texas 78701, (512) 463-1624.
Filed: November 21, 1994, 10:22 a.m.
TRD-9451174

Texas Education Agency
Wednesday, November 30, 1994, 9:00 a.m.
Room 1-109, William B. Travis Building, 1701 North Congress Avenue
Austin
Texas Environmental Education Advisory Committee Executive Committee
AGENDA:
Planning meeting of the Texas Environmental Education Advisory Committee (EEAC) Executive Committee prior to the TEAC meeting scheduled for December 9, 1994. The Executive Committee will review the funding options for the 1995-1996 year. The possibility of a newsletter will be discussed as well as considering the committee’s role in reviewing material. Committee member replacement issues will be dis-
cussed as well as quality control of staff development activities.

Contact: Irene Pickhardt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9566.

Filed: November 18, 1994, 10:07 a.m.

TRD-9451086

Thursday-Friday, December 1-2, 1994, 8:30 a.m. and 9:00 a.m., respectively.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

Austin

Commission on Standards for the Teaching Profession

AGENDA:

Thursday, December 1, 1994, 8:30 a.m.—Opening activities: roll call, adoption of agenda, approval of minutes for October 27, 1994. 9:15 a.m. —Discussion items: SBOIS update; division of educator assessment and appraisal; Ad Hoc ErcET Access Committee, Educator Professional Appraisal System, counselor proficiency surveys; TACTE peer evaluation proposal; Executive Committee report; Resource Group report. Noon—Lunch break. 1:30 p.m.—Action items: program requests—Southwestern Assemblies of God University, Texas Christian University, University of Texas—Permian Basin, Dallas Baptist University; accountability system for educator preparation—Executive Committee recommendations, Resource Group recommendations. 4:30 p.m.—Summary, suggestions for follow-up (items for February 2-3, 1995 agenda) and adjourn. Friday, December 2, 1994, 9:00 a.m. —Revisit accountability system for educator preparation: 1:00 p.m.—Summary, suggestions for follow-up (items for February 2-3, 1995 agenda) and adjourn.

Contact: Delia Quintanilla, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 17, 1994, 10:11 a.m.

TRD-9451049

Advisory Commission on State Emergency Communications

Tuesday, November 29, 1994, 8:30 a.m.

Hobby Building, Tower Two, Room 212, 333 Guadalupe Street

Austin

Call Box Task Force Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports and discuss and take commission action, as necessary: on: recommendations on Call Box Program; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Vella Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Jim Goeker, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

Filed: November 18, 1994, 3:49 p.m.

TRD-9451119

Tuesday, November 29, 1994, 9:30 a.m.

333 Guadalupe, Room 100, Hobby Building

Austin

Administration Committee

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports and take commission action, as necessary, on: ACSCB financial report; final audit report on ACSBC operations, management of revenue collection and reporting process, revenue remittance issues, agency public education activities, regulatory and legislative issues to include, but not limited to: Federal Communications Commission proceedings, Texas Public Utility Commission proceedings, PS 911 for universities, and proposed 9-1-1 legislative items; proposed amendment to East Texas Council of Governments’ administrative budget for fiscal year 1994 and 1995; proposed amendment to Heart of Texas Council of Governments’ administrative budget for fiscal year 1995; budgeting of program/administrative activities; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Vella Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goeker, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701, (512) 305-6911.

Filed: November 18, 1994, 4:20 p.m.

TRD-9451133

Tuesday, November 29, 1994, 1:00 p.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Addressing Committee Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports and discuss and take commission action, as necessary, on: consideration of comments received and adoption of Rule §251.3, Guidelines for Ad-
ordinating Committee report; telecommunications system implementation; public education and training; National 800 Poison 1 Administration; evaluation of the Poison Control Coordinating Committee per Senate Bill 383; and 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: November 18, 1994, 3:49 p.m.

TRD-945111

Wednesday, November 30, 1994, 9:00 a.m.

Hobby Building, Room 100, 333 Guadalupe Austin

Commission Meeting

AGENDA:
The committee will meet to order and recognize guests; consideration of committee makeup and membership; internal auditor; hear committee reports; approval of September meeting minutes; and 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: November 18, 1994, 4:20 p.m.

TRD-9451134

State Employee Charitable Campaign

Monday, November 21, 1994, 3:30 p.m.

815 Market

Galveston

Local Employee Committee-Galveston

AGENDA:
I. Welcome—final meeting minutes, share information on SECC, review campaign results
II. Review and update of campaign, review critique summary survey
III. Review of critique summary survey

Contact: Dr. Robert McCauley, 815 Market Street, Galveston, Texas 77550, (409) 770-6736, Fax: (409) 770-6919.

Filed: November 21, 1994, 3:24 p.m.

TRD-9451062

Texas Employment Commission

Monday, November 28, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:
Prior meeting notes; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 48; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: November 18, 1994, 3:14 p.m.

TRD-9451115

Texas Department of Health

Thursday, December 1, 1994, 9:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Advisory Council on Massage Therapy, Ad Hoc Curriculum and Testing Committee

AGENDA:
The committee will discuss and possibly act on: review job analysis study; review joint movement section of practical exam; initiate revision of curriculum guide; and setting of next meeting date.

Contact: Patsy Crooks, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6616. 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: November 21, 1994, 8:45 a.m.

TRD-9451141

Health Professions Council

Wednesday, November 30, 1994, 10:30 a.m.

1812 Centre Creek Drive, Room 203

Austin

Administration Committee

AGENDA:
I. Call to order, 9:30 a.m.
2. Roll call and introductions
3. Acceptance of agenda
4. Minutes of August 31, 1994, meeting
5. Reports of committees
6. Old business
7. New business
8. Other
9. Announcements
10. Comments from audience
11. Next meeting
12. Adjourn

Contact: Edward M. Boggess, 9101 Burnet Road, Suite 109, Austin, Texas 78758-5260, (512) 873-6565.

Filed: November 21, 1994, 4:28 p.m.

TRD-9451213

Statewide Health Coordinating Council

Tuesday, November 22, 1994, 10:00 a.m.

Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Emergency Meeting

Legislative Committee

AGENDA:
The committee will discuss and possibly act on: legislative priorities: overview; legislative priorities: facilitated process; 74th Legislature; legislative/appropriations process; and next meeting date and agenda planning.

Reason for emergency: Unforeseeable circumstances.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: November 17, 1994, 12:40 p.m.

TRD-9451051

Tuesday, November 22, 1994, 2:00 p.m.

Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Emergency Meeting

Rules and Bylaws Committee

AGENDA:
The committee will discuss and possibly act on: council rules revisions; and set next meeting date and agenda planning.
Texas Incentive and Productivity Commission

Monday, December 5, 1994, 10:00 a.m.
Clements Building, Fourth Floor, Room #406, 15th and Lavaca
Austin

AGENDA:
I. Call to order and roll call
II. Approval of minutes of previous meeting
III. Discussion of 1994 Texas Performance Review report
IV. Consideration of employee suggestions for approval
V. Consideration of 1995 productivity bonus plan for approval
VI. Election of vice chair
VII. Consideration of commission report to 74th Legislature for approval
VIII. Report on administrative matters
IX. Adjournment

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 435-6527.

