Texas Register

Volume 18, Number 90, December 3, 1993 Page 8871-9027

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Volume 18, Issue Number 90, Part II

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Texas Register

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16. Economic Regulation
19. Education
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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Texas Department of Insurance

Open Meetings Section

In Addition Section

Texas State Board of Public Accountancy

Texas Bond Review Board

Office of Consumer Credit Commissioner

Texas Department of Criminal Justice

Employees Retirement System of Texas

Texas Department of Health

Texas Department of Insurance

Board of Law Examiners

Texas Natural Resource Conservation Commission

Public Utility Commission of Texas

Sul Ross State University

Texas Department of Transportation

Cont'd: Drawing 10-043

Name: Lewis Broderick
Grade: 9
School: Skyline High School, Dallas ISD

Adopted Sections

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 16. ECOMIONIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

- **16 TAC §§3.46, 3.95-3.97**

The Railroad Commission of Texas adopts new §3.95 (Rule 95, Underground Storage of Liquid or Liquified Hydrocarbons in Salt Formations); new §3.96 (Rule 96, Underground Storage of Gas in Productive or Depleted Reservoirs); new §3.97 (Rule 97, Underground Storage of Gas in Salt Formations) and a conforming amendment to §3.46 (Rule 46, Fluid Injection into Productive Reservoirs). Sections 3.95, 3.96, and 3.97 are adopted with changes to the proposed text as published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5447). The conforming amendment to §3.46 is adopted without changes and will not be republished. Sections 3.95, 3.96, and 3.97, and the conforming amendment to §3.46, shall take effect on January 1, 1994.

These rules refine the commission's regulations regarding storage of all types of hydrocarbons in underground salt formations and productive or depleted reservoirs. These rules also comply with the legislative mandates of House Bill 2622, 73rd Legislature, 1993 (to be codified at Texas Civil Statutes, Article 6053-3), and House Bill 2016, 73rd Legislature, 1993 (to be codified at Texas Natural Resources Code, Title 11), to develop safety regulations for storage of hazardous liquids and natural gas.

New §3.95 addresses storage of liquid and liquified hydrocarbons in underground salt formations. This new section includes requirements for permitting facilities engaged in such storage activities, and also specifies requirements for facility design, operation, and maintenance. The section also includes detailed safety requirements. New §3.95 also requires storage facility operators to apply to amend existing permits or orders before exceeding the authorized cavern capacity, adding storage wells, or increasing the volume of stored hydrocarbons above the authorized maximum.

New §3.95 also provides that permits for facilities storing liquid and liquified hydrocarbons in underground salt formations issued under §3.71, which the commission is repealing upon the effective date of this section, would continue in effect until revoked, modified, or canceled, or until they expire according to their terms. However, the provisions of the section relating to operation, maintenance, and safety apply to facilities currently permitted under §3.71.

The following changes have been made to the published version of §3.95.

The words "injection" and "withdrawal" have been substituted for one another in the definition of the term "brine string."

The definition of the term "liquid or liquified hydrocarbons" has been revised to include any hydrocarbon that is liquid at standard conditions of temperature and pressure, any hydrocarbon that is a liquid under storage conditions, or any hydrocarbon that is withdrawn from storage through use of a displacing agent.

The definition of the term "process or transfer area" has been revised to include areas at the facility where hydrocarbons are transferred from trucks or to or from pipelines.

The heading of subsection (b)(1) has been changed to read "General." In addition, the first sentence of paragraph (2) of subsection (b) has been moved up to paragraph (1).

The heading of subsection (b)(2) has been changed to read "Conflict With Other Requirements."

The heading of subsection (d) has been changed to read "Standards for Underground Storage Zone."

A provision has been added to subsection (d) clarifying that §3.95 does not authorize storage of natural gas. A permit issued under §3.97 is required to store natural gas in a salt formation.

Subsection (e)(1) has been revised to require that notice of the application be given to affected persons and local governments on the date the application is "mailed to or filed with," rather than "mailed or delivered to," the commission.

A new subsection (e)(3) has been added that allows notice to be given to an affected person whose name and/or address cannot be located despite diligent efforts through publication of notice as required by subsection (e)(2). Paragraphs following new subsection (e)(3) have been renumbered.

A provision has been added to subsection (e)(4) (previously subsection (e) (3)) indicating that the commission will give notice of a hearing on a new application to affected persons, local governments, and other persons who express an interest in the application in writing

Subsection (e)(5) (previously subsection (e)(4)) has been reorganized and a redundant provision deleted. This provision has also been revised to clarify that the commission can issue a permit amendment administratively if no protest is filed.

Subsection (e)(5)(B) (previously subsection (e)(4)(A)) has been revised to clarify that the 15-day protest period begins on the date the application is received by the commission, or on the date of the third publication of notice, whichever is later.

A provision has been added to subsection (f)(1)(A) that clarifies that conditions that do not affect the safe operation of a facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution are not considered to be material.

Subsection (f)(2) has been revised to allow suspension of a permit if pollution of fresh water is imminent, rather than threatened.

A provision has been added to subsection (h) that provides that wells that are out of service and disconnected from surface piping are not subject to the requirements of subsection (h).

Subsection (h) has been revised to require 24-hour on-site attendants at any facility that does not have all the safety equipment required by paragraphs (2)-(7) and (13)-(15) of subsection (h).

Subsection (h)(2)(B) has been revised to require installation of emergency shutdown valves on fresh water piping within two years of the effective date of this section, if such valves are required under new subsection (h)(3).

The heading of subsection (h)(3) has been revised to read "Brine and Fresh Water Piping."

New subsection (h)(3)(B) has been added. This subparagraph requires that fresh water piping, if any, either be isolated from the wellhead when not in use or designed for maximum wellhead pressure and equipped with an emergency shutdown valve.

The heading of subsection (h)(4) has been changed to read "Overfill Detection and Automatic Shut-In Methods."

Subsection (h)(4)(C) has been revised to require that one overfill detection device or method be in operation within one year of the effective date of this section, and two devices or methods be in operation within two years of the effective date of this section.

Subsection (h)(4)(C)(ii) has been revised to delete the specifications for weep hole(s) and to eliminate the alternative to use a mule shoe. This provision has also been revised to allow use of preset pressure sensors independent of weep holes, and to allow use of weep holes on a safety string that is concentric with the brine piping.

Subsection (h)(5)(B) has been revised to include a reference to the warning system integration provisions of subsection (h)(13)(A) (previously (h)(12)(A)).

Subsection (h)(5)(C) has been revised to require that four leak detectors be evenly spaced around the perimeter of the brine pit(s).

Subsection (h)(6)(C) has been revised to require inspection of brine system gas vapor control systems twice each calendar year at intervals not to exceed 7-1/2 months

The heading of subsection (h)(7) has been changed to read "Fire Detection Devices or Methods."

Subsection (h)(7)(A) has been revised to include a reference to the warning system integration requirements of subsection (h)(13)(A) (previously subsection (h)(12)(A)).

Subsection (h)(7)(A)(ii) has been revised to specify that heat sensors include meltdown or fused devices.

Subsection (h)(8) has been revised to require coordination of emergency response activities with local emergency planning committees, and to specifically require that emergency response plans include citizen emergency notification procedures.

Subsection (h)(8) has been revised to require that the emergency response plan include a plat of the facility showing the location of various features at the facility.

Subsection (h)(8) has been revised to require that a copy of the emergency response plan be provided to the local emergency planning committee and to other local governmental entities, upon written request.

A new subsection (h)(10) has been added requiring facility operators to establish a continuing education program to inform residents within a one-mile radius of the facility of emergency warning and evacuation procedures Paragraphs following new subsection (h)(10) have been renumbered.

Subsection (h)(13)(A) (previously subsection (h)(12)(A)) has been revised to require integration of leak detectors, fire detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation with warning systems. This provision has also been revised to exclude meltdown and fused devices from the requirement that a warning be activated if the device fails to function.

Subsection (h)(14) (previously subsection (h)(13)) has been revised to require that wind socks be visible from any normal work location.

Subsection (i)(1) has been revised to eliminate the requirement that saturated brine be used as the displacing agent in order for crude oil storage facilities to be exempt from the requirements of this subsection.

Subsection (l)(1) has been revised to require multiple pressure sensors that display wellhead pressures on the product and brine sides of the wellhead at the control room.

Subsection (l)(3) has been revised to provide that volumes of hydrocarbons injected and withdrawn from the storage well must be measured by flow meters or alternative measures approved by the commission.

Subsection (l)(4) has been revised to provide that measurement performance of devices required under subsection (l)(3) must be verified annually by a person who is not an officer or employer of the owner or operator or of any affiliate of the owner or operator.

Subsection (m) has been revised by eliminating the requirement that brine volumes be reported.

Subsection (n)(1) has been revised to delete the requirement that records regarding flow volumes be retained, and to provide that records regarding interface levels are required to be retained only if interface levels are monitored.

Subsection (n)(2) has been revised to require that records regarding safety equipment required under subsections (h) and (l) be retained for five years.

New §3.96 requires a permit to store natural gas or other gases in a productive or depleted reservoir, and specifies information that must be submitted in an application for such a permit. The section provides that permits for reservoir storage facilities issued under §3.46 continue in effect until revoked, modified, or canceled, or until they expire according to their terms. The section includes design, construction, and operating requirements for gas injection and storage in a productive or depleted reservoir, such as pressure monitoring and gas metering requirements, well construction and integrity testing requirements, and safety requirements. The safety requirements involve development of safety plans and employee and subcontractor safety training programs, and installation of gas detectors, warning systems, and alarms.

The following changes have been made to the published version of §3.96:

The first sentence of proposed subsection (b)(2) has been moved to subsection (b)(1).

The term "mineral interest owner" has been substituted for the term "person holding an interest in minerals" in subsection (f)(1)(A).

The term "leaseholder" has been substituted for the term "person holding a lease" in subsection (f)(1)(B) and (C).

The phrase "owner or leaseholder of" has been substituted for "person holding an interest in" in subsection (f)(1)(D).

A new subsection (f)(3) has been added that allows an notice to be given to an affected person whose name and/or address cannot be located despite diligent efforts through publication of notice as required by subsection (f)(2) . Paragraphs following new subsection (f)(3) have been renumbered.

Subsection (f)(5)(A) (previously subsection (f)(4)(A)) has been revised to clarify that the 15-day protest period begins on the date the application is received by the commission, or on the date of the third publication of notice, whichever is later.

A provision has been added to subsection (g)(1)(A) that clarifies that conditions that do not affect the safe operation of a facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution are not considered to be material.

A new subsection (g)(2) has been added that allows the commission to immediately suspend a natural gas storage permit in the event of imminent danger. Subsection (g) as proposed has been rearranged. Proposed subsection (g) (1)-(5) is now found at subsection (g)(1)(A)-(E).

Subsection (i)(1) has been revised to provide that leak detectors must be installed at each gas storage well that is located 100 yards or less from a residence, commercial establishment, church, school, or small, well-defined outside area, and at each structurally enclosed compressor site. A small, well-defined outside area means an area such as a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for ten weeks in any 12-month period.

Subsection (i)(2) has been revised to exclude the requirement that wellhead pressure monitoring devices be integrated with warning systems.

The provision in subsection (n)(3) requiring that meters be recalibrated or proven for accuracy at least once each year by an independent company has been deleted.

New §3.97 requires a permit to create, operate, or maintain a facility for storage of natural gas or other gases in an underground salt formation. The section establishes permitting standards for such facilities. New §3.97 also requires gas storage facility operators to apply to amend existing permits or orders before exceeding the authorized cavern capacity, adding storage wells, or exceeding the authorized maximum injection pressure.

In addition, new §3.97 establishes operating requirements, such as pressure monitoring and gas metering, and standards for mechanical integrity testing of wells used to inject or withdraw natural gas or other gases into or out of a salt formation. The new section also requires detailed safety plans and employee and contractor safety training for facilities where natural gas and other gases are stored in salt formations. The provisions of the section concerning safety apply to gas storage facilities that are currently permitted under §3.71. The section also provides, however, that permits for storage of natural gas or other gases in salt formations issued under §3.71 would continue in effect until revoked, modified, or canceled, or until they expire according to their terms.

The following changes have been made to the published version of §3.97:

The first sentence of proposed subsection (b)(2) has been moved to subsection (b)(1).

A new subsection (e)(3) has been added that allows notice to be given to an affected person whose name and/or address cannot be located despite diligent efforts through publication of notice as required by subsection (e)(2). Paragraphs following new subsection (e)(3) have been renumbered.

Subsection (e)(5) (previously (e)(4)) has been reorganized to delete a redundant provision.

Subsection (e)(5)(A) (previously subsection (e)(4)) has been revised to provide that the commission may grant an application for permit amendment administratively if no protest is received from a person notified pursuant to subsection (e)(1) or from any other affected person.

Subsection (e)(5)(B) (previously subsection (e)(4)(A)) has been revised to clarify that the 15-day protest period begins on the date the application is received by the commission, or on the date of the third publication of notice, whichever is later.

A provision has been added to subsection (f)(1)(A) that clarifies that conditions that do not affect the safe operation of a facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution are not considered to be material.

Subsection (f)(2) has been revised to provide that the commission may suspend a permit if pollution of fresh water is imminent, rather than threatened.

A provision has been added to subsection (h) clarifying that the provisions of subsection (h) do not apply to any well that is out of service and disconnected from surface piping.

A provision has been added to subsection (h)(2)(A) clarifying that brine or fresh water piping that is connected at the wellhead must be equipped with an emergency shutdown valve.

Subsection (h)(2)(A)(ii) has been revised to provide that emergency shutdown valves shall be set to activate when the maximum operating pressure specified in subsection (k) is exceeded.

The heading of subsection (h)(3) has been changed to read "Cavern Debrining and Solution Mining Operations."

Subsection (h)(3)(A) has been revised to require that after one year from the effective date of this section, at least one gas release prevention method shall be in operation during cavern debrining activities or during solution mining activities that are conducted with gas in storage. This provision has been further revised to require that within two years from the effective date of this section, at least two gas release prevention devices or methods shall be in operation during cavern debrining activities or during solution mining activities that are conducted with gas in storage.

Subsection (h)(3)(A) has been revised to delete the reference to leach storage operations. In addition, the term "solution mining" has been substituted for the term "leaching."

Subsection (h)(3)(A)(i)-(iv) has been revised to require closure of emergency shutdown valves on brine and fresh water piping.

Subsection (h)(3)(B) has been revised to delete the provision as proposed and substitute a provision that indicates that solution mining of a cavern may occur while gas is in storage, provided that the injection of fresh water and the injection or withdrawal of gas do not occur simultaneously within the same cavern.

Subsection (h)(4)(A) has been revised to provide that leak detectors must be installed at each gas storage well that is located 100 yards or less from a residence, commercial establishment, church, school, or small, well-defined outside area, and at each structurally enclosed compressor site. A small, well-defined outside area means an area such as a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for ten weeks in any 12-month period.

Subsection (h)(4)(B) has been revised to include a reference to the warning system integration requirements of subsection (h)(5)(A).

Subsection (h)(6) has been revised to require that emergency response plans include procedures for citizen emergency notification. This provision has also been revised to include a requirement that emergency response plans include a plat of the facility showing the locations of wells, processing areas, and other significant features at the facility.

Subsection (h)(6) has been revised to require that a copy of the emergency response plan be provided to the local emergency planning committee, and that a copy be provided to any other local governmental entity upon written request.

Subsection (h)(7)(A) has been revised to include a phrase indicating that emergencies requiring notification are not limited to the examples given.

Subsection (i)(2) has been revised to provide that sonar surveys are not required on gas storage caverns. Provided, however, a sonar survey must be run on any out-of-service cavern that is returned to service unless a sonar survey has been run on that cavern within the previous ten years.

Subsection (1)(4) has been revised to delete the requirement that meters be recalibrated by an independent company.

The conforming amendment to §3.46 clarifies that natural gas storage in productive or depleted reservoirs will be regulated under §3.96 in the future.

Summary of comments on §3.95.

One commenter indicated that the commission's authority to regulate hydrocarbon storage facilities from the standpoint of safety is preempted under federal law and regulations adopted by the Occupational Safety and Health Administration (OSHA). The commission disagrees. OSHA regulations are designed primarily to address workplace safety. This section has three basic objectives: to prevent waste of hydrocarbons, to prevent pollution of surface and subsurface waters; and to protect property and public health and safety. This section addresses workplace safety only indirectly, and therefore is not preempted by federal laws and regulations.

One commenter recommended that the definition of "liquid or liquified hydrocarbons" be revised to include ethylene and other products when they are stored above critical temperature and pressure, or "are stored under conditions that necessitate the use of displacement fluids to withdraw them from storage." Another commenter suggested that the portion of the definition relating to use of displacement fluids is unnecessary and should be deleted. The commission believes that the portion of the definition relating to use of displacement fluids is necessary to ensure coverage of materials such as ethylene which may not be in a liquid state under storage conditions, but are highly volatile and are removed from storage through use of displacing agents. The commission agrees, however, that the definition of this term should be revised to provide that storage of any hydrocarbon material, whether or not it is considered a liquid, that is removed from storage through use of a displacing agent is covered under §3.95. Therefore, the definition of "liquid or liquified hydrocarbons" has been revised to include any hydrocarbon material that is liquid at standard temperature and pressure, that is in a liquid state under storage conditions; or that is stored under conditions that necessitate the use of displacement fluids to withdraw the material from storage. One commenter recommended that the definition of "affected person" be revised to include those persons who *will* suffer injury as a result of a proposed project, rather than those who *might* suffer injury as a result of a proposed project. The commission believes that all persons who might reasonably be expected to suffer injury as a result of a proposed project should have the opportunity to protest the permit application. The commission has the ability to reject protests from persons who would not reasonably be anticipated to suffer injury as the result of a proposed project. However, revising the definition as proposed would focus too much attention on impacts to the protestant, rather than on the merits of the application. Therefore, the commission does not believe the definition should be changed as recommended.

One commenter recommended that the definition of "fresh water" be revised to include only water that is non-toxic and non-corrosive. This commenter also recommended that the definition of "pollution" be revised to include only adverse impacts on "fresh" water. This commenter did not explain why it recommended these changes. The proposed definitions of "fresh water" and "pollution" are consistent with the definitions for those terms in the Texas Water Code and in other commission regulations. The commission does not see a need to revise these definitions as recommended.

One commenter recommended that the words "injection" and "withdrawal" be substituted for one another in the definition of "brine string" to add internal consistency to the definition. The commission agrees with this rec-

ommendation, and has revised the text of the definition as recommended.

One commenter recommended revisions to the definition of the term "process or transfer area" to include areas where hydrocarbon materials are transferred from trucks or transferred to or from pipelines. The commission agrees with this commenter and has revised this definition as recommended.

One commenter suggested that the headings of paragraphs (1) and (2) of subsection (b) be revised to be consistent with comparable provisions of §3. 96 and §3.97. The commission agrees with this recommendation and appropriate changes have been made. In addition, the commission has moved the first sentence of subsection (b)(2) up to subsection (b)(1).

One commenter indicated support for proposed subsection (b)(2), which provides that provisions of any commission order, field rule, or permit, will control in the event of a conflict with this section. This commenter also requested that a provision be added to subsection (b)(2) indicating that the Barbers Hill field rules will not be eroded by the provisions of this section. The commission does not feel that such a provision is necessary. This subsection clearly indicates that in the event of a conflict between this provision and field rules, the field rules will control. The commission does not feel that it is appropriate to specifically list the Barbers Hill field rules without listing all other field rules that might control over the provisions of this section. Because it is not practical to list all other field rules, the commission has not added the requested provision to this section.

Two commenters recommended that §3.95(c) be revised to include a requirement that permits for underground storage of liquid or liquified hydrocarbons be issued for only ten-year terms. The commission does not believe that ten-year permit terms for underground hydrocarbon storage operations are appropriate, and has therefore not included the recommended addition. The construction of an underground hydrocarbon storage cavern involves extensive capital outlays, in excess of several million dollars. A ten-year permit term would create much uncertainty about the long-term viability of an underground hydrocarbon storage project such that many projects might not be undertaken. The commission believes that ten-year renewals would not effectively increase the safety of storage caverns because most safety requirements are imposed by regulation, not by permit conditions. Further, facility operations will be periodically reviewed by the commission through field inspections, review of results of mechanical integrity tests, and review of sonar surveys.

One commenter suggested that subsection (c)(2) be revised to require that an application for permit amendment be filed whenever a permit transfer is proposed. The commission does not agree with this suggestion. Subsection (g) requires that the commission be notified of a proposed permit transfer, and indicates the conditions under which such a transfer will be approved. In most situations, transfer of a permit will not impact the safe operation of a cavern storage facility. The permit transferee will be required to adhere to the provisions of this section and to any additional permit conditions, just as was the original permittee. The commission has, however, retained the authority under subsection (g)(3) to require a hearing on a proposed transfer for good cause.

One commenter suggested that subsection (c)(2) be revised to require that an application for permit amendment be filed at least one year in advance of final action on the application. The commission does not believe that such a requirement will accomplish any objective other than delay, and therefore has not adopted the suggested revision.

One commenter recommended that subsection (c)(2) be revised to specifically require a permit amendment when an operator plans to convert a cavern storing liquid or liquified hydrocarbons to natural gas storage. The commenter indicated that when natural gas is stored in caverns, stresses to the surrounding formation are greater than when liquid or liquified hydrocarbons are stored. These increased stresses, and potential impacts on any surrounding caverns, should be carefully considered before a liquids storage cavern is converted to gas storage. Two commenters strongly disagreed with this recommendation. These commenters believe that formation stresses are always carefully considered in the design of a gas storage cavern, whether it is originally built for gas storage or converted from liquids storage to gas storage. Section 3.95 does not authorize the storage of natural gas. Any operator who wished to convert a liquids storage facility permitted under §3. 95 to natural gas storage would have to apply for a permit under §3.97. Section 3.97(d) specifically requires that an underground gas storage facility may be operated only in an impermeable salt formation in a manner that will prevent uncontrolled escape of gases. In order to clarify that a permit issued under §3.95 does not authorize storage of natural gas, the commission has added a provision to §3.95(d)(1) that specifically provides that gas storage operations must be permitted under §3.97. A reciprocal provision has been added to §3.97(d)(1).