Filed: November 17, 1994, 3:04 p.m.
TRD-9451056

Texas Juvenile Probation Commission

Friday, November 18, 1994, 10:30 a.m.
2015 South IH-35
Austin

Emergency Meeting
Board Meeting

AGENDA:
I. Call to order; excused absences; public comment; consideration of amended supplemental emergency Community Corrections contracts; executive closed session—e.f.c./c.e.r—council legal counsel—contemplated litigation—this session will be closed to the public under the authority of Article 6522.17, §21(g), Texas Revised Civil Statutes; and adjourn.


Filed: November 17, 1994, 5:16 p.m.
TRD-9451082

Legislative Oversight Committee on Workers' Compensation

Tuesday, December 6, 1994, 9:00 a.m.
Room E2.010, Capitol Extension
Austin

AGENDA:
1. Call to order
2. Approval of minutes of September 29, 1994 meeting
3. Discussion of and possible action on the LOC biennial report
4. Adjournment
AGENDA:
1. Approve minutes of September 21, 1994 meeting.
3. Approve revisions to Library Services and Construction Act annual plan.
4. Select candidate(s) to be invited for interview for position of Director and Librarian.
5. Committee reports: A. System Leadership Conference; B. State Auditor’s audit of Commission’s performance measures; C. Commission’s Sunset legislation.

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

FILED: November 18, 1994, 1:14 p.m.

TRD-9451105

Texas Department of Licensing and Regulation

Monday, December 5, 1994, 10:00 a.m.
John H. Reagan Building, 105 West 15th Street, Room 101
Austin

Policies and Standards Division

AGENDA:
To hear public comments on the proposal to adopt the following rules:
Chapter 61-Boxing
Chapter 66-Registration of Property Tax Consultants
Chapter 75-Air Conditioning and Refrigeration Contractors License Law

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

FILED: November 18, 1994, 1:13 p.m.

TRD-9451102

Texas Natural Resource Conservation Commission

Wednesday, November 30, 1994, 9:30 a.m.
12118 North Interstate 35, Building B, Room 201S
Austin

AGENDA:
The Commission will consider approving the following matters on the attached contested agenda: water quality enforcement; petroleum storage tank enforcement; water hygiene enforcement; solid waste management plan; resolution; agency report on enforcement actions; rules; proposal for decisions; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this
date. With regard to any item, the Commission may take various actions, including by not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.
Filed: November 21, 1994, 4:52 p.m.

TRD-9451216

Wednesday, November 30, 1994, 9:30 a.m.

12118 North Interstate 35, Building E, Room 2015

Austin

AGENDA:

The Commission will consider approving the following matters on the attached uncontested agenda: Class 2 permit modifications; temporary variance; amendment to water quality permit; district matters; water utility matters; utility operator certification appointment; budget; settled hearings; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.
Filed: November 21, 1994, 4:53 p.m.

TRD-9451217

Wednesday, November 30, 1994, 10:00 a.m.

State Capitol Building, Capitol Extension, Room B-1.012

Austin

Petroleum Storage Tank Advisory Committee

AGENDA:

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Call to order.

Approval of previous meeting minutes.

Discussion of TNRCC Subchapter M, PST reimbursement cost guidelines.

Discussion of items tabled from previous meetings.

Schedule future meetings.

Contact: Dwight C. Russell, P.E., 7801 Norrio Lamar Boulevard, Suite D-77, Austin, Texas 78752, (512) 452-8834.
Filed: November 21, 1994, 10:22 a.m.

TRD-9451175

Thursday-Friday, December 1-2, 1994, 1:30 p.m. and 9:30 a.m., respectively.

12015 Park 35 Circle, Building E, Room 2015

Austin

Municipal Solid Waste Management and Resource Recovery Council

AGENDA:

The Municipal Solid Waste Management and Resource Recovery Advisory Council will hold an Education Committee meeting and a Regulatory Oversight Committee meeting on Thursday, December 1, 1994. The Advisory Council will hold its general meeting on Friday, December 2, 1994, to discuss the following: meeting minutes of October 27, 1994; conference planning report; legislative issues; report from the Office of Pollution Prevention/Recycling; watch two films "Recycling in the Workplace" and "The ABCs of School Recycling"; report from the Waste Planning and Assessment Division; and a report from the Municipal Solid Waste Division.

Contact: Gary Trim, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6708.
Filed: November 21, 1994, 4:51 p.m.

TRD-9451215

Monday, December 19, 1994, 5:00 p.m.

Holiday Inn, Jacinto Port Room, 15157 Interstate 10 East

Channelview

AGENDA:

On an application by Ralston Road Landfill, L.P., Proposed Permit Number M5W2240, authorizing a Type IV municipal solid waste management facility. The facility is to be located at 6612 John Ralston Road near Houston, in Harris County, Texas and will cover approximately 50 acres of land.

Contact: Charles Stables or Ann Scudder, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687, or (512) 239-6688.
Filed: November 18, 1994, 12:40 p.m.

TRD-9451095

Tuesday, December 20, 1994, 10:00 a.m.

Texas Natural Resource Conservation Commission, 12118 IH-35, Building E, Room 245

Austin

AGENDA:

On an application by W. T. Liston Company, Proposed Air Quality Standard Registration Number 25495, to construct and operating a concrete batch plant. The proposed facility will be located near Rabb Road and U.S. Highway 83, just northwest of the city limits of La Feria, in Cameron County, Texas.

Contact: Kelly Brown, P.O. Box 13087, Austin, Texas 78711, (512) 239-1086.
Filed: November 18, 1994, 12:38 p.m.

TRD-9451094

Wednesday, December 21, 1994, 9:30 a.m.

Room 2015, Building E, 12118 North Interstate 35, TNRCC Park 35 Office Complex

Austin

AGENDA:

For an agenda hearing on Northwest Harris County Municipal Utility District Number 29's application for authority to assess standby fees to owners of undeveloped property in the District. Any revenues collected from the standby fees will be used to pay operation and maintenance expenses. The amount of the standby fee requested is $61 per equivalent single family connection per year for 1994, 1995, and 1996. Docket Number 94-0639-DIS has been assigned to this application.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.
Filed: November 18, 1994, 12:43 p.m.

TRD-9451098

Wednesday, December 21, 1994, 9:30 a.m.

Room 2015, Building E, 12118 North Interstate 35, TNRCC Park 35 Office Complex

Austin

AGENDA:

For an agenda hearing on Harris County Municipal Utility District Number 165's standby fee application for authority to adopt and impose a standby fee on undeveloped property in the District. The amount of the standby fee requested is $356.24 per year per equivalent single family connection. The Commission may approve the standby fee as requested or it may approve a lower standby fee, but it will not approve a standby fee greater than that requested. This matter has been assigned Docket Number 94-0619-DIS.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.
Filed: November 18, 1994, 12:43 p.m.

TRD-9451097

Wednesday, January 4, 1995, 9:30 a.m.

(Rescheduled from Wednesday, December 7, 1994.)
Room 201S, Building E, 12118 North Interstate 35, TNRCC Park 35 Office Complex
Austin

AGENDA:

Agenda hearing on River Place Municipal Utility District of Travis County’s impact fee application has been moved from December 7, 1994 agenda to January 4, 1995 agenda, to allow for sufficient time for the District to publish and mail notice.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: November 18, 1994, 12:41 p.m.

TRD-9451096

Wednesday, January 18, 1995, 9:30 a.m.

Room 201S, Building E, 12118 North IH 35, TNRCC Park 35 Office Complex
Austin

AGENDA:

For a Commission agenda hearing on the City of Gilmer’s application for an extension of time to commence construction of a dam and reservoir on Kelsey Creek, tributary of Little Cypress creek, tributary of Big Cypress Creek, Cypress Basin, in Upshur County, approximately three miles northwest of Gilmer, Texas. Applicant is requesting an extension of the commencement from May 20, 1994 to June 1, 1995, because a testing program for cultural resources is still being done at the project site. This application has been given TNRCC Docket Number 95-00520-WR.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4614.

Filed: November 18, 1994, 12:37 p.m.

TRD-9451093

Texas Optometry Board

Thursday-Friday, December 1-2, 1994, 10:00 a.m. and 9:00 a.m., respectively.

Park Lane’s St. Anthony Hotel, 300 East Travis
San Antonio

AGENDA:

On December 1, 1994, informal conferences will be held with licensees beginning at 10:00 a.m. and continuing through 2:30 p.m., at which time the Rules Committee will meet. At 3:30 p.m. the Continuing and Therapeutic Education Committee will meet, followed by all remaining committees meeting. On December 2, 1994, beginning at 9:00 a.m., a special meeting of the Board will be held to consider reports of secretary-treasurer, legal counsel, executive director, committee chairpersons; consider proposed rules regarding National Board Examination, housekeeping changes to Rule 277.1 and prescription release; consider matters regarding Health Professions Council, Attorney General Opinion Request RQ-631, practice of optometry with an inactive licensure status, general correspondence, legislative changes to the Act, annual report, take action on recommendation of Investigation-Enforcement Committee regarding suspension of license; public comment at time certain of 10:30 a.m.; executive session to be held in compliance with §551.071 of the Government Code to discuss contemplated and pending litigation with Board attorney.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: November 21, 1994, 4:16 p.m.

TRD-9451212

Texas Board of Pardons and Paroles

Monday, November 28, 1994, 1:00 p.m.
8610 Shoal Creek Boulevard
Board Work Session

AGENDA:

I. Call to order by chairman; II. Presentations; III. Jefferson County Sheriff’s Office Work Program; Texas Criminal Justice Policy Council update on statistical methods and statistical findings; Texas Department of Criminal Justice-Pardons and Paroles update; review of Special Needs Parole Program; review of I.P.T.C. Program; Work Session Program. III. Adjournment.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: November 17, 1994, 4:43 p.m.

TRD-9451077

Tuesday, November 29, 1994, 9:00 a.m.
8610 Shoal Creek Boulevard
Austin

Parole Board

AGENDA:

I. Call to order; II. Discussion and approval of minutes of August 2, 1994 Board meeting. III. Consider, discuss and vote to adopt: repeal of 37 TAC §145.53 and adoption of new 37 TAC §145.53; repeal of 37 TAC §145.61 and §145.62; and repeal of 37 TAC §147.27 and adoption of new 37 TAC §147.27/IV. Consider, discuss and vote to propose the following administrative law changes; to repeal §§141.52, 141.57, 141.82, 141.101, 141.111, 143.6, 145.2, 145.3, 145.6, 145.12, 145.16, 145.21, 145.25, 149.2, 149.4, 149.11, 149.15, 149.17, 150.51, 150.52, 150.54, 150.58. To adopt new §§141.52, 141.57, 141.82, 141.101, 141.111, 143.6, 145.2, 145.3, 145.6, 145.12, 145.16, 145.21/VI. Consider, discuss and vote to adopt a Board of Pardons and Paroles mission statement/VI. Committee and other reports; / VII: Adjournment.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: November 17, 1994, 4:42 p.m.

TRD-9451076

Texas Department of Protective and Regulatory Services

Friday, December 2, 1994, 10:00 a.m.
701 West 51st Street, Fifth Floor, West Tower, Room 560W
Austin

Child Care Administrators and Facilities Advisory Committee

AGENDA:

According to the complete agenda, the Child Care Administrators and Facilities Advisory Committee will meet to hear: approval of minutes; deputy director’s report; implementing board action on day-care minimum standards; discussion and recommendations on proposed minimum standards for group day-care homes; review of annual report fiscal year 1994; election of officers for fiscal year 1995; and agenda planning for fiscal year 1995.

Contact: Doug Sanders, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3253.

Filed: November 17, 1994, 3:11 p.m.

TRD-9451059

Public Utility Commission of Texas

Wednesday, December 14, 1994, 10:00 a.m. (Rescheduled from Wednesday, November 30, 1994, 10:00 a.m.)
7800 Shoal Creek Boulevard
Austin

Hearings Division

AGENDA:

A hearing on the merits has been rescheduled in Docket Number 12677-application of City of College Station to amend certified service area boundaries within Brazos County.
Texas Savings and Loan Department

Monday, December 12, 1994, 9:00 a.m.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc sb, Houston, Texas to operate a branch office at 708 East Austin, Giddings, Lee County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:23 p.m.
TRD-9451184

Monday, December 12, 1994, 9:30 a.m.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc sb, Houston, Texas to operate a branch office at On The Square, Mason, Mason County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:24 p.m.
TRD-9451185

Monday, December 12, 1994, 10:00 a.m.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc sb, Houston, Texas to operate a branch office at 101 East Polk, Burnet, Burnet County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:26 p.m.
TRD-9451189

Monday, December 12, 1994, Noon.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc sb, Houston, Texas to operate a branch office at 4112 College Hills Boulevard, San Angelo, Tom Green County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:26 p.m.
TRD-9451190

Monday, December 12, 1994, 12:30 p.m.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc sb, Houston, Texas to operate a branch office at 907 Ford Street, Llano, Llano County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:27 p.m.
TRD-9451191

Monday, December 19, 1994, 9:00 a.m.
300 West 15th Street, Room 502
Austin

AGENDA:
The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of North Plains Savings and Loan Association, Dumas, Texas to merge with The First State Bank of Stratford, Stratford, Texas with First State Bank, Stratford, Texas the surviving entity, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 21, 1994, 2:28 p.m.
TRD-9451192
Stephen F. Austin State University
Tuesday, November 22, 1994, 10:00 a.m.
Stephen F. Austin Campus, Room 307, Austin Building
Nacogdoches
Board of Regents
AGENDA:
I. Academic and student affairs
   A. Admission standards
   Contact: Dr. Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.
   Filed: November 17, 1994, 3:26 p.m.
   TRD-9451064
Texas Sustainable Energy Development Council
Wednesday, November 30, 1994, 8:30 a.m.
1000 Red River, Teacher Retirement System Cafeteria Meeting Room
Austin
AGENDA:
I. Call to order
II. Administrative update
   a. Budget
   b. Vacancies/certificates
   III. Committee updates
      a. Transportation Committee
      b. Power Plant Committee
      c. Computer Model Committee
   d. Public participation IV. Project status reports
      a. Resource assessment report
      b. Cost/benefit analyses of electric resource options report
      c. Transportation efficiency
      d. Industrial efficiency
      V. SEDC representation on DOE’s Nevada Solar Enterprise Zone working group
      VI. Review agenda for December 16 council meeting
VII. Self evaluation
VIII. Adjourn
Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1743.