One commenter recommended that subsection (c)(3) be deleted. Yet another commenter supported the requirements of proposed subsection (c)(3) as an appropriate check on industry activities. This provision requires that the commission be notified when cavern capacity exceeds permitted capacity by 20%, and allows the commission to take appropriate action to address such a situation. The commission does not agree with the recommendation that this provision be deleted. Increases in cavern capacity may have impacts on the safety of cavern operations. For instance, an increase in cavern capacity may indicate an erosion of the salt barrier between caverns, or a reconfiguration of the cavern that will impact the structural and mechanical integrity of the cavern. Due to the possible safety implications associated with cavern capacity increases, the commission has retained this provision as proposed.

Yet another commenter suggested that subsection (c)(3) be revised to absolutely prohibit any increase in the size of the storage cavern. The commission does not agree with this suggestion. Through the normal course of operation, most caverns can be expected to increase in size because the displacing brine will periodically dissolve portions of the cavern walls. Further, the accuracy of cavern capacity measurement devices has up to ~ 10% margin of error, meaning that cavern capacity measurements can vary even without a change in capacity. By requiring sonar surveys every ten years, and by requiring that the commission be notified when measured capacity exceeds the permitted cavern capacity by 20% or more, the commission believes that cavern size can be adequately controlled without imposing undue burdens on operators.

One commenter recommended that the heading of this subsection be revised to read "Standards for Underground Storage Zone." The commission believes that this recommendation clarifies this subsection, and has adopted the recommended revision. One commenter recommended that subsection (d)(1) address suitability of a cavern for gas storage prior to conversion from liquids storage to gas storage. A provision has been added to subsection (d)(1) that indicates that gas storage operations must be permitted under §3.97.

Two commenters requested that subsection (e)(1) be revised to require that notice be given only to land and mineral interest owners, including leaseholders, of record. The commission agrees that an unreasonable burden would be imposed on applicants if they were expected to ascertain owners and leaseholders whose names and/or addresses could not be determined through diligent efforts. Therefore, the commission has added a new subsection (e)(3) that requires applicants to exercise diligent efforts to ascertain the names and addresses of land and mineral interest owners and leaseholders. The commission has also provided an avenue for an applicant to provide notice to persons whose names and addresses cannot be determined through exercise of diligent efforts by publication rather than delivering a copy of the application form. Diligent efforts include search of county records. Paragraphs subsequent to new paragraph (3) within subsection (e) have been renumbered.

One commenter recommended that subsection (e)(1) be revised to require that notice be provided to adjoining landowners only if the adjoining land is within one mile of the hydrocarbon storage facility. The commission does not agree with this recommendation. The commission believes that any landowner should be afforded notice if a hydrocarbon storage facility will be operated on adjoining land.

One commenter suggested that subsection (e)(1) be revised to require that notice to persons specified in subsection (e)(1) be given no later than the date the application is "mailed to or filed with" the commission, in order to be consistent with §3.97. The commission agrees that this change should be made and has revised this subsection accordingly.

In response to comments received regarding the notice provisions of §3.96 and §3.97, the commission has clarified in those sections

that the 15-day protest period begins upon receipt of the application by the commission. For consistency, the commission has also clarified §3.95(e)(4)(A) (new subsection (e)(5)(B)) by providing that the 15-day protest period begins upon receipt of the application by the commission, or the date of publication, whichever is later. The commission notes that subsection (e)(1) requires that persons specified in subsection (e)(1)(A)-(F) be given notice on or before the date the application is mailed to or filed with the commission.

One commenter suggested that the portion of subsection (e)(1) regarding "giving" notice be revised to avoid any implication that notice must be received by a certain date. The commission believes that the provision as written addresses this concern because it requires that notice be "given" by "mailing or delivering" a copy of the application. As written, the provision indicates that mailing notice is adequate to fulfill the requirements of this subsection.

One commenter recommended that subsection (e)(4)(A) (new subsection (e)(5) (B)) be revised to provide that a protest may be filed within one week from the date of the final publication of notice. The commission disagrees. As proposed, subsection (e)(4)(A) (new subsection (e)(5)(B)) provides that a protest may be filed within 15 days from the date of final publication. The commission believes that affected persons should be given at least 15 full days from the later of receipt of the application by the commission or the date of final publication within which to file a protest.

One commenter recommended that subsection (e)(4) (new subsection (e)(5)) be revised by making the opening statement subparagraph (A), striking subparagraph (B), and redesignating existing subparagraph (A) as subparagraph (B). The commenter recommended rearrangement of subsection (e)(4) (new subsection (e)(5)) because subparagraph (B) repeats the substance of the opening statement of this subsection. The commission believes that the suggested reorganization would help clarify subsection (e)(4) (new subsection (e)(5)), and this subsection has been revised accordingly.

One commenter suggested that statements be added to subsection (e)(3) (new subsection (e)(4)) indicating those to whom notice of the hearing will be provided. The suggested language would make §3.95 consistent with §3.97. The commission agrees with this suggestion, and has revised the text of subsection (e)(3) (new subsection (e)(4)) accordingly.

One commenter requested that subsection (e)(4)(A) (new subsection (e)(5)(B)) be revised to allow both the applicant and any interested person the right to request a hearing if an application for a permit amendment is protested. The commission does not believe that such a revision is necessary. As proposed, this provision provides that an application for a permit amendment will not be granted administratively if it is protested by an affected person. In that event, the application cannot be granted *unless* the applicant requests a hearing *and* the commission ultimately finds that the permit should be amended. In the event that the applicant requests a hearing, all persons notified of the application under subsection (e)(1) who express an interest in writing will be notified of the hearing.

This commenter also requested clarification about whether or not a city receiving notice under subsection (e)(1) can protest an application for a permit amendment. As specified in subsection (e)(4)(A) (new subsection (e)(5)(B)), any person notified pursuant to subsection (e)(1) can protest a permit amendment application. The term "person" is defined to include governmental entities.

One commenter requested that subsection (e)(4) (new subsection (e)(5)) be revised to provide that an application for a permit amendment *will* be approved absent a protest. The commission does not feel that such a revision is appropriate. The commission reviews permit applications to ensure compliance with applicable commission regulations. Where an application does not meet commission requirements, the permit should be denied administratively even if no protest has been filed. If an application is denied administratively, the applicant can request a hearing as provided in subsection (e)(4)(A) (new subsection (e)(5)(B)).

For purposes of clarity, the commission has added a phrase to subsection (f) (1)(A) specifying that a material deviation is one that does not affect the safe operation of a facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution.

One commenter recommended that the first word in subsection (f)(1)(E) be changed from "injected" to "stored." The commission does not agree. Stored fluids include only hydrocarbons. However, the displacing agent is an injected fluid that may cause damage or injury if it escapes from the storage facility.

One commenter recommended that subsection (f)(1)(B) be revised to require permit cancellation, modification, or suspension if fresh water *will* be polluted, rather than *is likely* to be polluted. The commission does not agree with this recommendation. The commission reserves the right to cancel, modify, or suspend a permit if fresh water can reasonably be expected to be polluted. Requiring a demonstration that fresh water *will* be polluted places undue restrictions on the commission's authority to act to prevent pollution of surface or subsurface waters.

For consistency with §3.97, subsection (f)(2) has been revised to allow the commission to suspend a permit where pollution of fresh water is imminent, rather than threatened.

One commenter recommended that subsection (f) be revised to include permit transfer as a reason for cancellation, modification, or suspension of a permit. The commission does not agree because the procedures and conditions for transfer are set out separately in subsection (g).

One commenter indicated that the permit transfer requirements of subsection (g) are too stringent. This commenter indicated that the provisions of subsection (g)(2) would discourage transfer of a permit to an operator who could correct deficiencies. This commenter suggested that a permit transfer should be subject to approval after a hearing, irrespective of existing deficiencies. The commission disagrees with this comment. The transfer provisions of §3.95 impose minimum conditions on transfer, and ensure that deficiencies at a facility will be corrected rather than allowed to continue under another operator.

One commenter was of the opinion that permits should not be transferred to a person who does not have both prior experience operating an underground hydrocarbon storage cavern and a good record of performance. The issue involved in permit transfer is not so much the past experience of the proposed transferee as it is the ability of the proposed transferee to comply with the provisions of the permit and this subsection. The commission has the ability under subsection (g)(3) to require a hearing prior to approval of a permit transfer for good cause. Under this authority, the commission could require a hearing on a permit transfer where legitimate questions had been raised about the ability of the proposed transferee to safely operate an underground hydrocarbon storage facility in accordance with this section and the permit. The commission notes, however, that this section does require experience in particular areas of facility operation. Subsection (h)(1) requires that injection and withdrawal operations be monitored by experienced personnel; subsection (h)(10) (new subsection (h)(11)) requires that all facilities participate in annual emergency drills; and subsection (h)(11) (new subsection (h)(12)) requires that employees at a facility have safety training.

One commenter requested that the commission be required by subsection (g) to act on a request for permit transfer within 15 days. The commission disagrees. The commission has not experienced undue delays in processing permit transfer requests in the past. The commission processes most transfer requests within 15 days. Since delay in processing permit transfers has not been a problem in the past, the commission does not feel the need to bind itself to act on a transfer request within a specified time period.

One commenter recommended that affected persons be given notice and an opportunity to protest any proposed permit transfer. Because any permit transferee will be required to comply with the provisions of this section and the permit, the commission disagrees.

One commenter recommended that hydrocarbon storage wells that are out-of-service be exempt from the requirements of subsection (h) until returned to service. The commission agrees. This subsection has been revised to exempt wells that are out of service and disconnected from all surface piping from the requirements of subsection (h).

Three commenters recommended that subsection (h)(1) be revised to require 24-hour on-site attendants at all facilities. One of these commenters suggested alternatively that on-call personnel be required to respond to a problem at the facility within ten minutes, rather than 30 as required in the proposed section. The redundant safety measures required by this section effectively minimize the opportunities for a release of hydrocarbons

from a facility. Furthermore, in the event of release, all valves at the facility will close automatically, eliminating the need for manual closure. Because of these safety features, the commission believes that 24-hour on-site attendants are not necessary at all facilities. Furthermore, the commission believes that 30-minute response time is reasonable for unattended facilities. Therefore, the commission has not adopted the commenters' recommendation. However, for the reasons discussed in connection with comments on subsection (h)(2)(B), the commission does believe that 24-hour on-site attendants should be required until any existing facility has the safety features required in subsection (h) (2)-(7) and (12)-(14) (new (13)-(15)) in place.

One commenter recommended that the provisions of subsection (h)(1) be revised to require that activities be monitored by a person who is trained in storage operations, not trained and experienced. The commission disagrees. Injection and withdrawal operations need to be closely monitored by a person who has the ability to respond appropriately in the case of an emergency. That ability will only come with experience. The commission believes that this experience can be gained through a training program that pairs a trainee with a person experienced in monitoring hydrocarbon injection and withdrawal activities.

One commenter recommended that condensate storage operations, in addition to crude oil storage operations, be exempt from the provisions of subsection (h)(2) (regarding emergency shut-down valves). The commission disagrees. Crude oil is in a liquid state while in storage. There is virtually no risk that crude oil will vaporize, escape from a cavern, and accumulate in combustible quantities at the surface. Therefore, there is no need to require that emergency shutdown valves be installed at crude oil storage facilities to prevent escape of vapors from the cavern. On the other hand, condensate is much more volatile than crude oil and may be in a gaseous state while in storage. There is the possibility that condensate vapors will escape from a cavern and accumulate in dangerous quantities at the surface. Emergency shutdown valves should therefore be installed at any cavern storing condensate.

One commenter recommended that the requirement of subsection (h)(2)(B) that emergency shutdown valves be closed and opened monthly be eliminated because it does not add to facility safety. The commission disagrees. Proper operation of emergency shutdown valves in the event of cavern overfill is critical. Valves need to be opened and closed at least monthly to ensure they are in proper working order.

One commenter recommended that subsection (h)(2)(B) be revised to require installation of emergency shutdown valves within three months of the effective date of the section, and another commenter recommended installation within one year. The section contemplates a coordinated emergency shutdown system. Many of the components of the system, such as electronic monitoring, warning systems, and detection devices, are interrelated. The commission believes that owners and operators of hydrocarbon storage facilities should be afforded a reasonable time within which to design and install such a coordinated system. Emergency shutdown valves of the size required for most storage wells must be custom-made. The commission also believes that many operators will be unable to obtain emergency shutdown valves within a period of three months to one year due to the demand that will be placed on the market through adoption of this section. Therefore, the commission disagrees with these commenters. The commission does recognize, however, the need for appropriate safety measures in the interim period between adoption of this section and the deadline for full implementation. For this reason, the commission has added a provision to subsection (h) that requires 24-hour on-site attendants at facilities that do not yet have all safety equipment required under subsection (h)(2)-(7) and (12) -(14) (new (13)-(15)), without reference to the applicable compliance time period. In addition, subsection (h)(8) requires that emergency response plans be adopted within six months of the effective date of this section. These plans must be designed around safety systems in place at the facility at the time of adoption of the plan, and updated as safety systems are modified. The commission believes that these interim measures will address public safety concerns until this section can be fully implemented at all facilities

One commenter recommended that subsection (h)(2)(C) (regarding manual closure of valves during repair) be revised to require only that automatic shutdown valves be repaired within ten days. The commission disagrees. It is critical to safe operation of a hydrocarbon storage facility that immediate shut-in capability exist for all storage wells at all times. In the event an automatic emergency shutdown valve is not working properly and a back-up automatic emergency shutdown valve is not operating on the same piping, the facility should either be shut-in or 24-hour manual shut-in capability should be provided.

Yet another commenter indicated the need for a back-up to the manual shut-in requirements of subsection (h)(2)(C). Manual shut-in is a back-up for the automatic shutdown valves. The commission does not believe that an additional back-up is necessary. The option for manual shut-in is designed to allow facilities to continue to operate in the short-term during automatic valve repairs.

One commenter recommended that subsection (h)(2) be revised to allow manual shut-in of product-side emergency shutdown valves in some circumstances (such as at facilities with 24-hour on-site attendants). The commission disagrees. The commission does not believe that it is a safe operating practice to continue to pump liquid or liquified hydrocarbons into a cavern when the brine-side valve is closed. In addition, human error may result in failure to close manual valves in the event of an emergency. Therefore, the product-side valve needs to have automatic shut-in capability so that it will close momentarily after the brine-side valve closes.

One commenter recommended that subsection (h)(3) be revised to require that wellhead piping for backflush (or fresh) water, if any, be rated to maximum wellhead pressure and be equipped with an emergency shutdown valve. The commission believes that most fresh water systems are not in communication with the well unless the system is in use. The commission does not believe that in this situation the recommended features are necessary. However, the commission does believe that this subsection should be clarified by requiring that either fresh water systems be isolated from the wellhead when not in use, or that backflush water piping be rated to the maximum wellhead pressure and equipped with an emergency shutdown valve. Where fresh water piping is equipped with an emergency shutdown valve, that valve should also be subject to other requirements of this section that apply to emergency shutdown valves. This subsection has therefore been revised to address fresh water piping in the manner discussed.

One commenter indicated that the overfill prevention methods under subsection (h)(4)(C) are more accurately characterized as automatic shut-in methods. The commission agrees, and has renamed this subsection "Overfill Detection and Automatic Shut-In Methods."

One commenter recommended that subsection (h)(4) be amended to require automatic closure of emergency shutdown valves in the event of high pressure, high flow rates, and/or detection of organics in the brine string. The commission believes that operators should be required to have two overfill detection measures, rather than three. The alternative overfill detection measures listed in subsection (h)(4) include high pressure, high flow, and organic detection devices. Therefore, the commission has not adopted the recommended change.

One commenter requested that subsection (h)(4)(C)(ii) be revised to allow use of weep holes on either the brine string or the safety string. The commission agrees, provided that the brine and safety string are concentric. This subsection has been revised to allow this method of overfill detection.

Two commenters requested that the compliance period under subsection (h)(4) (C) be extended from one year to two years in order to be consistent with other compliance periods. The commission agrees somewhat. The commission believes that all facilities should, at a minimum, have one overfill detection device in operation within one year of the effective date of this section. Therefore, the commission has revised this subsection to require installation of at least one overfill detection device within one year of the effective date of this section, and to allow up to two years for installation of the second device.

One commenter requested that the compliance period under subsection (h)(4) (C) be limited to six months. Due to the time needed to design and install an integrated safety system, the commission does not agree with this comment.

One commenter recommended that use of a safety string as an alternative overfill detection device be eliminated from subsection (h)(4)(C). The commission disagrees with this comment because safety strings may be acceptable in some situations as overfill detection devices. Furthermore, safety strings must be used in conjunction with at least one additional overfill detection measure in order to comply with the requirements of this section.

Two commenters recommended that the mule shoe alternative in subsection (h)(4)(C)(ii) be eliminated. The commission agrees. Turbulent fluid flow through a mule shoe may cause tubulars to vibrate, which may result in tubular damage or failure. Therefore, the alternative to use a mule shoe as an overfill detection device has been eliminated.

One commenter requested that subsection (h)(4)(C) be revised to allow use of a pressure sensor as a detection device independent of weep holes, because some operators do not favor use of weep holes. The commission agrees, and has added use of pressure sensors independent of weep holes as an overfill detection method.

Three commenters objected to the specifications for weep holes in subsection (h)(4)(C)(ii). These commenters indicated that typically two weep holes, rather than one, are used. These commenters also indicated that a one-inch weep hole is too large. The commission agrees with these commenters and has revised this option to allow use of one or more weep holes, of an unspecified size. As revised, this provision allows operators the latitude to design their own weep hole system if that overfill detection alternative is chosen.

One commenter requested that use of a low liquid level alarm on brine degassing drums be added as an overfill detection method. The commission disagrees because this method does not detect a problem until hydrocarbons have flowed past the emergency shutdown valve.

One commenter suggested that subsection (h)(4)(B) be revised to provide that the provisions of subsection (h)(4) do not apply to wells that are blinded at the wellhead valve, not just those that are disconnected from surface piping. The commission disagrees because it is impossible to visually confirm that piping is not in communication with the well unless it has been disconnected from the wellhead.

One commenter requested that an inventory control system be included among the overfill detection alternatives listed in subsection (h)(4). The commission disagrees. Other provisions of the section require accurate measurement of volumes of hydrocarbons stored, because careful tracking of volumes stored is an important aspect of the overall safe operation of a facility. The requirements for tracking volumes in storage are in addition to the overfill detection device requirements of subsection (h)(4).

One commenter recommended that subsection (h)(4) be revised to require use of only one overfill detection and automatic shut-in method. The commission disagrees. In an overfill situation, it is imperative that emergency shutdown valves close automatically. The commission therefore believes that a back-up overfill detection and automatic shut-in method should be required.

Three commenters questioned the need for leak detectors at points of lower elevation when detectors are also required around wellheads and other surface equipment. One commenter requested clarification about what is meant by the phrase "points of lower elevation" in subsection (h)(5)(C). Another commenter expressed concern that the number and spacing of leak detectors under subsection (h)(5)(C) is not clearly specified. Yet another commenter questioned whether subsection (h)(5)(C) required leak detectors when brine pits are located off-site. The commission believes that leak detectors at wellheads and surface equipment should be supplemented by detectors installed around the facility near the location of the brine pits to aid in detection of a vapor cloud that may escape from the facility. The commission agrees, however, that this provision needs further clarification. Therefore, the commission has revised this subsection to require that a minimum of four leak detectors be evenly spaced outside the perimeter of the brine pits, whether the pits are located on-site or off-site.

One commenter recommended that subsection (h)(5) be revised to require leak detectors at off-site locations. The commission disagrees, unless the brine pits are off-site. The leak detectors required in this section, including the additional detectors around the brine pits, should detect the presence of a vapor cloud before it can move off-site.

One commenter requested clarification on what leak detectors are designed to do. This commenter recommended that they be integrated with warning systems and their function specified in the facility's safety plan. The commission believes that the function of the detectors is obvious-to detect leaks of hydrocarbons at various locations around a facility. The requirement for integration of detectors with warning systems is specified in subsection (h) (12)(A) (new subsection (h)(13)(A)). The commission believes that this provision could be clarified by making reference to subsection (h)(12)(A) (new subsection (h)(13)(A)), and has revised the subsection to include this reference.

One commenter recommended that the period for installation of leak detectors be limited to six months rather than two years. Due to the time necessary to integrate leak detectors with the warning system, the commission disagrees. This commenter also requested that the subsection be revised to require replacement of defective leak detectors immediately. The commission believes that the subsection as proposed provides a reasonable time within which detectors must be replaced. The commission does not believe that immediate replacement is practical.

One commenter questioned the need for brine system gas vapor controls because, if the emergency shutdown devices function properly, vapor control will be unnecessary. The commission believes that the brine system gas vapor control requirement is appropriate, even though it is redundant. This section includes measures to prevent leaks from occurring and to rapidly detect and properly manage leaks that do occur. A brine system gas vapor control system will lessen the possibility that a combustible concentration of hydrocarbon vapor will accumulate at the brine pit(s).

One commenter recommended that the compliance time period for installation of brine system gas vapor controls be limited to nine months, rather than two years. Given the time necessary to design a comprehensive safety system for each facility, the commission disagrees.

One commenter recommended that the inspection requirement of subsection (h) (6)(C) be revised to require inspections of the brine system gas vapor control system twice a year at intervals not in excess of 7 1/2 months, rather than every 6 months. The recommended inspection interval would be consistent with other semi-annual inspection requirements of the section. The commission agrees, and has made the recommended change.

One commenter recommended that §3.95 require that plans and designs for flares be submitted to the commission for review and approval. The commenter did not give a reason for this suggestion. The commission does not see a need to review and approve flare design, and therefore the recommended provision has not been added.

One commenter requested clarification on what the fire detectors required in subsection (h)(7) are supposed to do. This commenter recommended that they be integrated with warning systems and their function specified in the facility's safety plan. Fire detectors are required to detect any fire that breaks out at a facility. The subsection has been clarified by referring to subsection (h)(12)(A) (new subsection (h)(13)(A)), which requires integration of fire detectors with warning systems.