The Texas State University System
Thursday, December 8, 1994, 2:00 p.m.
First Floor Conference Room, Houston Harte Student Center, Angelo State University
San Angelo
Board of Regents
AGENDA:
Review of matters of the Board and the four universities in the system including: award of a construction contract for the Disaster Recovery Facility at Angelo State University; selection of a consultant for the Equine Science Facility project at Sul Ross State University; and consideration and discussion of all matters and candidates relating to the employment of a president for Angelo State University, including those candidates recommended by the Presidential Selection Advisory Committee, Dr. Bruce F. Grube, Dr. E. James Hindman, Dr. W. Frank Newton and Dr. Russell G. Warren. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)
Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.
Filed: November 18, 1994, 4:02 p.m.
TRD-9451124

The University of Texas at Austin
Tuesday, November 22, 1994, 3:30 p.m.
21st and San Jacinto Streets, Ex-Student’s Association
Austin
Council for Intercollegiate Athletics for Women
AGENDA:
I. Call to order
II. Approval of minutes of previous meeting
III. Old business
IV. Announcements/information reports
V. Adjournment
Contact: Judy Conradt, Bellmont Hall 718, Austin, Texas 78712-1286, (512) 471-7693.
Filed: November 18, 1994, 12:56 p.m.
TRD-9451100

The University of Texas System
Thursday, December 1, 1994, 10:00 a.m.
Room 316, Mvialice Shary Shivers Administration Building and Ballroom, University Center, U. T. Pan American, 1201 West University Drive
Edinburg
Board of Regents and Standing Committees
AGENDA:
To consider: resolution in support of institutional plans; chancellor’s docket (submitted by system administration); amendments to Regents’ Rules and Regulations; restructure of regular meetings of the Board of Regents; revision of annual operating budget process and format; U. T. System—Internal Audit Plan for fiscal year 1994-1995; U. T. System—insurance matters; degree programs; agreements; appointments to endowed academic positions; revision of process for Regental review of Capital Improvement Program, budget, and capital projects; buildings and grounds matters including approval of preliminary and final plans, award of contracts, and appropriations; acceptance of gifts, bequests and estates; establishment of endowed positions and funds; potential litigation; real estate,
and personnel matters as detailed on the attached complete agenda.

Contact: Arthur H. Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: November 21, 1994, 8:44 a.m.
TRD-9451140

Texas Council on Workforce and Economic Competitiveness

Thursday-Friday, December 1-2, 1994, 1:00 p.m. and 8:30 a.m., respectively.
Austin Community College Administration Offices, 5930 Middle Fiskville Road, Room 233C
Austin

Apprenticeship and Training Advisory Committee

AGENDA:

Items on the agenda include: opening remarks; public testimony; approval of the minutes of the September 14-15, 1994, ATAC meeting; staff report on revisions to Chapter 33 of the Texas Education Code, mission statement, and School-to-Work activities; briefing on apprenticeship in the Workforce Development System by Barbara Ciganerio, executive director of the Texas Council on Workforce and Economic Competitiveness, adoption of the funding structure for apprenticeship training programs for 1995-1996; adoption of journeyman training funding rules; briefings on apprenticeship programs in Texas by the Texas Education Agency, Texas Higher Education Coordinating Board, and U.S. Department of Labor Bureau of Apprenticeship and Training; briefing on the development of a performance and evaluation system for the workforce; legal opinion on the privacy act; adoption of the results of the survey sent to program sponsors of apprenticeship programs; update on the Federal Commission of Apprenticeship; update on Tech Prep and Apprenticeship Coordination by the Texas Higher Education Coordinating Board; update on the School-to-Work Opportunities Extension Grant; selection of future meeting dates, discussion of the committee's schedule of work, and other business.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contract Val Blaschke, (512) 707-8222 (or Relay Texas 800) 735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78758, (512) 707-8222.

Filed: November 18, 1994, 2:33 p.m.
TRD-9451114

Regional Meetings

Meetings Filed November 17, 1994, 3:40 p.m.


The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 400, San Antonio, November 22, 1994, at 1:00 p.m. Information may be obtained from Al J. Notzoon III, 1118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9451068.

The Brazos Valley Quality Workforce Planning Committee met at 715 University Drive, College Station, November 22, 1994, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801-2142, (409) 821-2505. TRD-9451074.

The Central Texas Area Consortium (Special Called Meeting) met at the Super 8 Motel, Conference Room, 5505 South General Bruce Drive, Temple, November 22, 1994, at 7:00 p.m. Information may be obtained from Michael B. Herring, 3311 So ihwest Hc Dodge Loop #428, Temple, Texas 76502, (817) 791-9102, Fax (817) 774-9508. TRD-9451054.

The Comal Appraisal District Board of Directors met at 178 East Mill Street #101, New Braunfels, November 21, 1994, at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9451058.

The Lower Rio Grande Valley Development Council (Revised Agenda) LRGVDC Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, November 22, 1994, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr. or Anna M. Hernandez, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9451075.

The Lubbock Regional MHMR Center (Revised Agenda) Board of Trustees met at 1602 Tenth Street, Board Room, Lubbock, November 21, 1994, at Noon. Information may be obtained from Gene Meneelee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9451050.

The San Antonio-Bexar County Metropolitan Planning Organization High Occupancy Vehicle Study Oversight Committee will meet at 233 North Pecos, Room 1420, Vista Verde Building, San Antonio, December 2, 1994, at 8:30 a.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9451055.

Meetings Filed November 18, 1994

The Colorado County Appraisal District Appraisal Review Board will meet at 400 Spring Street, County Courtroom, Columbus, December 2, 1994, at 1:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9451106.

The Dallas Area Rapid Transit Dallas Delegation met at 1500 Marilla Street, City Hall, Mayor's Office, Dallas, November 22, 1994, at 10:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9451113.

The Dallas Area Rapid Transit Audit Committee met in Conference Room B, Dallas Area Rapid Transit, Board Room, 1401 Pacific Avenue, Dallas, November 22, 1994, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9451110.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, Dallas Area Rapid Transit, Board Room, 1401 Pacific Avenue, Dallas, November 22, 1994, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9451112.

The Dallas Area Rapid Transit Board Meeting met at Dallas Area Rapid Transit, Board Room, 1401 Pacific Avenue, Dallas, November 22, 1994, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9451111.

The Education Service Center, Region XVIII Board of Directors will meet at 2811 LaForce Boulevard, Midland, December 1, 1994, at 6:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9451111.
60580, Midland, Texas 78711, (915) 563-2380. TRD-9451107.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, December 1, 2, 5, 6, 7-9, 12-16, 1994, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9451109.

Meetings Filed November 21, 1994

The Atascosa County Appraisal District Appraisal Review Board will meet at Fourth and Avenue J, Poteet, November 29, 1994, at 8:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9451124.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, December 8, 1994, at 4:00 p.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9451173.