One commenter was of the opinion that fire detectors are not necessary at some facilities. In particular, this commenter felt that the commission should retain the authority to waive this requirement at some facilities, such as facilities that are attended 24 hours per day. As proposed, subsection (h)(7) allows camera surveillance as a fire detection method at facilities that are attended 24 hours per day. Therefore, the commission believes that the section as proposed addresses this commenter's concern.

One commenter recommended including fusible plugs, links, or melt heads as alternative heat sensing devices. The commission agrees that meltdown or fused devices are suitable for use as heat sensors, and has revised the final subsection accordingly. This commenter also indicated that the subsection should be revised to reflect the fact that these devices cannot be readily tested. As proposed, this subsection requires testing of fire detectors, not heat sensors, because of the impracticability of testing heat sensors.

For purposes of clarification, subsection (h)(7) has been retitled "Fire Detection De-

vices or Methods."

One commenter indicated that emergency response plans should outline areas of responsibility in an emergency. The commission agrees. Subsection (h)(8) specifically requires that emergency response plans include procedures for coordination of emergency communication and response activities. The commission expects that these procedures will discuss areas of responsibility in an emergency where appropriate.

One commenter recommended that a standing committee be created to review safety aspects of storage facilities on a periodic basis, and to receive citizen input on storage facility safety. The commission reviews its regulations on a continuous basis to determine whether revisions are appropriate. The commission will consider citizen input regarding the effectiveness of its regulations at any time. Therefore, the commission does not believe it is necessary to establish a standing committee to review facility safety regulations.

One commenter recommended that the commission accept participation with the local emergency planning committee as fulfilling the requirement of subsection (h)(8) for communication with local emergency response authorities. The commission agrees that local emergency planning committees should be involved in emergency response planning wherever possible. Therefore, the commission has revised this subsection to require coordination with local emergency planning committees and other response authorities.

Two commenters recommended that subsection (h)(8) be revised to require that the local emergency planning committee be provided a copy of the facility's emergency response plan. The commission agrees with these commenters, and has revised this provision as recommended.

One commenter recommended that the emergency response plan be required to include a description of leak detection devices and the normal operating conditions at a facility. Subsection (h)(8) requires a description of use of warning systems, which should include a description of the leak detection system. The commission believes that information regarding site lay-out might be very valuable information in the event of an emergency, and has revised the subsection to specifically require that a plat of the facility showing locations of wells, processing areas, loading racks, brine pits, and other significant features be included in emergency response plans. The commission does not believe, however, that other information regarding normal operating conditions at a facility would be particularly helpful in the event of an emergency.

One commenter recommended that operators of facilities located within city limits be required to provide a copy of the emergency response plan to appropriate city officials The commission believes that a copy of the plan should be given to the local emergency planning committee. The commission also believes that a copy of the plan should be made available to other local governmental entities upon request. Subsection (h)(8) has therefore been revised to require that a copy of the emergency response plan be provided to the local emergency planning committee and to any other local governmental entity upon written request.

One commenter recommended that subsection (h)(8) be revised to require that a copy of the emergency response plan be kept in a fire and explosion proof structure at the company headquarters The commission does not believe that this requirement is necessary. As revised, this subsection requires that copies of the plan be maintained at the facility and company headquarters, and that a copy be provided to the local emergency planning committee. Therefore multiple copies of the plan will be available in an emergency, without adding the burden of creating a special enclosure to hold a copy of the plan at company headquarters

One commenter also recommended that subsection (h)(8) be revised to require compliance with other local, state, and federal safety requirements. Compliance with this section does not relieve any operator of the duty to comply with other local, state, and federal laws and regulations. Therefore, the commission does not believe that it is necessary to add the recommended language to this subsection.

One commenter indicated strong support for the proposed subsection (h)(9) In particular, this commenter indicated that the provision as worded allows an operator to tailor emergency notification procedures to the particular circumstances of the facility and surrounding area

One commenter recommended that subsection (h)(9) be revised to require notification of any release that, in the judgment of the operator, endangers local residents or property. This commenter recommended that subsection (h)(9) include specific examples of quantities of hydrocarbons released that might endanger local residents or property. The commission does not agree with this recommendation The provision as proposed requires some judgment of operators The commission hesitates to provide examples based upon specific quantities of material due to the great variety of circumstances that could be encountered at different facilities throughout the state

One commenter suggested that subsection (h)(9)(A) be revised to specifically require that city officials who respond to emergencies be provided with emergency notification. The commission disagrees. As proposed, this provision requires that notification of an emergency be given to appropriate public officials identified in the emergency response plan. As proposed, this provision would encompass city officials where they are appropriate responders to an emergency The commission has clarified subsection (h)(9)(A) by indicating that other responders are identified in the emergency response plan. This commenter also suggested that written notification of the emergency be provided to local officials, including city officials, within five days of a release The commission also disagrees with this suggestion. The commission assumes that local emergency response officials would be working with the operator on a day-to-day basis throughout an emergency and would therefore have first-hand knowledge of circumstances surrounding that emergency.

Three commenters recommended that the emergency notification procedures of subsection (h)(9) be revised to require notice to local residents. Two commenters suggested use of an alarm that would be audible over a two-mile radius. The other commenter did not specify use of any particular warning device. While the commission believes that local warning systems are appropriate in some circumstances, the commission is hesitant to require such emergency notification systems in this subsection. In some situations, early warning of residents may result in accidents because residents attempting to evacuate instead drive directly into a dangerous situation, such as a vapor cloud. The commission believes that citizen emergency notification and evacuation procedures should be carefully analyzed and tailored to fit the particular circumstances at each facility and in each community. The provisions of subsection (h)(8), which require that emergency response plans include warning and evacuation procedures, require development of site-specific warning and evacuation plans and procedures. The commission has therefore not made the recommended change to subsection (h)(9). The commission has clarified subsection (h)(8) by expressly requiring that emergency response plans include provisions for citizen emergency notification.

One commenter recommended that requirements for public education be added to this section. The commission agrees that a public education program would enhance public safety The commission has therefore added a new subsection (h)(10) that requires facilities to undertake a public education program, and has renumbered subsequent paragraphs in subsection (h). The provision requires that residents within a one-mile radius of the facility be informed about emergency notification and evacuation procedures.

One commenter recommended that local residents be allowed to participate in annual emergency drills. Another commenter recommended that drills be coordinated through local emergency planning committees, and residents allowed to participate as deemed appropriate by the local emergency planning committee The commission believes that emergency response planning for local residents should be addressed through the public education program required by new subsection (h)(10). Therefore, the commission has not revised subsection (h) (10) (new subsection (h)(11)) to provide that local residents be invited to participate in annual emergency drills

Another commenter recommended that city emergency response officials be invited to participate in annual emergency drills. As proposed, subsection (h)(10) (new subsection (h)(11)) requires that local emergency response authorities be invited to participate in annual emergency drills. The commission believes that this provision as proposed would include city emergency response officials where appropriate.

One commenter indicated that it cooperated in drills with other operators in an industrial complex, and asked whether these combined drills would fulfill the requirements of subsec-

tion (h)(10) (new subsection (h)(11)). The commission believes that coordinated drills among a number of operators in an area encourage assistance and cooperation among operators and thereby enhance the safety of the entire area. Combined drills should therefore be encouraged. As proposed, subsection (h)(10) (new subsection (h)(11)) requires all facilities to annually conduct a drill that tests response to a simulated emergency. A combined annual drill among a number of operators in an industrial complex will fulfill the requirements of this subsection.

One commenter recommended that subsection (h)(12)(A) (new subsection (h)(13) (A)) be reworded to require that failure of a sensor to function will activate a "trouble" alarm, not an emergency alarm that would result in emergency notification. As proposed, this provision requires that a warning be given in local and remote control rooms. This warning need not result in full emergency notification. Therefore, the commission does not believe that this provision should be revised as recommended.

One commenter recommended that the compliance period for subsection (h) (12) (new subsection (h)(13)) be one year rather than two, and another commenter recommended that it be shorted to 180 days. Due to the time required to design and install an integrated emergency response system, the commission disagrees with both comments

One commenter recommended that this provision be revised to require integration of "emergency shutdown instrumentation" with warning systems, rather than just integration of various sensors. The commission agrees that all emergency shutdown instrumentation should be integrated with warning systems, and has added this requirement to subsection (h)(12) (new subsection (h)(13)).

One commenter recommended that warning systems not be required to give an alarm when a meltdown device fails to function, because the ability of meltdown devices to function cannot be readily measured. The commission agrees, and has excluded meltdown and fused devices from provisions requiring activation of warnings in the event a device fails to function.

One commenter recommended that the compliance time period for subsection (h) (13) (new subsection (h)(14)) be limited to one month, rather than one year. The commission disagrees. The proposed section requires that the wind sock be visible at any time. In most cases, this will require use of an illuminated wind sock. The commission believes that one year is a reasonable length of time within which to install an illuminated wind sock, while one month is too short a time

Two commenters recommended that subsection (h)(13) (new subsection (h)(14)) be revised to require that wind socks be visible from normal work locations, not any location at the facility. The commission agrees, and has revised this subsection accordingly.

One commenter requested that subsection (h)(14) (new subsection (h)(15)) be revised to require barriers to prevent public access to certain areas during an emergency The commission disagrees because placement of barriers should be addressed on a site-specific basis in the emergency response plan required under subsection (h)(8).

One commenter requested that subsection (h)(14) (new subsection (h)(15)) be revised to require above-ground, rather than above-grade, barriers. This commenter did not explain the reasons for this request, and the commission does not see a need to change this provision as recommended.

One commenter requested that alternatives to barriers be allowed in subsection (h)(14) (new subsection (h)(15)). This commenter failed to suggest any alternatives to barriers. The commission believes that the requirement for barriers is appropriate, and has not added provisions allowing substitution of alternative measures.

One commenter recommended that the provisions of subsection (i)(11) be revised to exempt facilities using saturated brine as a displacing agent from the requirement that sonar surveys be run every ten years. The commission disagrees. Even if brine is saturated at the surface, it will usually be unsaturated initially after injection into the cavern because of the higher temperatures at depth. Because cavern leaching will occur even if brine that is saturated at surface conditions is used as the displacing agent, periodic surveys to determine the size and configuration of the cavern are necessary

One commenter recommended that sonar surveys be required to be run in crude oil storage caverns only when withdrawals exceed 90% of the permitted storage volume The commission disagrees Crude oil is stored by the Department of Energy at Strategic Petroleum Reserve locations and remains in storage in preparation for a national emergency, except for limited test withdrawals. Therefore, the commission does not believe that there is a need to change the provisions of this subsection, other than to delete the requirement that saturated brine be used as the displacing agent As revised, this subsection will not require sonar surveys for crude oil storage caverns

One commenter recommended that subsection (i) be revised to require that sonar surveys be run on an annual basis. The commission does not agree with this recommendation Sonar surveys are expensive, protracted operations In addition to the expense of the survey, revenue can be lost during the period of weeks or even months that a cavern is out of service due to survey operations Any time a sonar survey is run, there is a risk that the cavern will be damaged through loss of downhole equipment The commission believes that requiring that sonar surveys be run every ten years will balance the risks and costs associated with surveys against the need for information regarding cavern size and configuration.

One commenter recommended that cavern roof monitoring requirements be extended to once every ten years rather than once every five years if saturated brine is used as the displacing agent. The commission disagrees, because the bedded salt will continue to leach even if brine that is saturated at surface conditions is used as the displacing agent.

One commenter recommended that the commission require that cement bond logs be run on all cemented casing strings, and that casing potential profiles and vertilogs be run on production casing. The commission disagrees. The commission does not believe that technology exists to run accurate cement bond logs in the large diameter casings used in hydrocarbon storage wells. In addition, the commission believes that periodic mechanical integrity tests are the best way of determining casing integrity. Therefore, the commission does not see a need to prescribe use of vertilogs or casing potential profiles.

One commenter recommended that subsection (l)(1) be revised to clarify that pressures on both the brine and hydrocarbon sides of the well must be monitored. As proposed, the section indicates that "a pressure sensor" rather than multiple sensors will monitor pressure on the brine and hydrocarbon sides of the well. In addition, this commenter requested clarification that use of pressure switches, which read pressure continuously but do not provide a pressure read-out, is allowed. The commission believes that continuous read-out of wellhead pressures should be required Pressure switches therefore do not meet the requirements of this subsection This subsection has been clarified to require use of multiple pressure sensors that give continuous pressure read-outs.

Yet another commenter requested that subsection (l)(1) be revised to allow brine pressures to be monitored at the brine header, not individual wellheads. The commission disagrees. It may be necessary to determine brine pressure on the wellhead when the wellhead is isolated from surface brine piping.

Three commenters requested that subsection (l)(3)(B) (regarding volumes of hydrocarbons injected and withdrawn) be revised to allow use of volumetric measurement devices and methods, rather than just meters. These methods and devices include cavern strapping charts used in conjunction with interface detectors, and tank gauges for crude oil storage The commission agrees with these commenters that volumetric measurement devices other than meters should be allowed where they have been demonstrated to the commission to be effective This subsection has been revised to allow use of alternative measurement devices or methods approved by the commission

One commenter recommended that subsection (l)(3) be amended to require that operators use a specific gas measurement device or method. The commission does not agree with this recommendation. Flow volumes into and out of caverns vary widely from facility to facility, and can vary widely from time to time at the same facility. Devices appropriate for gas measurement vary with flow rate and with the type of material being measured. Therefore, the commission does not believe that it is appropriate to specify a particular measurement device or method.

Nine commenters objected to the requirement that volumetric meters be calibrated annually by an independent company. These commenters indicated that operators have an

economic incentive to ensure that volume measurements are accurate. In addition, these commenters indicated that in-house personnel are specially trained to recalibrate meters. Four commenters strongly recommended third-party meter calibration. The commission believes that accurate measurement of the volume of hydrocarbons in storage is the first line of defense against cavern overfill. Therefore, accurate volume measurements are critical. The potential danger to the public associated with cavern overfill outweighs arguments against third party verification of the accuracy of volume-measuring devices. On the other hand, the commission understands the concerns expressed by some operators about allowing third-parties to calibrate meters when they have carefully trained their own in-house personnel in this activity. Therefore, this subsection has been revised to allow third-party witnessing of meter calibration as an alternative to recalibration by a third party. This subsection has also been revised to require third-party verification of the accuracy of alternative measurement devices on an annual basis.

One commenter indicated that the term "accuracy" as used in subsection (l) (4) should be defined. The commission believes that accuracy is inherent to the measurement device. The choice of measurement device will vary from facility to facility and will depend in part upon the types of fluids, range of flow rates, and in some instances on the cavern configuration. Therefore quantification of accuracy requirements is not appropriate.

One commenter indicated that a phase-in period of two years should be allowed for monitoring requirements specified in subsection (l). The commission disagrees. The commission believes that, at a minimum, all operators should be measuring volumes of materials in storage and wellhead pressures as of the effective date of this section.

Four commenters recommended that the requirement for reporting volumes of brine injected and withdrawn be deleted because brine metering is not required, and because brine volumes do not readily correlate to hydrocarbon volumes. Furthermore, brine volumes are difficult to measure due to gas vapor that can become entrained in the brine. The commission agrees with these commenters, and has revised the final section accordingly. Another commenter recommended deletion of the requirement that "net" brine volumes injected and withdrawn be reported. Due to the elimination of the brine reporting requirement, the requirement that "net" volumes be reported has also been eliminated.

Two commenters recommended that the record retention period be revised to three years rather than five years. One commenter recommended that the record retention period be expanded to ten years. The commission disagrees with these comments. The commission believes that a five-year record retention period will result in retention of sufficient records to reconstruct activities at a facility should the need arise without imposing undue recordkeeping burdens on operators.

One commenter recommended that subsection (n)(2) be revised to require that only records relating to safety devices required under subsection (h) be required to be retained for five years, rather than all records concerning equipment relating to the safe operation of a facility. The commission agrees somewhat. The commission believes that records concerning equipment required under subsections (h) and (l) should be retained for five years. Other records concerning safe operation of facilities, those required under subsections (i), (j), and (o), are already filed with the commission. This subsection has therefore been revised to require retention of records relating to equipment required under subsections (h) and (l).

One commenter recommended deleting the requirement of subsection (n)(1) for keeping records regarding flow volumes. This commenter also recommended clarifying that interface level records need only be kept if interface levels are monitored. The commission agrees, and has eliminated the requirement to keep records regarding flow volumes, and indicated that records regarding interface levels are required to be retained only if interface levels are measured at the facility.

One commenter recommended that mechanical integrity tests be required every three years, rather than every five years. The commission disagrees. The primary reason for requiring mechanical integrity tests is to ensure that fluids are not escaping from the cavern and traveling into z

Ones containing fresh water. Other commission regulations regarding injection of fluids also require that mechanical integrity tests be run on a five year schedule, absent special circumstances. The commission had good success with this requirement under §3.71 of this title (Rule 74, Underground Hydrocarbon Storage), and does not believe that there is a need to run mechanical integrity tests more frequently on liquids storage caverns.

One commenter felt that workover operations would not result in physical changes to any cemented casing string, and therefore recommended clarification of subsection (o)(1). The commission agrees that workovers that result in changes to cemented casing strings will occur only rarely. Such a situation could arise where there was a need to squeeze additional cement behind casing to remedy an integrity problem. In such a circumstance, the commission believes that it is important to require a mechanical integrity test after cementing has taken place to ensure integrity of the well. The commission therefore does not believe that further clarification is necessary.

This commenter also suggested that the required written explanation of a mechanical integrity test should be given in terms of gas volume changes, rather than in terms of a calculated leak rate. The commission disagrees. Where a decrease in pressure occurs in the course of a mechanical integrity test, the test results need to be evaluated in terms of the potential for leakage into zones containing fresh water.

One commenter requested that acceptable alternatives to the nitrogen-brine interface test method be specifically stated in the subsection. The commission prefers to evaluate alternative test methods on a case-by-case basis to ensure their applicability to each situation.

One commenter indicated that penalties need to be severe enough to ensure compliance. The commission's authority to impose penalties for violation of this section is set by statute.

One commenter recommended that subsection (r) be revised to provide that other commission rules and orders will apply wherever there is a conflict with the provisions of §3.95. The commission does not believe that such a revision is necessary. Subsection (b)(2) specifically provides that the terms of any commission order, field rule, or permit control over any conflicting provisions of §3.95.

Summary of comments on §3.96:

Three commenters recommended that a provision be added to the section that allows the owner or operator of an underground natural gas storage facility to seek an exception to any specific requirement of this section. The commission currently considers requests for variances or exceptions to commission regulations on a case-by-case basis. The commission therefore does not believe that such a provision is necessary. Further, the commission believes that the requirements of this section should be applied fairly uniformly. Therefore, the commission does not anticipate granting a large number of variances or exceptions to the requirements of this section.

One commenter recommended that the definition of "affected person" be revised to include those persons who *will* suffer injury as a result of a proposed project, rather than those who *might* suffer injury as a result of a proposed project. The commission believes that all persons who might reasonably be expected to suffer injury as a result of a proposed project should have the opportunity to protest the permit application. The commission has the ability to reject protests from persons who would not reasonably be anticipated to suffer injury as the result of a proposed project. However, revising the definition as proposed would focus too much attention on impacts to the protestant, rather than on the merits of the application. Therefore, the commission does not believe the definition should be changed as recommended.

One commenter recommended that the definition of "fresh water" be revised to include only water that is non-toxic and non-corrosive. This commenter also recommended that the definition of "pollution" be revised to include only adverse impacts on "fresh" water. This commenter did not explain why it recommended these changes. The proposed definitions of "fresh water" and "pollution" are consistent with the definitions for those terms in the Texas Water Code and in other commission regulations. The commission does not see a need to revise these definitions as recommended.

One commenter indicated support for proposed subsection (b)(2), which provides that provisions of any commission order, field

rule, or permit will control in the event of a conflict with this section. This commenter also requested that a provision be added to subsection (b)(2) indicating that the Barbers Hill field rules will not be eroded by the provisions of this section. The commission does not feel that such a provision is necessary. This subsection clearly indicates that in the event of a conflict between this subsection and field rules, the field rules will control. The commission does not feel that it is appropriate to specifically list the Barbers Hill field rules without listing all other field rules that might control in the event of a conflict with the provisions of this section. Furthermore, the Barbers Hill field rules are applicable to storage in a salt formation, not storage in a reservoir. The commission has moved the first sentence of subsection (b)(2) up to subsection (b)(1) for purposes of clarity.

One commenter suggested that subsection (d) be revised to require that an application for permit amendment be filed whenever a permit transfer is proposed. The commission does not agree with this suggestion. Subsection (h) requires that the commission be notified of a proposed permit transfer. In most situations, transfer of a permit will not impact the safe operation of a facility. The permit transferee will be required to adhere to the provisions of this section and to any additional permit conditions, just as was the original permittee. However, the commission has retained the authority under subsection (h)(2) to object to transfer of a permit.

One commenter objected to the provisions of subsection (d)(4) which requires that an application for permit amendment be filed at any time that conditions at a facility deviate materially from the conditions specified in the permit or permit application. This commenter felt that this provision would require a permit amendment even for temporary conditions that do not affect the safe operation of a facility, such as taking a well out of service temporarily. The commission disagrees. The commission believes that a permit amendment should be required any time conditions at the facility have deviated from permitted conditions in a manner that may impact the safe operation of the facility, the ability of the facility to operate without causing a waste of hydrocarbons, or the ability of the facility to operate without causing pollution Any such situation would involve a material deviation warranting commission review and approval. Temporary conditions at a facility that do not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution would not be considered material deviations.

One commenter indicated that subsection (f) should be revised to allow new permits to be issued administratively if no protest is filed. The commission disagrees. The commission believes that all new underground storage facility permit applications should be considered in a hearing to ensure that all issues related to operation of the facility have been addressed.

One commenter objected to the notice requirements of subsection (f). This commenter indicated that there might be a large number of people who must receive notice under the provision as proposed, some of whom might even have foreign addresses This commenter also wondered about the degree of proof required to show that proper notice had been given. This commenter also recommended that affected persons who had already entered into a gas storage agreement with the applicant be excluded from the notice requirements. The commission disagrees with this comment. The commission believes that all persons specified in this subsection as proposed are entitled to notice of an application. The applicant has the burden of proving that notice was given should a question regarding notice arise. The commission believes that even persons who have signed a storage agreement are entitled to notice of an application.

Three commenters indicated that the provisions of subsection (f) should be revised to require that notice be given to landowners and leaseholders of record, at their last known address The commission agrees that an unreasonable burden would be imposed on applicants if they were expected to ascertain owners and leaseholders whose names and/or addresses could not be determined through diligent efforts. Therefore, the commission has added a new paragraph (3) to subsection (f) that requires applicants to exercise diligent efforts to ascertain the names and addresses of land and mineral interest owners and leaseholders. The commission has also provided an avenue for an applicant to give notice to those persons whose names and/or addresses cannot be determined through exercise of diligent efforts by publication rather than by delivering a copy of the application form. Diligent efforts include search of county records Paragraphs subsequent to new paragraph (3) of subsection (f) have been renumbered

One commenter recommended that the provisions of subsection (f)(4)(A) (new subsection (f)(5)(A)) regarding receipt of notice be clarified. This commenter was concerned that this provision would create multiple 15-day protest periods, depending on the date notice was delivered to different affected persons. In addition, this commenter indicated that the 15-day protest period might never expire if some affected persons could not be located The commission agrees that this provision should be clarified, and has revised it to provide that the 15-day protest period will begin to run on the date notice is received by the commission, or the date of last publication, whichever is later. The commission notes that subsection (f)(1) provides that notice to persons specified in subsection (f)(1)(A)-(F) must be given no later than the date the application is filed with the commission

One commenter requested clarification of the use of the term "leaseholder" as used in §3.95(e)(1) and §3 97(e)(1), and the terms "person holding an interest in minerals" and "person holding a lease in minerals" as used in §3 96(f)(1). For purposes of clarity, the commission has retained the term "leaseholder" in §3 95 and §3 97, and substituted the term "leaseholder" for "person holding a lease" in §3.96(f)(1)(A) The commission also substituted the term "mineral interest owner" for the term "person holding an interest in minerals" in §3.96(f)(1)(B) and (C), and has substituted the phrase "owner or leaseholder" for "each person holding an interest" in subsection (f)(1)(D).

One commenter requested that subsection (f)(4)(A) (new subsection (f)(5)(A)) be revised to allow both the applicant and any interested person the right to request a hearing if an application for a permit amendment is protested. The commission does not believe that such a revision is necessary. As proposed, this provision provides that an application for a permit amendment will not be granted administratively if it is protested by an affected person or local government. In that event, the application cannot be granted *unless* the applicant requests a hearing and the commission ultimately finds that the permit should be amended. In the event that the applicant requests a hearing, all persons notified of the application under subsection (f)(1) who express an interest in writing will be notified of the hearing.

One commenter requested that subsection (f)(4) (new subsection (f)(5)) be revised to provide that an application for a permit amendment *will* be approved absent a protest The commission does not feel that such a revision is appropriate The commission reviews permit applications to ensure compliance with applicable commission regulations Where an application does not meet commission requirements, the permit should be denied administratively even if no protest has been filed

For purposes of clarity, a provision has been added to subsection (g)(1) (A) specifying that a material deviation is one that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution.

One commenter recommended that subsection (g)(2) (new subsection (g)(1)(B)) be revised to require permit cancellation, modification, or suspension, if fresh water *will* be polluted, rather than *is likely* to be polluted Another commenter recommended that this subsection be revised to provide that a permit may be canceled, modified, or suspended if pollution of fresh water is imminent Yet another commenter recommended that subsection (g) (5) (new subsection (g)(1)(E)) be revised to allow permit cancellation, modification, or suspension if escape of fluids is imminent, rather than likely. The commission does not agree with these recommendations. The commission reserves the right to cancel, modify, or suspend a permit if fresh water can reasonably be expected to be polluted or if escape of fluids is likely Requiring a demonstration that fresh water *will* be polluted or that escape of fluids is imminent places undue restrictions on the commission's authority to act to prevent pollution or waste of hydrocarbons

One commenter indicated that subsection (g) should be amended by adding a provision allowing immediate suspension of a permit pending a commission hearing in the event of imminent danger The commission agrees, and has added a provision allowing immediate suspension of a permit in the event of imminent danger

One commenter recommended requiring public notice and opportunity for hearing prior to transfer of a permit In the alternative, this

commenter recommended that the permit transfer requirements of §3.95 and §3.97 be included in §3.96. The commission does not agree that transfer of a permit for storage of gas in a productive or depleted reservoir should require public notice and opportunity for hearing. In addition, the commission does not believe that the permit transfer requirements of §3.95 or §3.97 are necessary in the case of transfer of a permit for storage of natural gas in depleted or productive formations because activities regulated under §3.96 do not differ substantially from gas production operations.

One commenter objected to the requirement of subsection (i)(1)(A) that wells located within 100 yards or less from a residence, commercial establishment, or a well-defined area be equipped with leak detectors because commission regulations do not require that production wells be equipped with leak detectors. The commission disagrees. Storage wells may experience different stresses than production wells due to gas injection operations. The requirement for leak detectors for wells within 100 yards from public areas is a reasonable requirement given the stresses that are placed on natural gas storage wells.

One commenter recommended that the requirements of subsection (i)(1)(A) be limited to storage wells used for injection. Subsection (i)(5) as proposed and adopted exempts wells used for gas withdrawal only from the requirements of subsection (i)(1) and (2).

Two commenters recommended that the phrase "well-defined outside area" used in subsection (i)(1)(A) be defined as that phrase is defined in pipeline safety regulations. The commission agrees. Under pipeline safety regulations, a well-defined outside area means a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for ten weeks in any 12-month period. The commission has also included churches and schools in the category of facilities listed in subsection (i)(1)(A).

Three commenters recommended that subsections (i)(2) and (n)(1) be revised to provide that integration of pressure monitoring devices with warning systems is required only for those wells that are required to be equipped with leak detectors under subsection (i)(1)(A). One commenter recommended that integration of pressure monitoring devices with warning systems not be required for any gas storage wells. This commenter felt that pressure monitoring would provide no benefit over and above high/low pressure switches that shut in a well in response to either high or low pressure. The commission agrees that no additional safety benefit is gained from the integration of pressure monitoring devices with warning systems and has deleted the requirement from subsection (i)(2).

Two commenters recommended that subsection (i)(2) be revised to clarify that only leak detectors required under subsection (i)(1)(A) are required to be integrated with warning systems. The commission agrees, and has revised this subsection as recommended.

One commenter recommended that subsection (i)(2) be revised to prohibit off-site control rooms, and to require installation of manual alarms. The commission disagrees. Underground storage of natural gas in productive or depleted reservoirs is similar to gas production in many respects. The commission does not believe that risks to the public associated with gas storage are so different from gas production operations that an on-site control room is necessary, absent special circumstances. Further, the commission does not believe that manual alarms are necessarily practical or appropriate because warning systems will be monitored at the control room and because most reservoir storage projects are in remote areas covering a number of acres.

One commenter recommended that subsection (i)(3) be revised to require that emergency response plans meet the Department of Transportation's requirements for emergency response plans. The provisions of this subsection do not conflict with the requirements of the Department of Transportation, therefore such a revision is not necessary.

One commenter recommended that subsection (i)(3) be revised to require emergency notification, and that cities be provided with copies of emergency response plans and notified in the event of an emergency. The commission does not believe that the same safety precautions that are appropriate for facilities regulated under §3.95 should be required for facilities regulated under §3.96. With few exceptions, reservoir gas storage does not differ significantly from gas production. As proposed, subsection (n)(5), rather than subsection (i)(3), addresses emergency notification procedures because emergencies at facilities permitted under this subsection will be associated with a release of gas. The commission does not believe that it is necessary in all cases to require that copies of emergency response plans be provided to cities, or to require that cities be notified in case of emergencies, due to the nature of reservoir gas storage. Nevertheless, subsection (i)(3) does require that the plan include emergency response procedures. The emergency response plan will need to address coordination with local authorities, including affected cities.

One commenter recommended that subsection (i)(4) be revised to allow alternatives to employee safety testing. The commenter did not offer any alternatives to employee safety testing. The commission believes that employee safety testing is appropriate, and has not revised this provision.

One commenter noted the lack of a requirement for fire detectors in §3.96, and requested inclusion of provisions regarding fire prevention and response procedures. The commission does not believe that fire detectors are necessary at facilities where natural gas is stored in underground formations. The commission believes that the leak detectors required in subsection (i) (1) will act as fire prevention aids. Subsection (i)(3) requires gas leak prevention and detection measures, and also requires a plan that addresses response to emergencies. In addition, subsection (n)(5) requires reporting of leaks. The commission believes that fires that occur at such facilities and that might pose a threat to the public will be associated with gas leaks. The commission therefore believes that this section satisfies Texas Civil Statutes, Article 6053-3, which requires the commission to develop regulations for natural gas storage facilities that address fire prevention and response.

One commenter recommended that subsection (j) be revised to require identification of only those wells that the applicant has determined are unplugged or improperly plugged, rather than those wells that *appear* to be unplugged or improperly plugged. The commission disagrees. If public records indicate that a well is unplugged or improperly plugged, that well should be identified by the applicant. Where appropriate, the applicant can explain why it believes that any such well is in fact properly plugged.

One commenter indicated that subsection (l)(1) should be deleted because gas injection occurs in a non-corrosive environment, eliminating the need for injection through tubing set on a packer. The commission believes that proposals for tubingless and packerless completions should be reviewed on a case-by-case basis. Subsection (l)(3) allows the commission to consider requests for exceptions to the tubing and packer requirements of subsection (l) (1) on a case-by-case basis.

One commenter recommended that subsection (n)(4) be revised to require that records be retained for three years rather than five. The commission disagrees. The commission believes that it is not unreasonable to require that records regarding wellhead pressures, gas metering, and leak detector tests be retained for five years.

One commenter recommended that subsection (n)(5) be revised to require only that the commission be notified when an operator determines that a leak has occurred, rather than when monitoring data indicates the presence of a leak or escape of injected gases from the storage reservoir. The commission disagrees. The commission believes that it should be notified when information indicates the presence of a leak, whether or not the operator has determined that a leak has actually occurred. Operators should not have an indefinite time period within which to confirm a leak before reporting it due to the potential for harm to the environment and the potential impact on public safety.

One commenter recommended that the commission not require reporting of information related to gas storage projects on either Form H-10 or Form G-10. The commission agrees. The commission is developing new reporting forms for facilities permitted under §3.96. Information regarding gas in storage should be submitted on the data sheet currently required by the commission.

Six commenters recommended that the provisions of subsection (n)(3) requiring third-party calibration of meters be deleted. These comments included discussion of the economic incentive to carefully measure the amount of gas in storage, and the fact that many operators carefully train employees to calibrate meters. One operator requested clarification of the meaning of the term "accuracy" as used

in this provision. From a safety standpoint, accurate volume measurements are not as critical in the case of underground natural gas storage as they are in the case of storage of liquid or liquified hydrocarbons in salt formations. Therefore, the commission has deleted the requirement for annual calibration of gas volume meters by an independent party.

One commenter recommended that subsection (o) be deleted because it has no bearing on gas storage activities. The commission disagrees. Gas storage operations should be carefully monitored to ensure that zones containing fresh water do not become contaminated. Periodic integrity testing is important in ensuring that fresh water zones are protected.

One commenter recommended that subsection (r) be revised to provide that other commission rules and orders will apply wherever there is a conflict with the provisions of §3.96. The commission does not believe that such a revision is necessary. Subsection (b)(2) specifically provides that the terms of any commission order, field rule, or permit will control over any conflicting provisions of §3.96.

Summary of comments on §3.97:

Two commenters recommended that a provision be added to the section that allows the owner or operator of an underground natural gas storage facility to seek an exception to any specific requirement of this section. The commission currently considers requests for variances or exceptions to commission regulations on a case-by-case basis. The commission therefore does not believe that such a provision is necessary. Further, the commission believes that the requirements of this section should be applied fairly uniformly. Therefore, the commission does not anticipate granting a large number of variances or exceptions to the requirements of this section.

One commenter recommended that the definition of "affected person" be revised to include those persons who *will* suffer injury as a result of a proposed project, rather than those who *might* suffer injury as a result of a proposed project. The commission believes that all persons who might reasonably be expected to suffer injury as a result of a proposed project should have the opportunity to protest the permit application. The commission has the ability to reject protests from persons who would not reasonably be anticipated to suffer injury as the result of a proposed project. However, revising the definition as proposed would focus too much attention on impacts to the protestant, rather than on the merits of the application. Therefore, the commission does not believe the definition should be changed as recommended.

One commenter recommended that the definition of "fresh water" be revised to include only water that is non-toxic and non-corrosive. This commenter also recommended that the definition of "pollution" be revised to include only adverse impacts on "fresh" water. This commenter did not explain why it recommended these changes. The proposed definitions of "fresh water" and "pollution" are consistent with the definitions for those terms in the Texas Water Code and in other commission regulations. The commission does not see a need to revise these definitions as recommended.

One commenter recommended that the definition of "emergency shutdown valve" be revised to provide that the valve shall automatically close in the event of conditions that will, rather than may, cause an emergency. The commission disagrees. The conditions under which an emergency shutdown valve must close are specified in the section. Any of these conditions, whether or not they are subsequently demonstrated to be capable of actually causing an emergency, should result in shut-in of a natural gas storage cavern.

One commenter indicated support for proposed subsection (b)(2), which provides that provisions of any commission order, field rule, or permit will control in the event of a conflict with this section. This commenter also requested that a provision be added to subsection (b)(2) indicating that the Barbers Hill field rules will not be eroded by the provisions of this section. The commission does not feel that such a provision is necessary This subsection clearly indicates that in the event of a conflict between this subsection and field rules, the field rules will control. The commission does not feel that it is appropriate to specifically list the Barbers Hill field rules without listing all other field rules that might control in the event of a conflict with the provisions of this section. Because it is not practical to list all other field rules, the commission has not added the requested provision to this subsection. For purposes of clarity, the first sentence of subsection (b)(2) has been moved up to subsection (b)(1).

One commenter suggested that subsection (c)(2) be revised to require that an application for permit amendment be filed whenever a permit transfer is proposed. The commission does not agree with this suggestion. Subsection (g) requires that the commission be notified of a proposed permit transfer, and indicates the conditions under which such a transfer will be approved. In most situations, transfer of a permit will not impact the safe operation of a natural gas storage facility. The permit transferee will be required to adhere to the provisions of this section and to any additional permit conditions, just as was the original permittee. However, the commission has retained the authority under subsection (g)(3) to require a hearing on a proposed transfer for good cause.

One commenter recommended that subsection (c)(2)(E) be revised to require permit amendment anytime conditions at a facility deviate substantially, rather than materially, from conditions specified in the permit or permit application. The commission disagrees The commission believes that a permit amendment should be required anytime conditions at a facility deviate from permitted conditions in a manner that may impact the safe operation of the facility, the ability of the facility to operate without causing a waste of hydrocarbons, or the ability of the facility to operate without causing pollution. Any such situation would involve a material deviation warranting commission review and approval

This commenter also recommended that subsection (c)(3) be revised to require that the commission be notified when an operator determines that cavern capacity has been exceeded by 20%, rather than when information available to the operator indicates that cavern capacity has been exceeded by 20% or more. The commission disagrees. The commission believes that it should be apprised of information indicating that cavern capacity has been exceeded by 20% or more, whether or not the cavern operator has finally determined that capacity has expanded to that degree.

One commenter recommended that the heading of this subsection be revised to read "Standards for Underground Storage Zone." The commission believes that this recommendation clarifies this subsection, and has adopted the recommended revision.

Another commenter recommended that a sentence be added to subsection (d) indicating that storage of liquid or liquified hydrocarbons in a salt formation is not authorized under §3.97. The commission agrees that this change would clarify this section, and has added a provision indicating that a permit issued under §3.95 is required to store liquid or liquified hydrocarbons in a salt formation.

Two commenters requested that subsection (e)(1) be revised to require that notice be given only to land and mineral interest owners, including leaseholders, of record The commission agrees that an unreasonable burden would be imposed on applicants if they were expected to ascertain owners and leaseholders whose names and addresses could not be determined through diligent efforts. Therefore, the commission has added a new subsection (e)(3) that requires applicants to exercise diligent efforts to ascertain the names and addresses of land and mineral interest owners and leaseholders The commission has also provided an avenue for an applicant to give notice to persons whose names and/or addresses cannot be determined through exercise of diligent efforts by publication, rather than by delivering a copy of the application form. Diligent efforts include search of county records Paragraphs subsequent to new subsection (e)(3) have been renumbered

Two commenters recommended that the provisions of subsection (e)(4)(A) (new subsection (e)(5)(B)) regarding receipt of notice be clarified. These commenters were concerned that this provision would create multiple 15-day protest periods, depending on the date notice was delivered to different affected persons. In addition, these commenters indicated that the 15-day protest period might never expire if some affected persons could not be located. The commission agrees that this provision should be clarified, and has added a provision to the subsection providing that the 15-day period will begin to run on the date notice is received by the commission, or the date of last publication, whichever is later The commission notes that subsection (e) (1) requires that notice be provided to persons specified in subsection (e)(1) (A)-(F) on or before the date the application is mailed to or filed with the commission.

One commenter indicated that subsection (e) should be revised to allow new permits to be issued administratively if no protest is filed.

The commission disagrees. The commission believes that all underground storage facility permit applications should be considered in a hearing to ensure that all issues related to operation of the facility have been addressed.

One commenter requested that subsection (e)(4)(A) (new subsection (e)(5)(B)) be revised to allow both the applicant and any interested person the right to request a hearing if an application for a permit amendment is protested. The commission does not believe that such a revision is necessary. As proposed, this provision provides that an application for a permit amendment will not be granted administratively if it is protested by an affected person. In that event, the application cannot be granted *unless* the applicant requests a hearing *and* the commission ultimately finds that the permit should be amended. In the event the applicant does request a hearing, all persons notified of the application under subsection (e)(1) who express an interest in writing will be notified of the hearing. The commission has revised the first sentence of subsection (e)(4) (new subsection (e)(5)(A)) to clarify that the commission can grant a permit amendment application administratively if no protest is filed.

This commenter also recommended that subsection (e)(1) be revised to provide that any person notified under subsection (e)(1) can protest an application for a permit amendment. As specified in subsection (e)(4)(A) (new subsection (e)(5)(B)), any person notified pursuant to subsection (e)(1) can protest a permit amendment application. Therefore, the commission does not see a need to revise this subsection as recommended

One commenter requested that subsection (e)(4) (new subsection (e)(5)) be revised to provide that an application for a permit amendment *will* be approved absent a protest. The commission does not feel that such a revision is appropriate. The commission reviews permit applications to ensure compliance with applicable commission regulations. Where an application does not meet commission requirements, the amendment should be denied administratively even if no protest has been filed.

One commenter recommended that subsection (e)(4)(A) (new subsection (e)(5) (B)) be revised to provide that a protest may be filed within one week from the date of the final publication of notice. The commission disagrees. As proposed, subsection (e)(4)(A) (new subsection (e)(5)(B)) provides that a protest may be filed within 15 days from the later of receipt of the application by the commission or the date of final publication. The commission believes that affected persons should be given at least 15 full days from the date of final publication within which to file a protest.

One commenter recommended that subsection (e)(4) (new subsection (e)(5)) be revised by making the opening statement subparagraph (A), striking subparagraph (B), and redesignating existing subparagraph (A) as subparagraph (B). The commenter recommended rearrangement of subsection (e)(4) (new subsection (e)(5)) because subparagraph (B) repeats the substance of the opening statement of this subsection. The commission believes that the suggested reorganization would help clarify subsection (e)(4) (new subsection (e)(5)), and this provision has been revised accordingly.

For purposes of clarity, a provision has been added to subsection (f)(1)(A) clarifying that a material deviation is one that does not affect the safe operation of a facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution.

One commenter recommended that the first word in subsection (f)(1)(E) be changed from "injected" to "stored." The commission does not agree. Stored fluids include only hydrocarbons. However, any fluid that is injected in the well during any well activity may cause damage or injury if it escapes from the storage facility.

One commenter recommended that subsection (f)(1)(B) be revised to require permit cancellation, modification, or suspension, if fresh water *will* be polluted, rather than *is likely* to be polluted. Another commenter recommended that this subsection be revised to provide that a permit may be canceled, modified, or suspended if pollution of fresh water is imminent. The commission does not agree with these recommendations. The commission reserves the right to cancel, modify, or suspend a permit if fresh water can reasonably be expected to be polluted Requiring a demonstration that fresh water *will* be polluted places undue restrictions on the commission's authority to act to prevent pollution of surface or subsurface waters

One commenter recommended that subsection (f) be revised to include permit transfer as a reason for cancellation, modification, or suspension of a permit. The commission disagrees because the procedures and conditions for transfer are set out separately in subsection (g).

One commenter recommended that subsection (f) be revised to allow cancellation, modification, or suspension of a permit if there are substantial, rather than material, deviations from information originally furnished to the commission or violations of commission regulations or permit conditions. The commission disagrees As proposed, these provisions allow the commission to cancel, modify, or suspend a permit if conditions at the facility may affect the safe operation of the facility, the protection of fresh water, or allow waste of hydrocarbons. Any such situation would involve a material deviation warranting commission intervention.

One commenter recommended that subsection (f)(2) be revised by substituting the phrase "pollution of fresh water is imminent" for the phrase "pollution of fresh water is threatened." The commission agrees that this change should be made for internal consistency within this paragraph, and to clarify that this provision will be used to address situations posing an immediate danger of pollution or threat to life or property.

Two commenters recommended that subsection (g) be revised to allow transfers of permits between affiliated companies without prior approval by the commission. The commission disagrees. The provisions of §3.97(g) will not typically impose any great burden on an operator. Only in the event of good cause will a permit transfer request be sent to a hearing. In most other cases, the commission believes that it will be able to act on requests for permit transfer within 15 days of the date of receipt. Furthermore, the commission will have to be informed of any transfer, even if it is to an affiliated company. In rare circumstances, the commission may have concerns about a permit transfer to an affiliated company. For these reasons, the commission does not believe that the recommended change is necessary or appropriate.