The Lavaca County Central Appraisal District Appraisal Review Board met at 113 North Main Street, Hallettsville, November 21, 1994, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9451211.

The Middle Rio Grande Development Council (Emergency Revised Agenda) Task Committee met at the Corner of Main and Getty, Uvalde, November 23, 1994, at 10:00 a.m. Information may be obtained from Dora Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9451197.

The Northeast Texas Quality Work Force Planning will meet at Texas Utilities Company, Sulphur Springs, November 30, 1994, at 10:00 a.m. Information may be obtained from Walter York, P.O. Box 1911, Mt. Pleasant, Texas 75456-1307, (903) 572-1911. TRD-9451163.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee will meet at the International Conference Center, the Convention Center Complex, San Antonio, November 28, 1994, at 1:30 p.m. Information may be obtained from Charlotte A. Rosselle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9451198.

The Tarrant Appraisal District (Rescheduled from November 18, 1994.) Board of Directors will meet at 2301 Gravel Road, Fort Worth, November 28, 1994, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76120, (817) 284-0024. TRD-9451176.

The Trinity River Authority of Texas Administration Committee will meet at 6500 West Singleton Road, Grand Prairie, November 28, 1994, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9451193.

Meetings Filed November 22, 1994

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, November 30, 1994, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9451221.

The Leon County Central Appraisal District Board of Directors will meet at 103 North Commerce, Commerce Highway 7 and 15, Leon County Central Appraisal District Office, Gresham Building, Centerville, November 28, 1994, at 7:00 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9451222.

The Texas Political Subdivisions Joint Self-Insurance Funds Board of Trustees will meet at the Doubletree Hotel, 5410 LBJ Freeway, Dallas, December 2-3, 1994, at 8:00 a.m. Information may be obtained from James R. Gresham, Suite 108, 2440 East Fifth Street, Tyler, Texas 75701, (903) 593-4496. TRD-9451220.

The Southwest Milam Water Supply Corporation Board will meet at 114 East Cameron, Rockdale, November 28, 1994, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76557, (512) 446-2604. TRD-9451219.
Texas Education Agency
Request for Applications Concerning
Learn and Serve America 1994-1995

Filing Authority. Request for Applications (RFA) #701-95-001 is filed under 45 CFR, Chapter XXV.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from school districts or cooperatives of school districts to develop demonstration service learning sites and/or to develop service learning curriculum.

Description. School-based service learning programs will involve youth as resources in finding and addressing solutions to critical human issues within communities in the areas of human need, public safety, education, and environment, and integrating the experiences into the academic program.

Service learning curricula will be developed based on information received from previously funded projects continuing into the third year of service learning projects or on other prior experience with service learning.

All funded programs will collaborate with the state in addressing the critical human needs outlined in the State Comprehensive Plan, as well as make a commitment to expand and promote the concept of community service within the state.

All programs will have these components: preparation for service; performance of service; and reflection. Evaluation will include achievement, discipline, and attendance, as well as services provided to students and community, staff and student training, student participation, and curriculum utilized.

Dates of Project. The Texas Learn and Serve Program will be implemented during the 1994-1995 school year. Applicants should plan for a starting date of no earlier than February 3, 1995, and an ending date of no later than December 29, 1995.

Project Amount. Each of a minimum of the nine new demonstration sites will receive up to $85,000 for the 1994-1995 school year. Each curriculum development project will receive up to $10,000 for the 1994-1995 school year, for a total of $90,000. This project is funded 90% from Corporation for National Service federal funds ($1,433,914) and 10% from nonfederal sources ($159,324).

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Special consideration will be given to applicants who address violence prevention, substance abuse prevention, and/or dropout prevention. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve any application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not obligate TEA to pay any costs incurred before approving an application. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-95-001 may be obtained by writing: the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the request for application, contact Andree England, Division of Accelerated Instruction, Texas Education Agency, (512) 305-9205.

Deadline for Receipt of Applications. The deadline for receiving an application in the Document Control Center of the Texas Education Agency is 5:00 p.m., January 13, 1995.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451172

Cris Cloudt
Executive Associate Commissioner for Policy Planning and Information Management
Texas Education Agency

Filed: November 21, 1994

General Land Office
Contract Award

Pursuant to Texas Government Code Annotated, §2254.041 et seq., the General Land Office announces the award of a contract for consulting services to study, analyze, and provide advice, mediation, and recommendations relative to issues involved in the conversion of school buses to alternative fuels. The contract is an extension of a contract, under which a consultant has been providing support to the General Land Office Alternative Fuels Program in the agency’s ongoing efforts to assist school district officials and transportation managers, gas suppliers, equipment manufacturers, conversion firms, and the Texas Natural Gas Vehicle Coalition in the resolution of issues which may affect the timely and efficient conversion of school bus fleets to alternative fuels.

The request for proposals to provide these services was published in the July 29, 1994, issue of the Texas Register (19 TexReg 5898). The contract has been awarded to the...
The final selection of grantees for award shall be made by representatives of the Governor’s Office of Immigration and Refugee Affairs in accordance with applicable state and federal laws. The evaluation criteria and scores for each are contained in the RFP document. A copy of the RFP will be sent upon written request submitted to Debbie Desmond.

Issued in Austin, Texas, on November 18, 1994.

TRD-9451031
david a. talbot
general counsel
office of the governor

Filed: November 16, 1994

Texas Department of Insurance

Amendments to the Plan of Operation for the Texas Automobile Insurance Plan Association

The Commissioner of Insurance will consider approval of a filing made by the Texas Automobile Insurance Plan Association pursuant to Texas Insurance Code Article 21.81 to approve amendments to §6 and §11 of the Plan of Operation for the Association. A copy of the filing is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information or to request a copy of the filing, please contact Angie Arizpe at (512) 322-4147 (reference number A-1194-29).

This filing is subject to Commissioner approval without a hearing. Comments and objections must be filed with D. J. Powers, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-1C, P.O. Box 149104, Austin, Texas 78714-9104 within 15 days after publication of this notice in the Texas Register.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451162
d. j. powers
general counsel and chief clerk
texas department of insurance

Filed: November 21, 1994

Texas Department of Licensing and Regulation

Request for Proposals for Educational Programs, Seminars, or Training Projects for Auctioneers Licensed in Texas

Proposals submitted will be evaluated for completeness, content and usefulness by a committee of the Texas Department of Licensing and Regulation staff. Requests may be made for clarification, but no changes to proposals will be accepted. Proposals that meet all requirements will be evaluated by members of the Auctioneer Education Advisory Board, and a recommendation will be made by the Board to the department at a public meeting in February. More than one proposal may be recommended for funding.

The department reserves the right to accept or reject any or all proposals submitted. The department is under no legal or other obligation to execute a contract on the basis of this RFP. The RFP does not commit obligation to execute a contract on the basis of this RFP. The RFP does not
commit the department to pay for any costs incurred prior to the execution of a contract.

A copy of the Request for Proposals may be requested from Pauline Dension, (512) 463-7369. Proposals must be received by the Texas Department of Licensing and Regulation by January 13, 1995.