One commenter requested that the commission be required by this section to act on a request for permit transfer within 15 days. The commission disagrees. The commission has not experienced undue delays in processing permit transfer requests in the past. The commission processes most transfer requests within a period of 15 days. Because the time to process permit transfers has not been a problem in the past, the commission does not feel the need to bind itself to act on a transfer request within a specified time period.

One commenter recommended that affected persons be given notice and an opportunity to protest any proposed permit transfer. The commission does not agree that transfer of a permit should require public notice and opportunity for hearing. In most situations, transfer of a permit will not impact the safe operation of a storage facility. The permit transferee will be required to adhere to the provisions of this section and to any additional permit conditions, just as was the original permittee. However, the commission has retained the authority under subsection (g)(3) to require a hearing on a proposed transfer for good cause.

One commenter recommended that natural gas storage wells that are out-of-service be exempt from the requirements of subsection (h) until returned to service. The commission agrees. The final section has been revised to exempt wells that are out of service and disconnected from all surface piping from the requirements of subsection (h).

One commenter recommended that subsection (h)(1) be reworded to indicate that facilities that are unattended during injection and withdrawal activities have company personnel on call during such activities, rather than at all times. The commission understands that, given the nature of these facilities, injection and withdrawal may occur at any time under no regular schedule. Therefore, the commission has not revised this provision as recommended.

One commenter recommended that subsection (h)(1) be revised to require 24-hour on-site attendants at all facilities. The commission does not believe that 24-hour on-site attendants are necessary for the safe operation of gas storage facilities. A problem with the cavern would probably arise if maximum operating pressures are exceeded. In that event, the emergency shutdown valves should be activated, thereby closing the well in. The commission does intend that the emergency shutdown valves on the storage

wells at these facilities be set to close automatically in the event that maximum operating pressure is exceeded. Therefore, a provision has been added to subsection (h)(2) clarifying that emergency shutdown valves on the gas injection and withdrawal piping must be set to close automatically when the maximum permitted operating pressure for the facility is exceeded.

One commenter recommended that the provisions of subsection (h)(1) (regarding monitoring of injection and withdrawal operations) be revised to require that activities be monitored by a person who is trained in storage operations, not trained and experienced. The commission disagrees. Injection and withdrawal operations need to be closely monitored by a person who has the ability to respond appropriately in the case of an emergency. That ability will only come with experience. The commission believes that this experience can be gained through a training program that pairs a trainee with a person experienced in monitoring natural gas injection and withdrawal activities.

One commenter recommended that the requirement of subsection (h)(2)(B) that emergency shutdown valves be closed and opened monthly be eliminated because it does not add to facility safety This commenter also recommended that subsection (h)(2)(A) be revised to require annual, rather than semi-annual, testing of emergency shutdown valves. The commission disagrees Proper operation of emergency shutdown valves in the event of an emergency is critical. Valves need to be opened and closed at least monthly, and tested semiannually, to ensure they are in proper working order.

One commenter requested that the compliance period under subsection (h)(3) (A) be extended from one year to two years in order to be consistent with other compliance periods. Yet another commenter recommended that subsection (h) (3)(A) be revised to require installation of gas release prevention devices prior to beginning any new leaching operations, or within one year of the effective date of this section The commission agrees somewhat. The commission believes that none of these devices will be necessary until such time as cavern debrining operations take place or solution mining operations are conducted with gas in storage in the same cavern The commission also believes that at least one gas release prevention device should be in place any time after one year from the effective date of this section that cavern debrining or solution mining (with gas in storage) operations are undertaken Therefore, this provision has been revised to require that at least one gas release prevention device be employed during cavern debrining or solution mining (with gas in storage) operations that take place during the period between one and two years after the effective date of this section. Two gas release prevention devices must be in place in order to conduct cavern debrining or solution mining (with gas in storage) operations at any time after two years from the effective date of this section.

One commenter recommended that subsection (h)(3)(A)(i) be revised to eliminate the requirement that emergency shutdown valves on the gas side of the wellhead be set to automatically close when preset pressures are exceeded. This commenter indicated that it is preferable to continue to pump compressible gas into a cavern with the emergency shutdown valves on the brine and fresh water piping closed than to shock the compressors and gas piping by a rapid shut-in The commission agrees with this comment with regard to the injection of gas and has revised the provisions of subsection (h)(3) to require the automatic closure of valves on only the brine and fresh water piping, if any. The commission has also revised subsection (h)(2) to clarify that emergency shutdown valves are required on any fresh water or brine piping that is connected to the well

Two commenters recommended that subsection (h)(3)(B) be revised to allow simultaneous leaching and gas injection and withdrawal operations. The commission believes that simultaneous leaching and gas injection or withdrawal operations increase the safety risks associated with natural gas storage. Therefore, the commission has not revised this provision as recommended

One commenter indicated that subsection (h)(3)(B) could be read to prohibit simultaneous leaching and storage (gas injection/withdrawal) operations at a facility, rather than simply within the same cavern. The commission agrees, and has revised this subsection to prohibit simultaneous leaching and gas injection/withdrawal operations within a cavern. Another commenter indicated that cavern debrining operations could technically be considered simultaneous leaching and storing. The commission has further clarified this provision by clarifying the last phrase of subsection (h)(3)(B) regarding leach-storage operations to prohibit gas injection and withdrawal during leaching activities in the same well. The commission has also clarified that gas can be stored during leaching operations, so long as gas is not also injected or withdrawn during the course of the leaching operations. In addition, the commission has substituted the term "solution mining" for "leaching" since solution mining is the term commonly used by the commission to describe leaching operations

One commenter recommended that the mule shoe alternative in subsection (h) (3)(A)(ii) be eliminated. The commission agrees. Turbulent fluid flow through a mule shoe may cause well tubulars to vibrate, which may result in tubular damage or failure Therefore, the option of use of a mule shoe as a gas release prevention device has been eliminated

One commenter objected to the specifications for weep holes in subsection (h)(3)(A)(ii) This commenter indicated that typically two weep holes, rather than one, are used. This commenter also indicated that a one-inch weep holes too large The commission agrees and has revised this option to allow use of

One or more weep holes, of a size selected by the operator As revised, this provision allows operators the latitude to design their own weep hole system if that gas release prevention alternative is chosen.

Three commenters recommended that the term "well-defined area" used in subsection (h)(4)(A) to describe locations where leak detectors are required be clarified These commenters recommended that the description used in pipeline safety rules should be included in the provision. Under pipeline safety regulations, a well-defined outside area means a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for ten weeks in any 12-month period The commission has also included churches and schools in the list of facilities under subsection (h)(4)(A)

One commenter requested clarification on what leak detectors required in subsection (h)(4) are designed to do This commenter recommended that they be integrated with warning systems and their function specified in the facility's safety plan. The commission believes that the function of the detectors is obvious-to detect leaks of hydrocarbons at various locations around a facility The requirement for integration of detectors with warning systems is specified in subsection (h)(5)(A) The commission believes that this provision could be clarified by making reference to subsection (h)(5)(A), and has revised the subsection to include this reference

One commenter recommended that the period for installation of an audible alarm be extended to one year from the effective date of this section rather than 180 days The commission disagrees The commission believes that a manually operated audible alarm can be installed fairly quickly, at low cost This alarm will aid in prompt response to a problem at the facility, especially during the period prior to full implementation of this section

One commenter recommended that subsection (h)(5)(A) be revised to require integrated warning systems in the local control room This commenter had also recommended 24-hour on-site attendants at all facilities, and this addition was intended to make the provision consistent with that requirement Because the regulation has not been revised to require 24-hour on-site attendants, this rec ommendation has not been adopted

One commenter recommended that operators of facilities located within city limits be required to provide a copy of the emergency response plan to appropriate city officials The commission believes that a copy of the plan should be given to the local emergency planning committee. The commission also believes that a copy of the plan should be made available to other local governmental entities upon request. Subsection (h)(6) has therefore been revised to require that a copy of the emergency response plan be provided to the local emergency planning committee and to any other local governmental entity upon written request.

One commenter recommended that the emergency response plan required under subsection (h)(6) include a description of leak detection devices and the normal operating conditions at a facility The plan is required to include a description of warning systems, which includes a description of the leak de-

tection system. The commission believes that information regarding site lay-out might be very valuable information in the event of an emergency, and has revised the subsection to require that a plat of the facility showing locations of wells, processing areas, and other significant features be included in emergency response plans. The commission does not believe, however, that other information regarding normal operating conditions at a facility would be particularly helpful in the event of an emergency.

One commenter suggested that subsection (h)(7)(A) be revised to specifically require that city officials who respond to emergencies be provided with emergency notification. The commission disagrees. As proposed, this provision requires that notification of an emergency be given to appropriate public officials. As proposed, this provision would encompass city officials where they are appropriate responders to an emergency. This commenter also suggested that written notification of the emergency be provided to local officials, including city officials, within five days of a release. The commission also disagrees with this suggestion. The commission assumes that local emergency response officials would be working with the operator on a day-to-day basis throughout an emergency and would therefore have first-hand knowledge of circumstances surrounding that emergency.

One commenter recommended that the phrase "but not limited to" be added to the list of situations under subsection (h)(7)(A) requiring emergency notification. This addition would make §3.97(h)(7)(A) consistent with §3. 95(h)(9). The commission agrees, and has added the recommended phrase to subsection (h)(7)(A).

One commenter recommended that subsection (h)(7)(A) be revised to require notification of any release that, in the judgment of the operator, endangers local residents or property. This commenter also recommended that the provision be revised to require notification only of a "substantial" leak or fire. The commission does not agree with this commenter. The provision as proposed requires some judgment of operators. However, any leak or fire that could endanger local residents or property would need to be reported. The commission would prefer to be conservative in the reporting of potential dangerous situations.

Another commenter recommended that city emergency response officials be invited to participate in annual emergency drills. As proposed, subsection (h) (10) requires that local emergency response authorities be invited to participate in annual emergency drills. The commission believes that this provision as proposed would include city emergency response officials where appropriate.

One commenter noted the lack of a requirement for fire detectors in §3.97, and requested inclusion of provisions regarding fire prevention and response procedures. The commission does not believe that fire detectors are necessary at facilities where natural gas is stored in underground salt formations. The commission believes that the leak detectors required in subsection (h)(4) will act as fire prevention aids. In addition, subsection (h)(6) requires that fires be addressed in the emergency response plan. Subsection (h)(7) requires that proper notification be given in the event of a fire. The commission therefore believes that this section meets the requirements of Texas Civil Statutes, Article 6053-3, regarding fire prevention and response.

Five commenters recommended that sonar surveys not be required where natural gas is stored in underground salt formations. These commenters pointed out that gas storage caverns do not continue to expand through leaching because displacing agents are not used in gas storage operations. These commenters also pointed out the problems associated with obtaining brine to fill a cavern with fluid in order to run a sonar survey, and then disposing of that brine. These commenters also discussed the operational, structural, and safety problems that can result from running sonar surveys in gas storage caverns. The commission agrees, and has eliminated the requirement of subsection (i)(2) that sonar surveys be run in gas storage caverns. A sonar survey will be required, however, if a well that is out of service and filled with water is returned to service, unless a period of less than ten years has elapsed since the last sonar survey.

Three commenters recommended that subsection (i)(6) be revised to require sonar surveys before, not after, debrining operations. The commission agrees. A sonar survey should be run on a cavern while it is filled with brine. After the sonar survey is run, the cavern will be "debrined" by displacing the brine with gas. The commission has revised subsection (i)(6) as recommended.

One commenter objected to the provisions of subsection (i)(6) requiring verification of cavern volume through brine measurements due to metering inaccuracies where two-phase flow is involved. The commission disagrees. The commission believes that reasonable measures can be taken to adjust flow measurements to account for two-phase flow.

One commenter objected to the requirement of subsection (i)(3) requiring determination of volumes of gas injected into and withdrawn from each storage cavern. This commenter indicated that this information could not be obtained because of inability to calculate volumes given three unknowns. The commission does not entirely understand the substance of this comment. However, the commission believes that it is possible to measure volumes of gas injected into and withdrawn from each storage cavern. The commission believes that this information is relevant to the safe operation of a facility where gas is stored in underground salt formations. Therefore, the commission has retained this requirement in the final section.

Six commenters objected to the requirement that volumetric meters be calibrated annually by an independent company. These commenters indicated that operators have an economic incentive to ensure that volume measurements are accurate. In addition, these commenters indicated that in-house personnel are specially trained to recalibrate meters. From a safety standpoint, accurate volume measurements are not as critical in the case of underground natural gas storage as they are in the case of storage of liquid or liquified hydrocarbons in salt formations. Therefore, the commission has deleted the requirement for annual calibration of gas volume meters by an independent party.

One commenter recommended that the record retention periods of subsection (n) be revised to three years rather than five years. The commission disagrees. The commission believes that a five-year record retention period will result in retention of sufficient records to reconstruct activities at a facility should the need arise without imposing undue recordkeeping burdens on operators.

One commenter indicated a belief that workover operations would not result in physical changes to any cemented casing string, and therefore recommended clarification of subsection (o)(1). The commission agrees that workovers that result in changes to cemented casing strings will occur only rarely. Such a situation could arise where there was a need to squeeze additional cement behind casing to remedy an integrity problem. In such a circumstance, the commission believes that it is important to require a mechanical integrity test after cementing has taken place to ensure integrity of the well. The commission therefore does not believe that further clarification is necessary.

This commenter also suggested that the required written explanation of a mechanical integrity test should be given in terms of gas volume changes, rather than in terms of a calculated leak rate. The commission disagrees. Where a decrease in pressure occurs in the course of a mechanical integrity test, the test results need to be evaluated in terms of the potential for leakage into zones containing fresh water.

One commenter recommended that subsection (r) be revised to provide that other commission rules and orders will apply wherever there is a conflict with the provisions of §3.97. The commission does not believe that such a revision is necessary. Subsection (b)(2) specifically provides that the terms of any commission order, field rule, or permit will control over any conflicting provision of §3.97.

No comments were received regarding the proposed conforming amendment to §3.46.

The following commenters requested clarification of the proposed new sections, but did not offer any specific indication whether they supported the sections or not: Enron, Houston Pipe Line Company; Texas Eastman Division, Eastman Chemical Company; Warren Petroleum Company; PB-KBB; Fenix & Scisson; Enterprise Products Company; Webb & Webb; City of Mont Belvieu Mayor Joe Dutton; Western Gas Resources Storage, Inc.; Western Gas Resources, Inc.; Exxon Pipeline Company; Lone Star Energy Storage, Inc.; Joe Perino; Wesley Concerned Citizens; Phillips Petroleum Company; Regina A. O'Donnell; Hoffman & Stephens, P.C.; Billy C. Bryant; Amoco Chemical Company; Conoco, Inc.; Texas Brine Corporation; Seadrift Pipeline Corporation; Natural Gas Pipeline Company of America; Association of Texas Intrastate Natural Gas Pipelines; Mobil Oil Corporation; Lower Colorado River Au-

thority; Shell Western E&P Inc.; L

One Star Gas Company; Amoco Gas Company; Valero Transmission, L.P.; Dow Chemical Company; United States Department of Energy; Robert H. Anderson; Tejas Power Corporation, Moss Bluff Gas Storage Company, Inc.; William H. Tonn III; Martin S. Albrecht; Valero Energy Corp.; Texas Eastern Products Pipeline Co.

Section 3.96 and §3.97 and the conforming amendment to §3.46 are adopted under the Texas Natural Resources Code, Chapter 91, Subchapter F, and House Bill 2622, 73rd Legislature, 1993 (to be codified at Texas Civil Statutes, Article 6053-3), which authorize the commission to regulate construction, operation, and safety standards and practices of facilities for storage of natural gas in subsurface sands, strata, and formations.

Section 3.95 is adopted under the Texas Natural Resources Code, Title 3, and House Bill 2016, 73rd Legislature, 1993 (to be codified at Texas Natural Resources Code, Title 11), which authorize the commission to adopt regulations relating to the construction, operation, maintenance, closure, and safety standards and practices for facilities storing liquid or liquified hydrocarbons in underground salt formations.

The amendment and new sections are also adopted under the Texas Natural Resources Code, §85.042, which authorizes the commission to make and enforce rules pertaining to field operations that pose a danger to life or property.

Section 3.95 implements the Texas Natural Resources Code, Title 3, and House Bill 2016, 73rd Legislature, 1993 (to be codified at Texas Natural Resources Code, Title 11). Section 3.96 and §3.97 and the conforming amendment to §3.46 implement the Texas Natural Resources Code, Chapter 91, Subchapter F, and House Bill 2622, 73rd Legislature, 1993 (to be codified at Texas Civil Statutes, Article 6053-3).

§3.46. Rule 46. Fluid Injection into Productive Reservoirs.

(a)-(m) (No change.)

(n) Gas Storage Operations. Storage of gas in productive or depleted reservoirs shall be subject to the provisions of §3.96 of this title (relating to Underground Storage of Gas in Productive or Depleted Reservoirs).

§3.95. Underground Storage of Liquid or Liquified Hydrocarbons in Salt Fomrations.

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

(1) Affected person–A person who, as a result of actions proposed in an application for a storage facility permit or for amendment or modification of an existing storage facility permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Brine string–The uncemented tubing through which highly saline water flows into or out of a hydrocarbon storage well during hydrocarbon withdrawal or injection operations.

(3) Cavern–The storage space created in a salt formation by solution mining.

(4) Commission–The Railroad Commission of Texas.

(5) Emergency shutdown valve–A valve that automatically closes to isolate a hydrocarbon storage well from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency.

(6) Fire detector–A device capable of detecting the presence of a flame or the heat from a fire.

(7) Fresh water–Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose. For purposes of this section, brine associated with the creation, operation, and maintenance of an underground hydrocarbon storage facility is not considered fresh water.

(8) Hydrocarbon storage well or storage well–A well used for the injection or withdrawal of liquid or liquified hydrocarbons into or out of an underground hydrocarbon storage facility.

(9) Leak detector–A device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(10) Liquid or liquified hydrocarbons–Crude oil and products, derivatives, or by-products of oil or gas that are:

(A) liquid under standard conditions of temperature and pressure;

(B) liquified under the temperatures and pressures at which they are stored; or

(C) stored under conditions that necessitate the use of displacement fluids to withdraw them from storage.

(11) Operator–The person recognized by the commission as being responsible for the physical operation of an underground hydrocarbon storage facility, or such person's authorized representative.

(12) Owner–The person recognized by the commission as owning all or part of a storage facility, or such person's authorized representative.

(13) Person–A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(14) Pollution–Alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Process or transfer area–Any area at an underground hydrocarbon storage facility where hydrocarbons are physically altered by equipment, including dehydrators, compressors, and pumps, or where hydrocarbons are transferred to or from trucks, rail cars, or pipelines.

(16) Underground hydrocarbon storage facility or storage facility–A facility used for the storage of liquid or liquified hydrocarbons in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit Required.

(1) General. No person may create, operate, or maintain an underground hydrocarbon storage facility without obtaining a permit from the commission. A permit issued by the commission for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission, or until it expires by its terms. The provisions of this section apply to permits for underground hydrocarbon storage facility operations issued prior to the effective date of this section, except as specifically provided in this section.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a commission order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information Required. An application for a permit to create, operate, or maintain an underground hydrocarbon storage facility shall be filed with the commission by the owner or operator, or proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with the applicable state laws and commission regulations.

(2) Permit Amendment. An application for amendment of an existing underground hydrocarbon storage facility permit shall be filed with the commission:

(A) prior to any planned enlargement of a cavern in excess of the permitted cavern capacity by solution mining;

(B) when required in accordance with paragraph (3) of this subsection;

(C) prior to the drilling of any additional hydrocarbon storage wells;

(D) prior to any increase in the volume of liquid or liquified hydrocarbons stored in the cavern in excess of the permitted storage volume; or

(E) any time that conditions at the storage facility deviate materially from conditions specified in the permit or the permit application.

(3) Increase in Capacity. The owner or operator of a storage facility shall notify the commission if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the commission within ten days of the date that the owner or operator knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the commission or its designee may take any one or more of the following actions:

(A) require the permittee to comply with a compliance schedule that lists measures to be taken to ensure that conditions at the storage facility do not pose a danger to life or property, and that no waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water occurs;

(B) require the permittee to file an application to amend the underground hydrocarbon storage facility permit;

(C) modify, cancel, or suspend the permit as provided in subsection (f) of this section; or

(D) take enforcement action.

(4) Related Activities. An application for a permit to dispose of saltwater or other oil and gas waste arising out of or incidental to the creation, operation, or maintenance of an underground hydrocarbon storage facility shall be filed in accordance with applicable commission requirements.

(d) Standards for Underground Storage Zone.

(1) Impermeable Salt Formation. An underground hydrocarbon storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored hydrocarbons, uncontrolled escape of hydrocarbons, pollution of fresh water, and danger to life or property. Natural gas storage operations are not authorized under the provisions of this section. A permit under §3.97 of this title (relating to Underground Storage of Gas in Salt Formations) is required to convert from storage of liquid or liquified hydrocarbons to storage of natural gas in an underground salt formation.

(2) Fresh Water Strata. The applicant must submit with the application a letter from the Texas Natural Resource Conservation Commission stating the depth to which fresh water strata occur at each storage facility.

(e) Notice and Hearing.

(1) Notice Requirements. Such notice shall be given no later than the date the application is mailed to or filed with the commission. The applicant shall give notice of an application for a permit to create, operate, or maintain an underground hydrocarbon storage facility, or to amend an existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) the surface owner of the tract where the storage facility is located or is proposed to be located;

(B) the surface owner of each tract adjoining the tract where the storage facility is located or is proposed to be located;

(C) each oil, gas, or salt leaseholder, other than the applicant, of the tract on which the storage facility is located or is proposed to be located;

(D) each oil, gas, or salt leaseholder of any tract adjoining the tract on which the storage facility is located or is proposed to be located;

(E) the county clerk of the county where the storage facility is located or is proposed to be located; and

(F) if the storage facility is located or proposed to be located within city limits, the city clerk or other appropriate city official.