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

TRD-9450988
Jack W. Griscom
Executive Director
Texas Department of Licensing and Regulation

Filed: November 15, 1994


Texas Natural Resource Conservation Commission

Advertisement for PST Contracts

The Storage Tank Contracts Section of the Petroleum Storage Tank (PST) Division of the Texas Natural Resource Conservation Commission (TNRCC) will be mailing out a Request For Qualifications/Invitations For Bids (RFQ/IFB) Package seeking Statements Of Qualifications (SOQs) and bids from firms with expertise in monitoring, reporting, and evaluation of releases from PSTs. SOQs and bids will be due back to the TNRCC 30 days from the mailing date.

contracts will be awarded on a regional basis for groups of sites under the authority granted to the TNRCC by the Texas Health and Safety Code and the Texas Water Code. The contracts will be awarded using a two-part bid process. The first part is the SOQ. Companies whose SOQ's pass the review process will have their bids opened and tabulated.

It is a TNRCC goal to strive for 30% Historically Under-utilized Business (HUB) participation overall in these contracts. If a 15% HUB level of attainment has NOT been met then documentation of a "good faith" effort must be submitted, or an SOQ will fail the review. The TNRCC accepts and encourages the creation of Contractor Teams such as joint ventures, mentor relationships, prime contractors with HUB sub-contractors and HUB primes with or without sub-contractors as ways to meet these participation goals.

Also forthcoming, in the near future, the TNRCC will be seeking SOQs from firms with expertise in remedial action planning and engineering design of remediation systems for LPST sites. The resulting contracts for these services will be procured using the selection and negotiation process as required by the Professional Services Procurement Act.

These RFQ packages will be mailed automatically to any company listed under Class 925 or 926 on the General Services Commission (GSC) bid list. If you would like to receive any of the above mentioned RFQ packages, and you are not on the GSC bid list, you may receive one by calling in or faxing your request to Tonisa Patterson at (512) 239-2120 or Fax (512) 239-2177.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451171
Mark Jordan
Director, Water Policy Division
Texas Natural Resource Conservation Commission

Filed: November 21, 1994


Enforcement Orders

An agreed enforcement order was entered regarding Positive Feed, Docket Number 94-0654-IWD-B (Permit Number 02314) on November 14, 1994, assessing $4,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding Ben E. Keith, Docket Number 94-0260-PST-B (TNRCC Facility Identification Number 32704/Enforcement Identification Number EL0441) on November 18, 1994, assessing $2,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic McWherter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0579.

Issued in Austin, Texas, on November 18, 1994.

TRD-9451092
Gio's A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 18, 1994


Notice of Application for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of November 14-18, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a public hearing within 30 days after publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing:"

A brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit...
issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

Action Municipal Utility District; the De Cordova Bend Wastewater Treatment Facilities; the facilities are approximately 2.6 miles south of the intersection of U.S. Highway 377 and FM Road 167 on the west bank of McCarty Branch, 2,200 feet upstream of the confluence of McCarty Branch and Walnut Creek in Hood County, Texas; renewal; 11208-01.

Beasley West, Inc.; a crushed limestone aggregates plant; located adjacent to FM Road 2252, approximately one mile west of the intersection of FM Road 2252 and Interstate Highway 35, southeast of the City of New Braunfels, Comal County, Texas; renewal; 00380.

City of Borger; the Rock Creek Wastewater Treatment Facilities; the facilities are approximately 9,800 feet northeast of the intersection of State Highway 136 and Ranch Road 1559, southwest of the City of Borger in Hutchinson County, Texas; renewal; 10535-01.

City of Cactus; the wastewater treatment facilities; are approximately two miles north of the intersection of FM Road 281 and U.S. Highway 287, east of the City of Cactus, Moore County, Texas; amendment; 03436.

City of College Station; the Carter’s Creek WWTP-2 Wastewater Treatment Facilities. The facilities are approximately 1.5 miles southeast of the intersection of State Highway 6 Bypass and State Highway 30, approximately 1.9 miles north-northeast of the intersection of State Highway 6 and State Highway 6 Bypass in Brazos County, Texas; renewal; 10024-02.

Eastland County Water Supply District; water treatment facilities will serve the City of Ranger and the City of Eastland; the plant site is 1.5 miles south of Interstate 20 on FM Road 2461 in Eastland County, Texas; new; 13726-01.

City of Elsa; the Plant Number 2 Wastewater Treatment Facilities; the plant site is approximately 0.5 mile southwest of the intersection of FM Road 1925 and State Highway 88 in the City of Elsa in Hidalgo County, Texas; renewal; 11510-02.

Fort Hancock Water Control and Improvement District; the wastewater treatment facility and evaporation site are on the north side of and adjacent to State Highway 20, approximately one mile southeast of Fort Hancock in Hudspeth County, Texas; renewal; 11173-01.

Harris County WCID Number 99; the wastewater treatment plant; is on the north side of Cypress Creek near the confluence with Lemm Gully, approximately 4,600 feet east of Interstate Highway 45 in Harris County, Texas; renewal; 11444-01.

City of Johnson City; the wastewater treatment facilities; are approximately 3,700 feet north of the intersection of FM Road 2766 and U.S. Highway 281 and 2,500 feet south-southwest of the U.S. Highway 281 crossing of the Pedernales River in Blanco County, Texas; renewal; 10198-01.

City of Leonia and Travis J. Oden; the City of Leonia Wastewater Treatment Facilities will serve the City of Leonia; the plant site is approximately 1,500 feet due east of U.S. Highway 75 and 3,000 feet northeast of the intersection of U.S. Highway 75 and FM Road 977 in Leon County, Texas; new; 13756-01.

Orange County Water Control and Improvement District Number 1; the Pine Shadows Wastewater Treatment Plant; the plant site is west of Anderson Gully, south of Orange Street and approximately 1,200 feet east of the intersection of Orange and Pine Burr Street in Orange County, Texas; renewal; 12012-01.

Quantum Chemical Corporation; a plastics compounding plant which produces polyethylene pellets; the plant site is approximately three miles north of the City of Crockett and west of U.S. Highway 287, Houston County, Texas; amendment; 02207.

City of Talco; the wastewater treatment facilities are on the north side of FM Road 71, approximately one mile northeast of the City of Talco, Titus County, Texas; renewal; 10869-01.

Temple-Inland Forest Products Corporation; the Diboll Plant, a wood and wood products manufacturing complex, is approximately one-fourth mile west of U.S. Highway 59 and bordered by Mill Street on the south, Neil Pickett Drive on the west, Pine Valley Road and Borden Drive on the north, and First Street on the east, in the City of Diboll, Angelina County, Texas; renewal; 01153.

Texas A&M University; the Main Campus Wastewater Treatment Facilities; the plant site is approximately 14,000 feet south of the intersection of FM Road 60 and FM Road 2818, 11,000 feet southwest of FM Road 2818 and 9,000 feet southeast of FM Road 60 in Brazos County, Texas; amendment; 10968-03.

Texas Department of Criminal Justice; the Michael Unit Meat Processing Plant; the plant and irrigation site are about five miles southwest of the City of Tennessee Colony, Anderson County, Texas; renewal; 02072.