(2) Publication of Notice. Notice of the application, in a form approved by the commission or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county or counties where the facility is or is proposed to be located. The applicant shall file proof of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by Publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A) -(D) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons shall require an examination of the county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A)-(D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the commission specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing Required for New Permits. A permit application for a new underground hydrocarbon storage facility will be considered for approval only after notice and hearing. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the commission receives no protest from a person notified pursuant to the provisions of paragraph (1) of this subsection, or from any other affected person.

(B) If the commission receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the commission, or of the date of the third publication, whichever is later, or if the commission determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be

approved administratively. The commission will schedule a hearing on the application upon written request of the applicant. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the commission.

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the commission. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) fresh water is likely to be polluted as a result of continued operation of the facility;

(C) there are material violations of the terms and provisions of the permit or commission regulations;

(D) the applicant has misrepresented any material facts during the permit issuance process; or

(E) injected fluids are escaping or are likely to escape from the storage facility.

(2) Imminent dangers. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the commission or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the commission or its designee. Until such transfer is approved by the commission or its designee, the proposed transferee may not conduct any activities otherwise authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file a request for transfer of the permit with the commission. Such request may not be filed unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the commission.

(2) Approval. The commission, or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied commission enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any commission regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the commission, or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the commission, or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the commission or its designee may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the commission or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground hydrocarbon storage facilities, except as specifically provided otherwise. Provided, however, the provisions of this subsection shall not apply to any hydrocarbon storage well that is out of service and disconnected from all surface piping. Notwithstanding the compliance time periods specified in paragraphs (1)-(15) of this subsection, a new storage facility permitted under this section must have all required safety measures and equipment in place before commencement of storage operations at the facility. All storage facilities that are permitted on the effective date of this section must have such safety measures and equipment in place within the period of time specified. Further, until such a facility has all the safety measures and devices required by paragraphs (2)-(7) and (13)-(15) of this subsection in place, the facility must have an attendant on site at all times.

(1) Monitoring of injection and withdrawal operations. All hydrocarbon injection and withdrawal activities shall be continuously monitored by an individual who is trained and experienced in such activities. Any facility that is unattended during injection and withdrawal activities shall have company personnel on call at all times. On-call personnel must be able to reach the facility within 30 minutes from the time a potential problem at the storage facility is noted by the individual monitoring the injection or withdrawal activities.

(2) Emergency shutdown valves.

(A) The requirements of this paragraph do not apply to underground hydrocarbon storage facilities storing only crude oil.

(B) Within two years of the effective date of this section, emergency shutdown valves shall be installed on the product and brine sides of each hydrocarbon storage well and, if required under paragraph (3) of this subsection, on fresh water piping to the well. An operator may request an exception to the compliance date of this subparagraph and propose an alternative workover schedule for approval by the commission or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for hydrocarbon storage. Emergency shutdown valves shall meet the following requirements.

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day.

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic pressure, hydraulic pressure, or power to the valve.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed 7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(C) If an emergency shutdown valve system fails to operate as required, the storage well shall be immediately shut in until repairs are completed, unless:

(i) a back up emergency shutdown valve is in operation on the same piping; or

(ii) an attendant is posted at the well site to provide immediate manual shut in.

(3) Brine and fresh water piping.

(A) Brine piping from the wellhead to the emergency shutdown valve shall be designed for the maximum wellhead pressure on the hydrocarbon side of the well.

(B) Fresh water piping, if any, must either be:

(i) isolated from the wellhead when fresh water is not being injected into the well; or

(ii) designed for the maximum wellhead pressure on the hydrocarbon side of the well and equipped with an emergency shutdown valve.

(4) Overfill detection and automatic shut-in methods.

(A) The requirements of this paragraph shall not apply to an underground hydrocarbon storage facility storing only crude oil.

(B) The requirements of this paragraph shall not apply to a storage well that is out of service and disconnected from surface piping until the well is reconnected for hydrocarbon storage.

(C) Within one year of the effective date of this section, each storage cavern shall have at least one of the following devices or methods in operation. Within two years of the effective date of this section, each storage cavern shall have at least two of the following devices or methods in operation:

(i) a safety casing or annular tubing string filled with a non-volatile fluid and equipped with a pressure sensor switch set to automatically close all emergency shutdown valves in response to a preset pressure;

(ii) a preset pressure sensor switch on the brine piping that is set to automatically close all emergency shutdown valves in response to a preset pressure. This pressure sensor may be used in conjunction with weep hole(s) on a safety string that is concentric with the brine string, or in conjunction with weep hole(s) on the brine string;

(iii) a device on the brine string or brine piping that detects hydrocarbon in the brine by physical or chemical characteristics and that is set to automatically close all emergency shutdown valves in response to hydrocarbon detection;

(iv) an instrument that detects a rapid increase in the brine flow rate indicative of hydrocarbon in the brine and that is set to automatically close all emergency shutdown valves in response to a preset flow rate or differential flow rate; or

(v) an alternate device or method approved by the commission or its designee.

(5) Leak detectors.

(A) The provisions of subparagraphs (B)-(D) of this paragraph shall not apply to underground hydrocarbon storage facilities storing only crude oil.

(B) Within two years of the effective date of this section, a leak detector shall be installed and in operation at the wellhead of each hydrocarbon storage well and at each process and transfer area and each surface vessel area that contains liquid or liquified hydrocarbons. These leak detectors shall be integrated with the warning system required in paragraph (13)(A) of this subsection.

(C) Within two years of the effective date of this section, leak detectors shall be installed and in operation at four locations that are evenly spaced around the perimeter of the brine pit(s).

(D) Leak detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months and, when defective, repaired or replaced within ten days.

(6) Brine system gas vapor control.

(A) The provisions of this paragraph shall not apply to underground hydrocarbon storage facilities storing only crude oil.

(B) Within two years of the effective date of this section, gas vapor control devices shall be installed and in operation at each brine pit system to ignite or capture hydrocarbon vapors that are heavier than air. Control devices shall consist of at least one of the following:

(i) a flare on the brine system upstream from the brine discharge point;

(ii) a hydrocarbon liquid knockout vessel and degasifier;

(iii) pilot lights on the berm of each brine pit; or

(iv) an alternative method designed to provide a reliable, localized point of ignition to prevent the formation of a vapor cloud.

(C) Brine system gas vapor control systems shall be inspected twice each calendar year at intervals not to exceed 7 1/2 months.

(7) Fire detection devices or methods.

(A) Within two years of the effective date of this section, fire detection devices or methods shall be installed and in operation at all process and transfer areas. Fire detection devices or methods specified in this paragraph shall be integrated with the warning system required in paragraph (13)(A) of this subsection. Fire detection shall consist of at least one of the following:

(i) fire detectors;

(ii) heat sensors, including meltdown and fused devices; or

(iii) camera surveillance at facilities that are attended at an on-site control room 24 hours per day.

(B) Fire detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months and, when defective, repaired or replaced within ten days.

(8) Emergency response plan. Within six months of the effective date of this section, each storage facility shall submit to the commission a written emergency response plan. The plan shall address spills and releases, fires, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the storage facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local emergency planning committees and other local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the commission or its designee requires. The plan shall include a plat of the facility that shows the location of wells, processing areas, loading

racks, brine pits, and other significant features at the site. A copy of the plan shall be provided to the local emergency response planning committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(9) Notification of emergency or uncontrolled release.

(A) Emergency response personnel. Each operator shall notify the county sheriff's office, the county emergency management coordinator, and any other appropriate public officials, which are identified in the emergency response plan, of any emergency that could endanger nearby residents or property. Such emergencies include, but are not limited to, an uncontrolled release of hydrocarbons from a storage well, or a leak or fire at any area of the storage facility. The operator shall give notice as soon as practicable following the discovery of the emergency. At the time of the notice, the operator shall report an assessment of the potential threat to the public.

(B) Commission. The operator shall report to the appropriate commission district office as soon as practicable any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall confirm the report in writing within five working days.

(10) Public education. Within six months of the effective date of this section, each facility operator shall establish a continuing educational program to inform residents within a one-mile radius of a hydrocarbon storage facility of emergency notification and evacuation procedures.

(11) Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate commission district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(12) Employee safety training.

(A) Within six months of the effective date of this section, each operator shall prepare and implement a plan to train and test each employee at each underground hydrocarbon storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at an underground hydrocarbon storage facility. Emergency measures, including safety and evacuation measures specific to the contractor's work, shall be explained in the contractor safety meeting.

(13) Warning systems and alarms.

(A) Within two years of the effective date of this section, all leak detectors, fire detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation shall be integrated with warning systems that are audible and visible in the local control room and at any remote control center. The circuitry shall be designed so that failure of a detector or heat sensor, excluding meltdown and fused devices, to function will activate the warning.

(B) A manually operated alarm shall be installed at each attended storage facility within two years of the effective date of this section. The alarm shall be audible in areas of the facility where personnel are normally located.

(14) Wind socks. Within one year of the effective date of this section, at least one wind sock that is visible at any time from any normal work location within the storage facility shall be installed at the facility.

(15) Barriers. Within one year of the effective date of this section, barriers designed to prevent unintended impact by vehicles and equipment shall be placed around above-grade hydrocarbon piping, hydrocarbon process equipment, and surface hydrocarbon storage vessels in areas where vehicles may normally be expected to travel.

(i) Cavern sapacity and configuration.

(1) Crude oil storage. The provisions of this subsection shall not apply to underground hydrocarbon storage facilities where only crude oil is stored.

(2) Before storage operations begin. The capacity and configuration of each hydrocarbon storage cavern (both salt domes and bedded salt) shall be determined by sonar survey before storage operations begin in a newly completed cavern.

(3) Salt domes. The capacity and configuration of each salt dome hydrocarbon storage cavern shall be determined by sonar survey at least once every ten years.

(4) Bedded salt. The configuration of the roof of each hydrocarbon storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the commission or its designee at least once every five years.

(5) Filing results. Sonar and roof monitoring survey results shall be filed with the commission within 30 days after the survey.

(6) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any cavern that has been out of service is returned to service.

(j) Well completion, casing and cementing. Hydrocarbon storage wells shall be cased and the casing strings cemented to prevent fluids from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) New wells.

(A) All hydrocarbon storage wells drilled in salt domes after the effective date of this section shall have at least two casing strings cemented into the salt formation. Sufficient cement shall be used to fill the annular space outside the casing from the casing shoe to the ground surface, or from the casing shoe to a point at least 200 feet above the shoe of the previous casing string.

(B) All hydrocarbon storage wells in bedded salt drilled after the effective date of this section shall have all casing strings cemented with sufficient cement to fill the annular space outside each casing string from the casing shoe to the ground surface.

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the commission within 30 days after a storage well is completed and before solution mining to create the cavern begins.

(k) Operating requirements.

(1) Operating pressure. The operating pressure of each hydrocarbon storage well shall not exceed the permitted maximum operating pressure for that well. The permitted maximum operating pressure is that pressure specified in the commission permit or order, or, if not specified in the permit or order, that pressure stated in the

application or the application for amendment to a permit or order. The maximum operating pressure at the shoe of the lowermost cemented casing shall not exceed 0.8 pounds per square inch per foot of depth.

(2) Volume of hydrocarbons stored. The quantity of hydrocarbons stored in a cavern shall not exceed the permitted maximum storage volume for that cavern. The permitted maximum hydrocarbon storage volume is that volume specified in the commission permit or order, or, if not specified in the permit or order, that volume stated in the application or the application for amendment to a permit or order.

(l) Monitoring requirements.

(1) Pressures. Each hydrocarbon storage well shall be equipped with pressure sensors that continuously monitor and display wellhead pressures on both the product and brine sides of the wellhead at the control room. Each hydrocarbon storage well with a safety string shall be equipped with a pressure sensor and the sensor shall continuously monitor the pressure on the safety string at the wellhead.

(2) Pressure gauges. Each hydrocarbon storage well shall be equipped with gauges on both the brine and hydrocarbon sides of the wellhead.

(3) Volumes injected and withdrawn. The volume of hydrocarbons injected into and withdrawn from each hydrocarbon storage well shall be measured by:

(A) flow meter; or

(B) an alternate method approved by the commission or its designee.

(4) Measurement performance. The accuracy of hydrocarbon volume measurement devices or methods required under paragraph (3) of this subsection shall be verified at least once each year by a person who is not an officer or employee of the owner or operator, or any affiliate of the owner or operator. For purposes of this section, an affiliate is any person or entity that owns, is owned by, or is under common ownership with the owner or the operator. In the case of meters, verification includes witnessing meter calibration or proving conducted by the owner or operator or an affiliate of the owner or operator.

(m) Reporting. The operator shall report maximum wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well in accordance with the instructions on the annual report form prescribed by the commission.

(n) Records retention.

(1) Hydrocarbon injection and withdrawal data. The operator shall retain for five years records of hydrocarbon storage well pressures, interface levels (if any), hydrocarbons injected into and withdrawn from each well, and the hydrocarbon inventory of each cavern.

(2) Equipment data. The operator shall retain for five years documents and records pertaining to the installation, inspection, maintenance, and testing of equipment required under subsections (h) and (l) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within ten days of the date of the test.

(3) Extension during investigation. Any documents or records that contain information pertinent to the resolution of any pending regulatory enforcement proceeding shall be retained beyond the five-year period until the resolution of such proceeding.

(o) Testing.

(1) Integrity tests. Each hydrocarbon storage well shall be tested for integrity prior to being placed into service, at least once every five years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to all such integrity tests.

(A) A hydrocarbon storage well shall be tested for integrity by the nitrogen-brine interface method or an alternative approved by the commission, or its designee.

(B) A test procedure shall be filed with the commission for approval at least ten days before the test date.

(C) The operator shall notify the district office at least five days prior to conducting any integrity test.

(D) A complete record of each integrity test shall be filed in duplicate with the district office within 30 days after testing is completed. The record shall include a chronology of the test, copies of all downhole logs, storage well completion information, pressure readings, volume measurements, temperature logs and readings, and an explanation of the test results that addresses the precision of the test in terms of a calculated leak rate.

(E) Storage well pressures shall be allowed to stabilize to a rate of change of less than 10 psi in 24 hours before the testing period begins.

(2) Alternative monitoring. An operator may request the commission or its designee to approve storage well pressure monitoring as an alternative to integrity testing for hydrocarbon storage wells that are out of storage service. An out-of-service storage well must be tested for integrity according to the procedures specified in paragraph (1) of this subsection before it may be returned to storage service.

(p) Plugging.

(1) Plug on abandonment. A hydrocarbon storage well shall be plugged upon permanent abandonment in a manner approved by the commission or its designee. A proposal for plugging shall be submitted to the commission in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file a notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the commission in Austin within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a hydrocarbon storage well that has been permanently deactivated, an operator may request approval by the commission or its designee of a plan to convert the storage well to a monitor well. A pressure monitoring plan must be submitted to the commission along with the request to convert the storage well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in the Texas Natural Resources Code, Titles 3 and 11, and other statutes administered by the commission.

(2) Certificate of compliance. The certificate of compliance for any underground hydrocarbon storage facility may be revoked in the manner provided in §3.68 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance).

(r) Applicability of other commission rules and orders. The owner or operator of an underground hydrocarbon storage facility is not relieved by this section of compliance with any other requirement of the Oil and Gas Division, or any requirement of the Liquified Petroleum Gas Division or the Transportation/Gas Utilities Division.

§3.96. Underground Storage of Gas in Productive or Depleted Reservoirs.

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

(1) Affected person-A person who, as a result of actions proposed an application for an underground gas storage project permit or an amendment or modification of an existing underground gas storage project permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Commission-The Railroad Commission of Texas.

(3) Fresh water-Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose.

(4) Leak detector-A device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(5) Gas storage or underground gas storage-Storage of natural gas or other gaseous material in a productive or depleted reservoir, exclusive of gas injection for enhanced recovery.

(6) Gas storage project-All surface and subsurface rights, appurtenances, and improvements necessary for conducting underground gas storage operations in a gas storage reservoir.

(7) Gas storage well or storage well-A well used to inject or withdraw natural gas or other gaseous material stored in a productive or depleted reservoir, exclusive of a well used to inject gas for enhanced recovery.

(8) Operator-The person recognized by the commission as being responsible for the physical operation of a gas storage project, or such person's authorized representative.

(9) Person-A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(10) Pollution-Alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(11) Productive or depleted reservoir-A subsurface sand, stratum, or formation that is productive of, or has previously produced, oil, gas, or geothermal resources.

(b) Permit required.

(1) General. No person may operate a gas storage project without obtaining a permit from the commission. A permit issued by the commission for operation of a gas storage project before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission, or until it expires according to its terms. The provisions of this section apply to gas storage projects permitted prior to the effective date of this section, except as otherwise specifically provided.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a commission order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application. An application to operate a gas storage project shall be filed with the commission by the owner or operator or proposed owner or operator. The application shall include the following:

(1) compliance with safety requirements-information demonstrating compliance with the provisions of subsection (i) of this section;

(2) request for reservoir designation-a request for designation of a productive or depleted reservoir as a gas storage reservoir, supported by the following:

(A) information demonstrating that the reservoir is suitable for gas storage; and

(B) information demonstrating the amount of recoverable native gas remaining in the reservoir.

(3) compliance with Standards for Injection Wells-information demonstrating compliance with the provisions of subsections (j), (k), and (l) of this section for each gas injection well. The requirements of this paragraph do not apply to wells used for gas withdrawal only;

(4) water protection letter-a letter from the Texas Natural Resource Conservation Commission stating the depth to which fresh water strata occur in the project area;

(5) public interest-a request that the commission issue an order containing the findings described in Texas Natural Resources Code, §91.174(a) , if such an order is desired by the applicant;

(6) fees-the fees required under §3.76 of this title (relating to Fees, Performance Bonds and Alternate Forms of Financial Security Required to be Filed) for each gas storage well in the storage project that will be used for injection.

(d) Permit amendment. An application for amendment of an existing gas storage project permit shall be filed with the commission as specified in paragraphs (1)-(4) of this subsection.

(1) Expansion of reservoir. An application for permit amendment shall be filed prior to expanding the areal extent of the gas storage reservoir.

(2) Increase in pressure. An application for permit amendment shall be filed prior to increasing the gas storage reservoir pressure above the maximum permitted pressure.

(3) Adding storage wells An application for permit amendment shall be filed prior to adding additional gas storage wells to the project.

(4) Material deviation. An application for permit amendment shall be filed at any time that conditions at the storage project deviate materially from the conditions specified in the permit or permit application. (e) Standards for storage reservoir. A gas storage project shall be operated only in a productive or depleted reservoir in a manner that will prevent waste of oil, gas, or geothermal resources, uncontrolled escape of gases, pollution of fresh water, and danger to life or property.

(f) Notice and hearing.

(1) Notice requirements. By no later than the date the application is mailed to or filed with the commission, the applicant shall give notice of an application for a permit to operate a gas storage project, or to amend an existing storage project permit, by mailing or delivering a copy of the application to:

(A) each mineral interest owner, other than the applicant, of the proposed gas storage reservoir;

(B) each leaseholder of minerals lying above or below the proposed gas storage reservoir;

(C) each leaseholder of minerals offsetting the proposed gas storage reservoir;

(D) each owner or leaseholder of any portion of the surface overlying the proposed gas storage reservoir;

(E) the clerk of the county or counties where the proposed gas storage reservoir is located, and

(F) the city clerk or other appropriate city official where the proposed gas storage reservoir is located within city limits.

(2) Publication of notice. Notice of the application for an original or amended gas storage project permit, in a form approved by the commission or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county where the gas storage project is located. The applicant shall file proof of publication of the notice prior to any hearing on the application or administrative approval.

(3) Notice by publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A)-(D) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons shall require an examination of county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A)-(D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the commission specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. An application for a new gas storage project permit will be considered for approval only after notice and hearing. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(5) Hearing on permit amendments.

(A) If the commission receives a protest regarding an application for amendment of a gas storage project permit from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the commission, or of the date of the third publication, whichever is later, or if the commission or its designee determines that a hearing is in the public interest, then the applicant will be notified that the application for amendment cannot be administratively approved. The commission will schedule a hearing on the application upon request of the applicant. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(B) If the commission receives no protest regarding an application for amendment of a gas storage project permit from a person notified pursuant to paragraph (1) of this subsection or from any other affected person, the application may be approved administratively.

(C) If the application for amendment of a gas storage project permit is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the commission.

(g) Modification, cancellation, or suspension of a permit.

(1) General. A permit may be modified, suspended, or canceled after notice and opportunity for hearing under any of the following circumstances:

(A) a material change in conditions has occurred in the operation of the gas storage project, or there are material deviations from the information originally furnished to the commission. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) fresh water is likely to be polluted as a result of the continued operation of the gas storage project;

(C) there are material violations of the terms and provisions of the permit or of applicable commission orders or regulations;

(D) the applicant has misrepresented material facts during the permit issuance process; or

(E) injected fluids are escaping or are likely to escape from the storage project.

(2) Imminent danger. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the commission or its designee may immediately suspend a permit for underground gas storage until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All underground gas storage operations shall cease upon suspension of a permit under this paragraph.

(h) Transfer of permit. A gas storage project permit may be transferred from one operator to another operator if both of the following requirements are met.

(1) Notice. Written notice of intended permit transfer is submitted to the commission at least 15 days prior to the date the transfer takes place.

(2) No objection. The commission or its designee does not notify the present permit holder of an objection to the transfer prior to the transfer date stated in the notification in paragraph (1) of this subsection.

(i) Safety requirements for gas storage projects.

(1) Leak detectors.

(A) Within two years of the effective date of this section, leak detectors shall be installed and in operation at each gas storage well that is located 100 yards or less from a residence, commercial establishment, church, school, or small, well-defined outside area, and at each structurally enclosed compressor site. For purposes of this section, the term "small, well-defined outside area" means an area such as a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for ten weeks in any 12-month period. The days and weeks need not be consecutive.