Texas Parks and Wildlife Department; the Sea Center Texas facility which consists of a fish hatchery, visitor and educational center; the plant site is at 300 Medical Drive in the City of Lake Jackson, Brazoria County, Texas; new; 03748.

City of Three Rivers; the wastewater treatment plant; is approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Street in the City of Three Rivers in Live Oak County, Texas; renewal; 10301-01.

U.S. Army Corps of Engineers; Clear Lake Park Wastewater Treatment Facilities; the facilities are approximately 3.3 miles south of the intersection of FM Road 546 and FM Road 982, on the north side of Laver Lake in Clear Lake Park in Collin County, Texas; renewal; 12049-01.

Wolfe's Florist, Inc.; a greenhouse complex growing flowers for wholesaling; the plant site is at 2901 South 12th Street approximately three miles south of the intersection of Interstate Highway 35 and State Highway 6 in the City of Waco, McLennan County, Texas; renewal; 02663.

Issued in Austin, Texas, on November 18, 1994.
Notice of Opportunity to Comment on Permitting Actions

Notice of opportunity to comment on permitting actions for the week ending November 18, 1994.

Application by the City of Missouri City, for an extension of time to commence and complete construction under Permit Number 5365. Pursuant to Texas Water Code, §11.145. Applicant seeks authorization to begin the construction of repairing the outlet structure for Lake Kiamesha to July 30, 1994. The project will be completed by October 31, 1994. Water Use Permit Number 5365 was issued on June 9, 1992, and established the time for construction and completion of this project for June 9, 1994 and June 9, 1995, respectively. Permit Number 5365 includes authorization for the City of Missouri City to maintain a dam (Key Court) and reservoir (Leke Kiamesha) on the unnamed tributary of Oyster Creek, tributary of the Gulf of Mexico, San Jacinto Coastal Basin in Fort Bend County, Texas, and impound therein not to exceed 120 acre-feet of water for in-place recreational use.

Application Number 23-2690B By Alamo Concrete Products, Limited for a Texas Water Code, §11.122, Water Use Permit Application. Amendment to Certificate Number 23-2690 which currently authorizes owner to divert, use, redivert and reuse not to exceed 78 acre-feet of water per annum from the Rio Grande of which 15 acre-feet of water may be consumed for mining purposes in Maverick County, Texas. Applicant has acquired ownership of this certificate and seeks an amendment to change ownership and point of diversion to four miles southeast of the City of Eagle Pass, Rio Grande, Rio Grande Basin, Maverick County, Texas (Kelley Rila; 239-4612).

Application Number 5506 By the City of Del Rio, Texas for a Texas Water Code, §11.121, Water Use Permit Application. Applicant intends for consumptive use of water but seeks to redirect not to exceed 258.20 acre-feet of water per annum from San Felipe Creek through an existing 0.19 acre-foot capacity off-channel reservoir for recreation purposes. Designed as a landing pool for a water slide, water will be placed in the reservoir and a small amount circulated to wet the slide. Water will be redirected by gravity flow through a pipe into a concrete wetwell where water will be lifted (by pump) into the pool on a continuous basis during the day when in use. A weir will continuously discharge water from the pool at the same rate water enters the pool. Water flows from the pool, by gravity through a pipe back to San Felipe Creek approximately 175 feet downstream of the diversion point. Small evaporative and other losses are estimated to be 0.17 acre-feet of water per annum which will be replaced with equal or greater amounts of water from the applicant’s wells located upstream of the diversion point (Kelley Rila 239-4612).

Tyler Pipe Industries, Inc. for a minor amendment to Permit Number HW50141 which authorizes operation of an industrial hazardous waste disposal facility at their Tyler Plant. The waste management unit currently authorized by the permit is an inactive landfill which was used for the disposal of industrial and hazardous waste generated on-site as part of the manufacturing process. The permit amendment would authorize closure of the landfill, use of clean fill above the surface of the waste contained within the landfill, and use of steel pipes as a protective barrier post around the permanent bench marks. The facility is located on a 678-acre tract of land approximately seven miles north of Tyler, Smith County, Texas.

Issued in Austin, Texas, on November 18, 1994.

Notification of Availability of Grants for Assistance in Enforcing Prohibitions on Solid Waste Dumping and Littering

The Texas Natural Resources Conservation Commission (TNRCC) announces the availability of $700,000 in assistance grants for the purpose of supporting local government efforts to: minimize initial response and case resolution times with respect to solid waste related citizen complaints, including complaints alleging violations of solid waste laws by solid waste transporters; develop or strengthen investigative and enforcement capabilities; reduce occurrences of illegal dumping including, but not limited to, the illegal disposal of used automotive oil and/or oil filters, batteries, scrap tires, sludge, septage, and regulated medical waste; and discourage littering. Routine surveillance or inspection of TNRCC permitted or registered sites as well as cleanup of illegal sites is not intended to be a part of enforcement support programs funded under this Request for Proposals (RFP).

The deadline for applying for a grant under this RFP is 5:00 p.m., Monday, January 9, 1995.

In order to be considered for funding, applications must be prepared and submitted in accordance with the RFP and other printed guidelines available from TNRCC as part of Grant Application Packet Number 95ENF. Please note that a sample contract will be included in the Grant Application Packet in an effort to expedite the negotiation of contracts. This contract represents the conditions under which the TNRCC is willing to grant funds to local governments for this solid waste enforcement assistance program; substantial variation from the sample contract should not be expected. Local government representatives desiring to receive this particular packet are encouraged to call or write Tim Haase of the TNRCC Municipal Solid Waste Division, Compliance and Enforcement Section at (512) 239-6650 or P.O. Box 13087, Austin, Texas 78711-3087 and request Grant Application Packet Number 95ENF.

Applicants eligible to receive funding include Texas cities and counties, city and/or county health departments, local law enforcement agencies, and other public agencies having authority to conduct solid waste related enforcement activities. Eligible applicants must have authority to carry out activities described in either §361.225 (Suit By County or Political Subdivision), or §361.226 (Suit By Municipalities) in the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361; or to initiate and complete the various enforcement item provisions contained in...
The TNRCC intends that applicants must be able and willing to carry out investigation and prosecution functions that are related to the overall program objectives in enforcing prohibitions on solid waste dumping and littering. Financial assistance provided by TNRCC shall be matched, at least equally, by funds and/or designated in-kind services to be provided by the grant recipient. The TNRCC will not consider applications that request more than $100,000 in grant funds. The source of funds for these announced grants is the Municipal Solid Waste Disposal Fee, which is collected by the State of Texas for municipal solid waste disposed of in the State. The TNRCC has authority to provide enforcement assistance grants to local governments pursuant to §361.014 and §361.031 of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.

Issued in Austin, Texas, on November 18, 1994.

TRD-9451138  Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: November 21, 1994

Request For Proposal For Auditing Services

This Request For Proposal (RFP) is filed pursuant to the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

The Texas Natural Resource Conservation Commission (TNRCC) requests offers from qualified companies/organizations for auditing services to perform agreed upon procedures (audits) for the TNRCC.

Scope of Services. The successful candidate will be required to develop an audit plan and provide the following services: prepare an audit program, perform ten audits, and serve as an expert witness or in other capacities as needed to settle the audits performed under the contract.