(B) Each leak detector required under this paragraph shall be tested twice each calendar year at intervals not to exceed 7 1/2 months and, when defective, repaired or replaced within ten days.

(2) Warning systems. Within two years of the effective date of this section, all leak detectors required in paragraph (1) of this subsection shall be integrated with warning systems that are audible and visible in the control room and at any remote control center. The circuitry shall be designed so that failure of a detector or pressure monitor to function will activate the warning.

(3) Emergency response plan. Within six months of the effective date of this section, each operator shall submit to the commission a safety plan that includes emergency response procedures, provisions to provide security against unauthorized activity, and gas release detection and prevention measures. The plan shall include a description of and be designed for the residential, commercial, and public land use in

the proximity of the gas storage project. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the commission or its designee requires. Copies of the plan shall be available at the storage facility and at the company headquarters.

(4) Safety training Within six months of the effective date of this section, each operator shall prepare and implement a plan to train and test each employee at each gas storage project on operational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The plan shall be incorporated into the plan addressing the requirements of the United States Department of Transportation and Occupational Safety and Health Administration. Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at a gas storage project. Emergency measures specific to the contractor's work shall be explained in the contractor safety meeting

(5) Gas withdrawal wells exempt. Gas storage wells that will be used only for gas withdrawal are exempt from the requirements of paragraphs (1) and (2) of this subsection

(j) Area of review. The applicant shall review the data of public record for wells that penetrate the portion of the gas reservoir that falls within the area proposed to be designated as the gas storage reservoir, and those wells that penetrate the gas reservoir within 1/4 mile of the outer boundary of the proposed gas storage reservoir, to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the gas storage reservoir. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged, and any other unplugged or improperly plugged wells of which the applicant has actual knowledge

(k) Casing. Gas storage wells shall be cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements).

(l) Special equipment.

(1) Tubing and packer. New wells drilled or converted for injection of gases after April 1, 1982, shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 200 feet below the known top of cement behind the long string casing but in no case higher than 150 feet below the base of fresh water.

(2) Pressure observation valve. The wellhead shall be equipped with a pressure observation valve on the tubing and each annulus of the well.

(3) Exceptions. An exception to any provision of this subsection may be granted administratively upon a showing of good cause. If a request for an exception is administratively denied, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(m) Well record. Within 30 days after the completion, conversion, or recompletion of a gas storage well, the operator shall file in duplicate in the district office a complete record of the well on the appropriate form which shows the current completion.

(n) Monitoring and reporting.

(1) Wellhead pressure. The wellhead pressure of each gas storage well shall be continuously recorded, continuously monitored electronically, or controlled by a preset high-low pressure sensor switch.

(2) Pressure reporting. Information regarding wellhead pressures for each gas storage well shall be reported annually to the commission on the prescribed form.

(3) Gas metering. The total volume of gas injected into and withdrawn from the storage project shall be metered through a master meter.

(4) Record retention. All wellhead pressure records, gas metering records, and leak detector test results shall be retained by the operator for at least five years.

(5) Reporting of leaks. The operator shall report to the appropriate district office the discovery of any pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases to the gas storage reservoir. Such report shall be made orally as soon as practicable following the discovery of the leak, and shall be confirmed in writing within five working days.

(6) Gas volume reports. On or before the last day of each month, the operator of each gas storage project that stores gas to supply a public utility shall file with the commission a report showing the volume of gas placed into storage and the volume of gas removed from storage at the project during the preceding month. The report shall also state the total volume of gas stored on the first and last days of the preceding month. This report shall be filed in a format acceptable to the commission.

(o) Integrity testing.

(1) Prior to commencing operations. Before beginning gas injection operations, the operator shall pressure test the long string casing, or the tubing-casing annulus if the well is equipped with tubing set in a packer. Gas storage wells in which injection occurs through casing shall be tested at the maximum authorized injection pressure. Gas storage wells in which injection occurs through tubing and packer shall be tested at no less than 500 psig.

(2) Subsequent tests. Each gas storage well shall be pressure tested in the manner provided in paragraph (1) of this subsection at least once every five years to determine if there are leaks in the casing, tubing, or packer. The commission, or its designee, may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(3) Alternatives to testing. As an alternative to the testing required in paragraph (2) of this subsection, the tubing-casing annulus pressure may be monitored and monitoring results described in the annual monitoring report required by subsection (n) of this section, provided that there is no indication of problems with the well The commission, or its designee, may also grant an exception for other viable alternative tests or surveys.

(4) District office notification. The operator shall notify the appropriate district office at least 48 hours prior to conducting the test required in paragraphs (1) or (2) of this subsection. Testing shall not commence before the end of the 48-hour period unless authorized by the district office.

(5) Test records. A complete record of all tests shall be filed in duplicate with the district office within 30 days after the testing.

(6) Gas withdrawal wells exempt. Gas storage wells that shall be used only for gas withdrawal are excluded from the requirements of this subsection.

(p) Plugging. Gas storage wells shall be plugged upon abandonment in accordance with §3.14 of this title (relating to Plugging).

(q) Penalties.

(1) General. Violations of this section may subject the operator to penalties and remedies specified in the Texas Natural Resources Code, Title 3; Texas Civil Statutes, Article 6053-3; and other statutes administered by the commission.

(2) Certificate of compliance. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.68 of this title (relating to Pipeline Connection and Severance) for violation of this section.

(r) Applicability of other commission rules.

(1) General. The operator of a gas storage project must comply with the requirements of the Transportation/Gas Utilities Division for both pipelines and associated facilities, and other applicable commission rules and orders.

(2) Signs. Each location at which gas storage activities take place, including each gas storage well, shall be identified by a sign that meets the requirements specified in §3.3(a)(1), (2), and (5) of this title (relating to Identification of Properties, Wells, and Tanks). In addition, each sign shall include a teleph

One number where the operator, or a representative of the operator, can be reached in the event of an emergency.

§3.97. Underground Storage of Gas in Salt Formations.

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

(1) Affected person-A person who, as a result of actions proposed in an application for a storage facility permit or amendment or modification of an existing storage facility permit, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Cavern-The storage space created in a salt formation by solution mining.

(3) Commission-The Railroad Commission of Texas.

(4) Emergency shutdown valve-A valve that automatically closes to isolate a gas storage well from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency

(5) Fresh water-Water having bacteriological, physical, and chemical properties that make it suitable and feasible for beneficial use for any lawful purpose. For purposes of this section, brine associated with the creation, operation, and maintenance of an underground gas storage facility is not considered fresh water.

(6) Gas storage well or storage well-A well used for the injection or withdrawal of natural gas or any other gaseous substance into or out of an underground gas storage facility.

(7) Leak detector-A device capable of detecting by chemical or physical means the presence of hydrocarbon vapor or the escape of vapor through a small opening.

(8) Operator-The person recognized by the commission as being responsible for the physical operation of an underground gas storage facility, or such person's authorized representative.

(9) Owner-The person recognized by the commission as owning all or part of an underground gas storage facility, or such person's authorized representative.

(10) Person-A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(11) Pollution-Alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(12) Underground gas storage facility or storage facility-A facility used for the storage of natural gas or any other gaseous substance in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit required.

(1) General. No person may create, operate, or maintain an underground gas storage facility without obtaining a permit from the commission. A permit issued by the commission for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission, or until it expires according to its terms. The provisions of this section apply to permits to conduct gas storage operations issued prior to the effective date of this section, except as otherwise specifically provided.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a commission order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information required. An application for a permit to create, operate, or maintain an underground gas storage facility shall be filed with the commission by the owner or operator, or the proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with applicable state laws and commission regulations.

(2) Permit amendment. An application for amendment of an existing underground gas storage facility permit shall be filed with the commission:

(A) prior to any planned enlargement of a cavern in excess of the permitted cavern capacity by solution mining;

(B) when required in accordance with paragraph (3) of this subsection;

(C) prior to the drilling of any additional storage wells;

(D) prior to an increase in the maximum operating pressure above the permitted pressure; or

(E) any time that conditions at the storage facility deviate materially from the conditions specified in the permit or permit application.

(3) Increase in capacity. The owner or operator of a storage facility shall notify the commission if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the commission within ten days of the date that the owner or operator of the storage facility knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the commission or its designee may take any one or more of the following actions:

(A) require the permittee to comply with a compliance schedule that lists measures to be taken to ensure that conditions at the storage facility do not pose a danger to life or property, and that no waste of gas, uncontrolled escape of gas, or pollution of fresh water occurs;

(B) require the permittee to file an application to amend the underground gas storage facility permit;

(C) modify, cancel, or suspend the permit as provided in subsection (f) of this section; or

(D) take enforcement action.

(d) Standards for underground storage zone.

(1) Impermeable salt formation. An underground gas storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored gases, uncontrolled escape of gases, pollution of fresh water, and danger to life or property.

This section does not authorize storage of liquid or liquified hydrocarbons in an underground salt formation. A permit under §3.95 of this title (relating to Underground Storage of Liquid or Liquified Hydrocarbons in Salt Formations) is required to convert from storage of natural gas to storage of liquid or liquified hydrocarbons in an underground salt formation.

(2) Fresh water strata. The applicant must submit with the application a letter from the Texas Natural Resource Conservation Commission stating the depth to which fresh water strata occur at each storage facility.

(e) Notice and hearing.

(1) Notice Requirements. Such notice shall be given no later than the date the application is mailed to or filed with the commission. The applicant shall give notice of an application for a permit to create, operate, or maintain an underground gas storage facility, or to amend an a existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) the surface owner of the tract where the storage facility is located or is proposed to be located;

(B) the surface owner of each tract adjoining the tract where the storage facility is located or is proposed to be located;

(C) each oil, gas, or salt leaseholder, other than the applicant, of the tract on which the storage facility is located or is proposed to be located;

(D) each oil, gas, or salt leaseholder of any tract adjoining the tract on which the storage facility is located or is proposed to be located;

(E) the county clerk of the county or counties where the storage facility is located or is proposed to be located; and

(F) if the storage facility is located or is proposed to be located within city limits, the city clerk or other appropriate city official.

(2) Publication of Notice. Notice of the application, in a form approved by the commission or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county where the storage facility is or is proposed to be located. The applicant shall file proof of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by Publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A)-(D) of this subsection. The exercise of diligent efforts to ascertain names and addresses of such persons shall require an examination of the county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A)-(D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the commission specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. A permit application for a new underground gas storage facility will be considered for approval only after notice and hearing. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the commission receives no protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person.

(B) If the commission receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the commission, or of the date of the third publication, whichever is later, or if the commission determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be approved administratively. The commission will schedule a hearing on the application upon written request of the applicant. The commission will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the commission.

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the commission.

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the commission. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) pollution of fresh water is likely as a result of continued operation of the storage facility;

(C) there are material violations of the terms and provisions of the permit or commission regulations;

(D) the applicant has misrepresented any material facts during the permit issuance process; or

(E) injected fluids are escaping or are likely to escape from the storage facility.

(2) Imminent danger. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the commission or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the commission, or its designee. Until such transfer is approved by the commission or its designee, the proposed transferee may not conduct any activities authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file with the commission a request for transfer of the permit. Such a request may not be filed

unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the commission.

(2) Approval. The commission, or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied commission enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any commission regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the commission, or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the commission, or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the commission, or its designee, may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the commission or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground gas storage facilities. Provided, however, that the provisions of this subsection shall not apply to any natural gas storage well that is out of service and disconnected from surface piping. Notwithstanding the compliance time periods specified in this subsection, a new underground gas storage facility permitted under this section must have all required safety measures and equipment in place before commencement of storage operations at the facility. All existing storage facilities must have such safety measures and equipment in place within the period of time specified.

(1) Monitoring of injection and withdrawal operations. All gas injection and withdrawal activities shall be continuously monitored by an individual who is experienced and trained in such activities. Any facility that is unattended during injection and withdrawal activities shall have company personnel on call at all times. On-call personnel must be able to reach the facility within 30 minutes from the time a potential problem is noted by the individual monitoring the injection or withdrawal activities.

(2) Emergency shutdown valves.

(A) Within two years of the effective date of this section, emergency shutdown valves shall be installed on the gas injection/withdrawal piping of each storage well and on any brine or fresh water piping that is connected at the wellhead. An operator may request an exception to the compliance date of this subparagraph and propose an alternative workover schedule for approval by the commission, or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for gas storage. Emergency shutdown valves shall meet the following requirements.

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day;

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic or hydraulic pressure on, or power to, the valve or when the maximum operating pressure under subsection (k) of this section is exceeded.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed 7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(B) If an emergency shutdown valve system fails to operate as required, the well shall be immediately shut in until repairs are completed, unless:

(i) a backup emergency shutdown valve is in operation on the same piping; or

(ii) an attendant is posted at the well site to provide immediate manual shut in.

(3) Cavern debrining and solution mining operations.

(A) Within one year of the effective date of this section, each storage well shall have one or more of the following devices or methods in operation during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. Within two years from the effective date of this section, each storage well shall have two or more of the following devices or methods in operation during cavern debrining operations or during solution mining operations that are conducted in a cavern with gas in storage in the same cavern. These devices are designed to prevent the release of gas into the brine and fresh water systems connected to the well during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. Gas release prevention shall consist of at least two of the following devices or methods:

(i) emergency shut down valves equipped with pressure sensor switches set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to preset pressures on the brine and fresh water piping of the well;

(ii) weep hole(s) on the brine return string in conjunction with a preset pressure sensor switch on the brine piping that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset pressure;

(iii) a device on the brine return string or brine piping that detects hydrocarbon in the brine by physical or chemical characteristics and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to hydrocarbon detection;

(iv) an instrument that detects a rapid increase in the brine flow rate indicative of hydrocarbon in the brine and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset flow rate or differential flow rate; or

(v) an alternative device or method approved by the commission.

(B) Solution mining of a cavern may occur while gas is in storage, provided that the injection of fresh water and the injection of gas do not occur simultaneously within the same cavern.

(4) Leak detectors.

(A) Within two years of the effective date of this section, a leak detector shall be installed and in operation at each gas storage well that is 100 yards or less from a residence, commercial establishment, church, school, or small, well-defined outside area, and at each structurally enclosed compressor site. For purposes of this section, the term "small, well-defined outside area" means an area such as a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five

days a week for ten weeks in any 12-month period. The days and weeks need not be consecutive.

(B) Leak detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months, and, when defective, repaired or replaced within ten days. Leak detectors shall be integrated with warning systems required in paragraph (5)(A) of this subsection.

(5) Warning systems and alarms.

(A) Within two years of the effective date of this section, all leak detectors and pressure sensors shall be integrated with warning systems that are audible and visible in the control room and at any remote control center. The circuitry shall be designed so that failure of a leak detector to function will activate the warning.

(B) A manually operated audible alarm shall be installed at each attended storage facility within 180 days of the effective date of this section. The alarm shall be audible in areas of the facility that where personnel are normally located.

(6) Emergency response plan. Within six months of the effective date of this section, each storage facility shall submit to the commission a written emergency response plan. The plan shall address gas releases, fires, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The plan shall also include a plat of the facility showing the locations of wells, processing areas, and other significant features at the facility. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the commission or its designee requires. A copy of the plan shall be provided to the local emergency response committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(7) Notification of emergency or uncontrolled release.

(A) Emergency response personnel. Each operator shall notify the county sheriff's office, the county emergency management coordinator, and any other appropriate public officials, which are identified in the emergency response plan, of any emergency that could endanger nearby residents or property. Such emergencies include, but are not limited to, an uncontrolled release of hydrocarbons from a storage well, or a leak or fire at any area of the storage facility. The operator shall give notice as soon as practicable following the discovery of the emergency. At the time of the notice, the operator shall also report an assessment of the potential threat to the public.

(B) Commission. The operator shall report to the appropriate commission district office as soon as practicable any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall confirm the report in writing within five working days.

(8) Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate commission district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(9) Employee safety training.

(A) Within six months of the effective date of this section, each operator shall prepare and implement a plan to train and test each employee at each underground gas storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at an underground gas storage facility. Emergency measures, including safety and evacuation measures specific to the contractor's work, shall be explained in the contractor safety meeting.

(i) Cavern capacity and configuration.

(1) Before storage operations begin. The capacity and configuration of each gas storage cavern (both salt domes and bedded salt) shall be determined by sonar survey before storage operations begin in a newly completed cavern.

(2) Salt domes. The capacity and configuration of each salt dome gas storage cavern shall be determined by sonar survey before a cavern that has been out of service is returned to service. Provided, however, that a sonar survey shall not be required on a cavern that is being returned to service if a sonar survey of that cavern has been run at any time during the previous ten years.

(3) Bedded salt. The configuration of the roof of each gas storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the commission, or its designee, at least once every five years.

(4) Filing of results. Sonar and roof monitoring survey results shall be filed with the commission within 30 days after the survey.

(5) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any such cavern that has been out of service is returned to service.

(6) Verification. Sonar surveys performed before debrining shall be verified by metering the volume of the displaced brine.

(j) Well completion, casing, and cementing. Gas storage wells shall be cased and the casing strings cemented to prevent gases from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) New wells.

(A) All gas storage wells drilled in salt domes after the effective date of this section shall have at least two casing strings cemented into the salt formation. Sufficient cement shall be used to fill the annular space outside the casing from the casing shoe to the ground surface, or from the casing shoe to a point at least 200 feet above the shoe of the previous casing string.

(B) All gas storage wells drilled in bedded salt after the effective date of this section shall have all casing strings cemented with sufficient cement to fill the annular space outside each casing string from the casing shoe to the ground surface.

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the commission within 30 days after a storage well is completed and before solution mining to create the cavern

begins.

(k) Operating pressure.

(1) Not to exceed maximum. The operating pressure of each gas storage well shall not exceed the permitted maximum operating pressure for that well. The permitted maximum operating pressure is that pressure specified in the commission permit or order, or, if not specified in the permit or order, that pressure stated in the application or the application for amendment to a permit or order.

(2) At casing seat. The maximum operating pressure at the casing seat shall not exceed 0.85 pounds per square inch per foot of depth.

(l) Monitoring requirements.

(1) Gas pressure. Gas pressure on the injection/withdrawal casing or tubing or piping connected thereto shall be equipped with a pressure sensor to continuously monitor the wellhead pressure. Pressure sensors shall be integrated electronically with the warning systems and alarms as required in subsection (5)(A) of this section.

(2) Pressure observation valves The injection/withdrawal casing or tubing shall be equipped with a pressure observation valve and gauge. The wellhead shall be equipped with a pressure observation valve on each casing annulus so that a gauge may be installed for pressure monitoring.

(3) Volumes injected and withdrawn. The volume of gas injected into and withdrawn from each storage well shall be determined:

(A) by volume data from the master meter and records of pressure change for each well; or

(B) by an alternate method approved by the commission.

(4) Meter calibration. Meters that measure the volume of gas into storage and out of storage shall be recalibrated at least once each year.

(m) Reporting.

(1) Monthly reports. On or before the last day of each month, the operator of each facility that stores gas to supply a public utility shall file with the commission a report showing the volume of gas placed into storage, and the volume of gas removed from storage at the storage facility, during the preceding month. The report shall also state the total volume of gas in storage on the first and last days of the preceding month. This report shall be filed in a format acceptable to the commission or its designee.

(2) Annual reports. The operator shall file annually a status\report for each storage well in accordance with the instructions on the form prescribed by the commission.

(n) Records retention.

(1) Gas injection and withdrawal data. The operator shall retain for five years records of storage well pressures, volumes of gases injected and withdrawn, and the inventory of gas in storage.

(2) Equipment data. The operator shall retain for five years documents and records pertaining to the installation, inspection, maintenance, and testing of equipment relating to the safe operation of the storage facility.

(3) Extension during investigation. Any documents or records that contain information pertinent to the resolution of any pending regulatory enforcement proceeding shall be retained beyond the five-year period until the resolution of such proceeding.

(o) Testing.

(1) Integrity tests. Each gas storage well shall be tested for integrity prior to being placed into service, at least once every five years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to such integrity tests:

(A) A test procedure shall be filed with the commission for approval at least ten days before the test date.

(B) The initial test conducted on a well prior to placing it into service shall be performed using the nitrogen-interface test method or an alternative method approved by the commission, or its designee.

(C) The integrity test required to be conducted at least once every five years on a well that has gas in storage may be performed using pressure monitoring, provided:

(i) the wellhead pressure is stabilized such that the effects of ambient temperature on pressure have overtaken the effects of the last injection or withdrawal on pressure;

(ii) a downhole temperature log is run at the beginning and at the end of the test period;

(iii) the test period is a minimum of 72 hours; and

(iv) the net gas volume change for the test period is calculated.

(D) The operator shall notify the district office at least five days prior to conducting any integrity test.

(E) A complete record of each integrity test shall be filed in duplicate with the district office within 30 days after testing is completed. The record shall include a chronology of the test, copies of all downhole logs, storage well completion information, pressure readings, volume measurements, temperature logs and readings, and an explanation of the test results that addresses the precision of the test in terms of a calculated leak rate.

(2) Alternative monitoring. An operator may request the commission or its designee to approve well pressure monitoring as an alternative to integrity testing for storage wells that are out of gas storage service. An out-of-service well shall be tested for integrity by the nitrogen-interface method before it may be returned to storage service.

(p) Plugging.

(1) Plug on abandonment. A gas storage well shall be plugged upon permanent abandonment in a manner approved by the commission or its designee. A proposal for plugging shall be submitted to the commission in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the commission within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a gas storage well that has been permanently deactivated, an operator may request approval by the commission or its designee of a plan to convert the well to a monitor well. A pressure monitoring plan must be submitted to the commission along with the request to convert the well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in Texas Natural Resources Code, Title 3; Texas Civil Statutes, Article 6053-3; and other statutes administered by the commission.

(2) Certificate of compliance. The certificate of compliance for any underground gas storage facility may be revoked in the manner provided in §3.68 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) for violation of this section.

(r) Applicability of other commission rules and orders. The owner or operator of an underground gas storage facility is

not relieved by this section of compliance with any other requirement of the Oil and Gas Division, or with any requirement of the Transportation/Gas Utilities Division.

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 22, 1993.