The applicant should propose a separate plan for each of the following scenarios. First, the consultant will provide the previously described services and TNRCC will not provide any personnel to assist in these services. Second, the TNRCC will provide staff to perform auditing services with the consultant.

Qualifications. Each company/organization submitting a proposal must present evidence or otherwise demonstrate to the satisfaction of the TNRCC that such entity has the qualifications and experience to prepare and perform this type of audit and has the thorough understanding of auditing and the petroleum storage tank industry required to complete this program in the specified timeframe.

Proposal requirements in full detail may be obtained by contacting the individual listed in the section entitled Obtaining a Request for Proposal. Applicant will be required to submit evidence that it meets the preceding requirements, and a proposal which includes a detailed description of the plan to meet the requirements identified in the scope of services; a proposed timeframe for completion; and information on proposed staff for providing these services.

Proposal Closing. Responses must be submitted no later than 5:00 p.m., December 12, 1994. Responses received after this date and time will not be considered. TNRCC anticipates entering into a contract within seven to ten days of the proposal closing date. The successful applicant will be notified by telephone and/or facsimile.

Disclosure by Former Employees of a State Agency. Any individual who responds to this RFP and offers auditing services for the TNRCC, and who has been employed by the TNRCC or by another state agency at any time during the two years preceding the submittal of a response to this RFP, shall disclose in the response the date of termination of employment, the annual rate of compensation for the employment at the time of termination of employment, and the name of the agency.

The TNRCC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TNRCC is under no legal obligation to enter into a contract with any proposer on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested.

The TNRCC assumes no responsibility for expenses incurred in preparing a proposal and/or response to this solicitation.

Obtaining a Request for Proposal. Copies of the RFP, including proposal guidelines and an explanation of the selection criteria, may be obtained by sending a regular or certified letter requesting a copy of the RFP package; by sending an overnight or expedited delivery letter requesting a copy of the package, with a prepaid overnight or expedited delivery return envelope; or by sending a facsimile to the TNRCC requesting a copy of the RFP at (512) 239-6242.

Please direct requests to Dianna Gordon, Director, Administrative Audits and Financial Assurance Division, or Sharon Mooney, Manager, Audit and Program Coordination Section, Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building A, Austin, Texas 78753.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451170  Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: November 21, 1994

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.37

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Texas Wesleyan University, Fort Worth, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Six-Station Addition to the Existing PLEXAR-Custom Service for
Texas Wesleyan University pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13564.

The Application, Southwestern Bell Telephone Company is requesting approval of a six-station addition to the existing Plexar-Custom service for Texas Wesleyan University. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 18, 1994.

TRD-9451087  John M. Rentfrow  Secretary of the Commission
  Public Utility Commission of Texas

Filed: November 18, 1994, 10:08 a.m.

Texas A&M University
Biological Waste Review RFP

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, Texas A&M University announces the issuance of a Request for Proposal (RFP) for the purpose of hiring a consultant to develop a comprehensive plan for the handling and disposal of biological waste generated from teaching, research, clinical and diagnostic activities.

Contact: Parties interested in submitting a proposal should contact the Director of Purchasing Services, Texas A&M University, College Station, Texas 77843-1477, (409) 845-4579, to obtain a complete copy of the RFP.

Closing Date: Proposals must be received in the Director of Purchasing Services’ office no later than 2:00 p.m. (CST), on December 15, 1994. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make the final decision. A proposer may be asked to clarify if its proposal, which may include an oral presentation prior to the final decision. Texas A&M University reserves the right to accept or reject any or all proposals submitted. Texas A&M University is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits Texas A&M University to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on November 18, 1994.

TRD-9451108  Rex E. Janns  Director of Purchasing Services
  Texas A&M University

Filed: November 18, 1994

Texas Department of Transportation
Correction of Error

The Texas Department of Transportation publishes this notice of correction to a request for proposals that appeared in the November 18, 1994 issue of the Texas Register (19 TexReg 9244). The request for proposals was to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A. The notice involved two projects, one in Tarrant County and one in Johnson County, and provided for a pre-proposal meeting to be held on December 7, 1994. The notice read that the pre-proposal meeting was for both projects when it should have read that it was mandatory only for the Tarrant County project.

Issued in Austin, Texas on November 18, 1994.

TRD-9451117  Diane L. Northam  Legal Executive Assistant
  Texas Department of Transportation

Filed: November 18, 1994

Public Notice

The Texas Department of Transportation will conduct a meeting December 13, 1994 at 1:30 p.m. in Room 1-111 of the William B. Travis building located at 1701 North Congress Avenue, Austin, Texas, to present a public briefing on its recently developed Business Information and Systems Plan (BISP). The BISP has been prepared through the consultant services of Deloitte & Touche, to incorporate a top down, high level analysis of department information needs for all business areas of the department, an assessment of the department's existing information systems as well as supporting infrastructures, and implementation/migration plans for carrying out resulting recommendations. It will enable the department to ensure that all future systems development or enhancement efforts support the department's effective use of information. The briefing will describe the overall plan, the basis for plan components, and directions established with the plan for business process and technology improvement. Potential opportunities for doing technology-related business with the department will also be described and instructions for obtaining a copy of the BISP will be distributed to interested parties.

For additional information, contact the Information Resource Management Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9174.

Issued in Austin, Texas on November 11, 1994.

TRD-9451116  Robert E. Shaddox  General Counsel
  Texas Department of Transportation

Filed: November 18, 1994

IN ADDITION November 25, 1994 19 TexReg 9417
The University of Texas at Brownsville
Request for Proposals for the
Development and Implementation of a
Non-Faculty Compensation Program

Notice of Consultant Proposal Request. Pursuant to Texas
Civil Statutes, Article 6252-11c (Use of Private Consultants
by State Agencies), the University of Texas at
Brownsville (UTB) announces its Request for Consulting
Services for the Development and Implementation of a
Non-Faculty Compensation Program. The purpose of this
invitation is to obtain offers for a comprehensive evalua-
tion of the current compensation system and the recom-
mandation of a compensation program that will insure
internal job equity and external competitiveness in the
recruitment of personnel.

Contact. Parties interested in obtaining more information
should contact the Vice President of Business Affairs
Office, The University of Texas at Brownsville, 80 Fort
Brown, Brownsville, Texas 78520, (210) 982-0178.

Closing date. Offers must be received in the Vice Presi-
dent for Business Affairs Office no later than 5:00 p.m.
(CST), on December 2, 1994. Offers received after this
date and time will not be considered.

Award Procedure. All offers will be subject to evaluation
by a committee based on the evaluation criteria estab-
lished. The committee will determine which offer best
meets these criteria and will make a recommendation to
the Vice President for Business Affairs, who will then
make a recommendation to the Executive Council. The
Executive Council will make the final decision.

The UTB reserves the right to accept or reject any or all
offers submitted. The UTB is under no legal or other
requirements to execute a contract on the basis of this
notice. This notice does not commit the University of
Texas at Brownsville to pay for any costs incurred prior to
the execution of a contract.

Issued in Austin, Texas, on November 14, 1994.

TRD-9450949  Jeannie Reletoh
Assistant Vice President for Business
Affairs
The University of Texas at Brownsville

Filed: November 15, 1994

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