TRD-9332609 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 1, 1994

Proposal publication date: August 17, 1993

For further information, please call: (512) 463-6977

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• 16 TAC §3.71

The Railroad Commission of Texas (the commission) adopts the repeal of §3.71 (Statewide Rule 74, Underground Hydrocarbon Storage) without changes to the proposed text as published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5462). The repeal of §3.71 shall take effect on January 1, 1994.

Hydrocarbon storage activities currently regulated under §3.71 will be regulated under §3.95 (relating to Underground Storage of Liquid or Liquified Hydrocarbons in Salt Formations) and §3.97 (relating to Underground Storage of Gas in Salt Formations) after the effective date of this repeal. Section §3.95 and §3.97 both provide that permits for underground hydrocarbon storage facilities issued under §3.71 will continue in effect until revoked, modified, or canceled, or until they expire according to their terms.

No comments were received regarding adoption of the repeal.

The repeal of §3.71 is adopted under the authority of the Texas Natural Resources Code, Titles 3 and 11; and Texas Civil Statutes, Article 6053-3.

The repeal of §3.71 implements Texas Natural Resources Code, Title 3 and 11; and Texas Civil Statutes, Article 6053-3.

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 22, 1993.

TRD-9332608 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 1, 1994

Proposal publication date: August 10, 1993

For further information, please call. (512) 463-6977

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TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

• 22 TAC §101.1

The Texas State Board of Dental Examiners adopts an amendment to §101.1, concerning general qualifications, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6717).

Rule 101.1 ensures that applicants for dental licensure receive the highest standards and assures that the people of the State of Texas receive the highest quality of dental care. Also, allows access to dental licensure to as many applicants in order to serve the people of Texas.

Rule 101.1 defines the qualifications for persons desiring to practice dentistry and making application for licensure in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4545 and Article 4544 which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332591 C Thomas Camp
Executive Director
Texas State Board of Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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Chapter 103. Dental Hygiene Licensure

• 22 TAC §103.1

The Texas State Board of Dental Examiners adopts an amendment to §103.1, concerning general qualifications, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6718)

Rule 103.1 ensures that applicants for dental hygiene licensure receive the highest standards and to assure the people of the State of Texas receive the highest quality of dental care

Rule 103.1 defines the criteria for making application to take the dental hygiene licensure examination in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551e which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332590 C. Thomas Camp
Executive Director
Texas State Board of Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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Chapter 116. Dental Laboratories

• 22 TAC §116.11

The Texas State Board of Dental Examiners adopts new §116.11, concerning prosthetic identification, with changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6719).

Rule 116.11 provides saving money and promoting dental health through less loss of dental appliances, and to provide information through identification of persons and bodies.

Rule 116.11 defines that it is the duty of the licensed dentist to insure that all removable prosthetic devices or removable orthodontic appliances contain a permanent identification marking suitable to determine that the prosthetic device or removable orthodontic appliance belongs to that patient.

Dental Laboratory Association of Texas spoke in favor of §116.11 with minor word changes.

The Agency agrees to minor word changes.

The new section is adopted under Texas Civil Statutes, Article 4551f which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§116.11. Prosthetic Identification.

(a) It shall be the duty of the licensed dentist to insure that all removable prosthetic devices or removable orthodontic appliance delivered to a patient under his/her care shall contain a permanent identification marking suitable to determine that the prosthetic device or removable orthodontic appliance belongs to that patient.

(b) A suitable marking shall be defined as the patient's full name and/or social security number. This marking shall be placed in the denture base of the removable prosthetic device or acrylic portion of the removable orthodontic appliance in such a manner as not to compromise the esthetics of the restoration.

(c) The licensed dentist shall install this identification marking or shall request on the prescription to a registered dental laboratory that the laboratory place the identification marking in the removable prosthetic device or removable orthodontic appliance.

(d) Nothing in this rule shall preclude a dental laboratory from charging a fee for this service.

(e) Exemption. This rule shall not apply to any removable prosthetic device or removable orthodontic appliance which contains no acrylic, vinyl or plastic denture base or if said appliance is too small to reasonably accomplish this procedure.

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 23, 1993.

TRD-9332589 C Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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• 22 TAC §116.21

The Texas State Board of Dental Examiners adopts new §116.21, concerning dental laboratory, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6720).

Rule 116.21 provides for public health and safety through proper regulation and to ensure sanitation and quality of dental laboratories.

Rule 116.21 states that a dental laboratory is any place where a person performs, offers to perform, or undertakes to perform any act or service listed in Texas Civil Statutes, Article 4551f.

The Dental Laboratory Association of Texas spoke in favor of §116.21.

The new section is adopted under Texas Civil Statutes, Article 4551f, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations no inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332595 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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• 22 TAC §116.22

The Texas State Board of Dental Examiners adopts new §116.22, concerning in house dental laboratory, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6720).

Rule 116.22 provides for public health and safety through proper regulation and to ensure sanitation and quality of dental laboratories.

Rule 116.22 defines an In-house dental laboratory, in which a dentist licensed to practice in Texas performs, offers to perform or undertakes to perform any act or service listed in Texas Civil Statutes, Article 4551f(1), only for the patients of that dentist.

The Dental Laboratory Association of Texas spoke in favor of §116.22.

The new section is adopted under Texas Civil Statutes, Article 4551f, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332596 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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• 22 TAC §116.23

The Texas State Board of Dental Examiners adopts new §116.23, concerning commercial dental laboratory, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6720).

Rule 116.23 provides for public health and safety through proper regulation and to ensure sanitation and quality of dental laboratories.

Rule 116.23 defines that a commercial laboratory must register with the Texas State Board of Dental Examiners and comply with all relevant rules and statutes.

The Dental Laboratory Association of Texas spoke in favor of §116.23.

The new section is adopted under Texas Civil Statutes, Article 4551f, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332597 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 14, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-6400

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Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §§213.1-213.22

The Board of Nurse Examiners adopts the repeal of §§213.1-213.22, concerning practice and procedure, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6886).

The board is adopting the repeal to replace the existing rules with new, more applicable rules for clarification.

The function of the repeals will be clarification by omission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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 23, 1993.

TRD-9332676 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse Examiners

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 835-8650

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• 22 TAC §§213.1-213.31

The Board of Nurse Examiners adopts new §§213.1-213.31, concerning practice and procedure. §§213.13, 213.15, 213.20, 213.26, and 213.29 are adopted with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6887). §§213.1-213.12, 213.14, 213.16-213.19, 213.21-213.25, 213.27-213.28, and 213.30-213.31 are adopted without changes and will not be republished.

Statutory changes by the 73rd Legislature, specifically House Bill 756 and House Bill 2180, required an extensive revision of the board's practice and procedure rules. In addition, the legislature recodified and renumbered references to Administrative Procedure Act as part of the Government Code.

The rules address the mandatory timeline and disposition of preliminary matters. Provisions are retained for the executive director to require predocketing hearings.

Comment. §213.13(d) appears to allow up to one year to elapse before formal charges are filed or the complaint is dismissed. Recommend 90 to 120 days.

Response. A large amount of the investigative time is due to factors beyond the agency's control.

Comment. §213.14(c). Ten days appears to be too short of time for the RN to respond to a notice of a complaint. Recommend 20 days.

Response. The agency has always granted additional response time when requested.

Comment. §213.15(a). This rule uses the term "written charges" which seems to contradict the term used in the NPA.

Response. The Board concurs with the commenter and amended the rule to substitute "formal charges" in place of "written charges."

Comment. §213.20(f). The rule does not state how the RN will receive any exculpatory information.

Response. Staff recommended the addition of a paragraph to the discovery section, §213.17(c). The board concurred.

Comment. In relation to §213.26, list the sanctions.

Response. This concern will be addressed in the amendment added in relation to the exculpatory information provided by the agency.

Comment. In relation to §213.29, commenter noted it would be a rare situation in which a person would have a conviction for practicing without a license.

Response. The factor of unauthorized practice is consistent with the Board's charge of aiding the enforcement of the Nursing Practice Act (NPA).

Comment. Subsection (c)(2) of §213.29 refers to felonies and misdemeanors involving moral turpitude. Since these are the only convictions that justify the BNE taking action, it seems somewhat redundant to say there are factors the BNE would consider in evaluating a conviction.

Response. Although the agency agrees there is a redundancy, it was intended and no change will be made.

Comment. Subsection (c)(4) and (6) of §213.29 refer to "occupation" and "licensed occupation." Since professional nursing is the occupation involved, it would seem appropriate to refer to "professional nursing."

Response. The agency agrees and any references to "occupations" in §213. 29 will be modified to read "professional nursing practice.

Comment. The NPA and APA give the RN a number of rights relating to the disciplinary process, some of which were added in 1993. Recommendation: Add a new section addressing "Rights of the RN."

Comment. The board agreed and a new section is being proposed.

Commenting on the sections as proposed was the Texas Nurses' Association.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties before it.

§213.13. Complaint Investigation and Disposition.

(a) Complaints shall be made in writing on the agency's complaint form as described in §213.1 of this title (relating to Definitions, "Complaint forms"). Complainants shall be invited to explain their allegations.

(b) A preliminary investigation shall be conducted to determine the identity of the person named or described in the complaint.

(c) Complaints shall be assigned a priority status as follows:

(1) those indicating that credible evidence exists showing a violation of the NPA involving actual deception, fraud, or injury to clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public;

(2) those indicating that credible evidence exists showing a violation of the NPA involving a high probability of potential deception, fraud, or injury to clients or the public;

(3) those indicating that credible evidence exists showing a violation of the NPA involving a potential for deception, fraud or injury to clients or the public;

(4) all other complaints.

(d) Not later than the 30th day after a complaint is received, the staff shall place a timeline for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in timeline must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) staff determines there is insufficient evidence to demonstrate a violation of the NPA, board rules or a board order; or

(2) staff determines there is sufficient evidence to demonstrate a violation of the NPA, board rules or a board order and drafts proposed formal charges.

(e) The staff shall provide summary data of complaints extending beyond the complaint timeline to the executive director.

§213.15. Commencement of Disciplinary Proceedings.

(a) If a complaint is not resolved informally, the staff may commence disciplinary proceedings by filing formal charges.

(b) The charges shall contain the following information:

(1) the name of the respondent;

(2) a statement of the conduct alleged to be in violation of the Act or of a rule, regulation, or order of the Board; and

(3) a reference to the section of the Act or to the board rule, regulation, or order which respondent is alleged to have violated.

(c) When the charges are filed, the executive director shall serve the respondent

with a copy of the charges and with a notice of informal conference or notice of hearing which shall state the date, time and location of the conference or hearing at which the charges will be considered. The notice of informal conference or notice of hearing shall also state that the respondent may file a written answer to the charges meeting the requirement of §213.16 of this title (relating to Respondent's Answer in a Disciplinary Matter). The executive director shall enclose with the charges a copy of the rules governing disciplinary proceedings.

(d) The staff may amend the charges at any time permitted by APA. A copy of any formal amended charges shall be served on the Respondent. The first charges filed shall be entitled "charges," the first amended charges filed shall be entitled "first amended charges," and so forth.

(e) Charges may be resolved by agreement of the parties at any time.

§213.20. Informal Proceedings.

(a) Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, consent order, or default.

(b) In disciplinary matters, the Board shall offer the complainant and the licensee the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on the Board's complaint form, on any notice required by statute or these rules, or otherwise.

(c) Informal proceedings may be conducted in person, by attorney, or by electronic, telephonic, or written communication.

(d) Informal conferences may be conducted at any time by the executive director or designee.

(e) The Board's counsel or assistant attorney general shall participate in informal proceedings.

(f) In an effort to bring about a prompt solution to eligibility and disciplinary matters without a formal hearing, the staff shall provide evidence constituting the basis for its position on eligibility or substantiating a complaint; and shall accept relevant and material information from any party or interested person.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the executive director may deem reasonable and necessary. Said agreed order shall not be final and effective until the Board, or an eligibility and disciplinary committee, votes to accept the proposed disposition.

(h) If eligibility matters are not resolved informally, the applicant may obtain an administrative hearing by filing a petition with the executive director, requesting to be docketed for a hearing at the State Office of Administrative Hearings (SOAH), and paying the appropriate fees.

(i) If disciplinary matters are not resolved informally, or if the Board rejects a proposed disposition, the staff may file charges pursuant to §213. 15 of this title (relating to Commencement of Disciplinary Proceedings), and docket the matter at SOAH.

(j) Predocketing conferences may be conducted by the executive director prior to a hearing before an Administrative Law Judge. The executive director, unilaterally or at the request of any party, may direct the parties, their attorneys or representatives to appear before the executive director at a specified time and place for a conference prior to the hearing for the purpose of:

(1) simplifying the issues;

(2) considering the making of admissions or stipulations of fact or law;

(3) reviewing the procedure governing the hearing;

(4) limiting, where possible, the number of witnesses whose testimony will be repetitious; and,

(5) doing any act that may simplify the proceedings, and disposing of the matters in controversy, including settling all or part of the issues as in dispute pursuant to §213. 20 and §213.21 of this title (relating to Informal Proceedings and Agreed Disposition).

§213.26. Schedule of Sanctions. The sanctions set out in the Nursing Practice Act are adopted and the State Office of Administrative Hearings shall use such sanctions.

§213.29. Licensure of Persons with Criminal Convictions.

(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal convictions to obtain a license as a registered nurse. The Board may refuse to admit persons to its licensure examinations, may refuse to issue a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation imposed pursuant to such conviction.

(b) The practice of nursing involves clients, their families and significant others and the public in diverse settings. The registered nurse practices in an autonomous role with individuals who are physically, emotion- ally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore criminal behavior, whether violent or nonviolent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing.

(c) In considering whether a criminal conviction renders the individual ineligible for licensure as a registered nurse, the Board shall consider:

(1) the knowing or intentional practice of professional nursing without a license issued under the NPA;

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

(4) the relationship of the crime to the purposes for requiring a license to engage in professional nursing practice;

(5) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(6) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of professional nursing practice.

(d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecutional, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(e) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Board the recommenda-

tions of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

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 23, 1993.

TRD-9332677 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 835-8650

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Chapter 215. Nurse Education

• 22 TAC §§215.1-215.20

The Board of Nurse Examiners adopts the repeal of §§215.1-215.20, concerning nurse education, without changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5002).

The board is adopting the repeal to replace the existing rules with new rules for clarification.

The function of the repeals will be clarification by omission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4514, §1 and Article 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties before it. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

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 23, 1993.

TRD-9332679 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse Examiners

Effective date: September 1, 1994

Proposal publication date: August 3, 1993

For further information, please call: (512) 835-8650

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• 22 TAC §§215.1-215.20

The Board of Nurse Examiners adopts new §§215.1-215.20 concerning education. Sections 215.2, 215.3, 215.8, and 215.13 are adopted with changes to the proposed text as published in the August 3, 1993 issue of the *Texas Register* (18 TexReg 5003). Sections 215.1, 215.4-215.7, 215.9-215.12 and 215.14-215.20 are adopted without changes and will not republished.

The new rules are being adopted as a result of recommendations made by an educational rules task force appointed by the Board to review and recommend changes in the education rules. The task force received input from the board, deans and directors of nursing programs, and the Texas Higher Education Coordinating Board. The rules clarify, streamline, and simplify procedures in relation to nursing program administration.

The rules will become effective on September 1, 1994; implementation of §215.8(e) to be phased in over the 1994-1995 and 1995-1996 academic years, with final implementation of the 1:10 ratio by all programs no later than September 1, 1996. This proposed implementation plan permits educational institutions the opportunity to decrease the ratio of faculty to students at a rate that meets the needs of their communities. The board believes that lowering the faculty to student ratio will increase faculty to student contact thus increasing client safety.

The agency held a public hearing on Tuesday, November 16, 1993, regarding the proposed rules. Six persons signed up to testify, including one faculty person, a representative from the Texas Nurses Association, two nurse administrators, a hospital administrator representing the Texas Hospital Association, and a representaiive from the Texas Association of Community Colleges. The primary area of concern for both the oral and written comments was in regard to the proposed faculty student ratio of 1:10. Commenters cited shortages of nurses in rural areas, a possible bottle-necking of admissions, lack of faculty and the potential increase in the cost of nursing education.

Response. The primary concerns that the task force discussed in recommending the change in faculty/student ratio were patient safety, increased technology in health care delivery, increased complexity of patient care and medications and decreased availability of clinical experiences. As a result of cost containment measures and downsizing, nursing care in long-term care facilities and rehabilitation is increasingly complex.

Comment. One dean questioned whether it is realistic for a new dean to have a minimum of three years teaching experience in the type of program being administered; another suggested that a length be established for a waiver of the dean/director who does not meet the requirements for faculty.

Response. The rules include a waiver process for deans/directors who do not have the required teaching experience. These will be handled on a case by case basis.

Comment. One dean felt that allowing Associate Degree and Diploma prepared nurses to serve as preceptors was not educationally sound.

Response. The focus of the rule was to require clinical preceptors to be clinically competent in their designed area of practice and to meet the needs of rural areas.

Comment. One group requested that the rule concerning teaching assistant qualifications be changed from "BSN required" to "BSN preferred" due to their concern about the availability of BSNs in rural areas.

Response. "BSN required" for a teaching assistant is necessary because of the broad educational background it provides.

Comment. One dean was opposed to the use of a teaching assistant with faculty ratio (2:15) which was felt would increase the number of learners, including the teaching assistant, for whom the faculty would be responsible.

Response. The task force looked at the use of a teaching assistant as an innovative way to deal with the shortage of faculty and use the expertise of clinically competent baccalaureate prepared nurses, thus giving the faculty more flexibility in determining the size of their clinical group.

Comment. Several commenters requested clarification for the use of clinical preceptors after a student has received instruction in all basic areas of nursing.

Response. The BNE is amending that section to reflect the intent of the task force to expand the use of clinical preceptors to enhance student learning experiences and eliminate previously restrictive rule language.

Comment. One dean wrote in opposition to the faculty: student ratio using clinical preceptors.

Response. The BNE is amending this section to clarify the responsibility of the clinical preceptor and reflect the intent of the task force.

Comment. Two deans wrote regarding requirements for minor curriculum changes; one requested eliminating the requirement for approval stating that the process interfered with faculty's ability to make changes in curricular content based on changes in clinical settings.

Response. The BNE is amending this section to simplify and clarify the approval versus reporting of curriculum changes.

Commenting in favor of the new sections were the following: Texas Nurses' Association; Texas League for Nursing; Texas Organization for Associate Degree Nursing; Texas Organization for Baccalaureate and Graduate Nursing Education; and Texas Student Nurses Association.

There was no one opposed to the adoption of the entire rules; most were in opposition to §215.8(e) regarding the ratio of faculty to students. Among those who voiced concerns were the Texas Hospital Association, hospital and nursing administrators, and Texas Public Community Junior College Association.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, and Article 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties before it. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

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

Accredited nursing program–A school, department, or division of nursing accredited/approved by a nursing board or other licensing authority which has jurisdiction over accreditation/approval of nursing programs.

Acting director–A registered nurse who is temporarily responsible for the administration of the nursing program and meets the requirements as specified for the director.

Advanced placement–Granting of credit for part of the required curriculum.

Affiliate agency–An agency, other than the governing institution, which provides learning experiences for students.

Articulation–A planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

Baccalaureate degree program for registered nurses–A program leading to a bachelor's degree in nursing which admits only registered nurses.

Basic nursing program–An educational unit whose purpose is to prepare practitioners of nursing and whose graduates are eligible to write the National Council Licensure Examination for Registered Nurses.

(A) Associate degree program–A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree program–A program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) Master's degree program–A program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) Diploma program–A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

Board–The Board of Nurse Examiners for the State of Texas.

Board survey visit–An on-site visit of a nursing program by a board representative for the purpose of evaluating the program of learning and gathering data to support whether the program is meeting the board's requirements as specified in §§215.2-215.19 of this title (relating to Definitions; New Programs; Accreditation; Pass Rate of Graduates on the National Council Licensure Examination for Registered Nurses; Administration and Organization; Faculty Qualifications; Faculty Policies; Faculty Organization; Faculty Development and Evaluation; Mission and Goals (Philosophy and Outcomes); Curriculum; Curriculum Changes; Extended Campus/Extension Site; Students; Educational Resources and Facilities; Affiliate Agencies; Records and Reports; and Total Program Evaluation).

Clinical laboratory experiences–Faculty-planned and guided learning activities designed to assist students to meet the course objectives and to apply nursing knowledge and skills in the direct care of clients. This includes associated clinical conferences and planned learning activities in skills laboratories, acute care facilities, extended care facilities, and other community resources.

Clinical preceptor–A registered nurse or other licensed health professional, not paid as a faculty member by the governing institution, who directly supervises a student clinical laboratory experience, and who meets the minimum requirements in 215.7(h). A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the preceptor, affiliate agency and the educational institution.

Clinical preceptorship–An organized system of clinical laboratory experience which allows a nursing student to be paired with a clinical preceptor for the purpose of attaining specific learning objectives.

Coordinator–A qualified faculty who is responsible for the administration of an extended campus.

Course–A specific set of learning experiences organized to meet a group of objectives within a stated time period. A course involves both organized subject matter and related activities In a clinical nursing course, the didactic content shall be taught either prior to or concurrent with the related clinical laboratory experiences.

Curriculum–Content and teaching-learning activities designed to achieve specific educational objectives.

Curriculum change (major)–A significant change in content and teaching/learning activities which result in overall curriculum change requiring board approval prior to implementation.

Curriculum change (minor)–A limited revision in content or teaching/learning activities affecting curriculum which requires board staff approval or notification prior to implementation.

Dean/Director–A registered nurse who is responsible for administration of a basic nursing program or a baccalaureate degree program for registered nurses and who meets the requirements as stated in §215.6(e) and (f) of this title (relating to Administration and Organization) and §215.7 (c) and (f) of this title (relating to Faculty Qualifications).

Examination year–The time period from September 1 of one year to August 31 of the following year.

Extended campus–Any site external to the main campus of the governing institution where all or a majority of the nursing program is offered on an ongoing basis.

Extension site–Any approved site external to the main campus where individual nursing courses may be offered, but not the full curriculum.

Faculty currency/clinical credibility–Maintenance of up-to- date professional practice as demonstrated by certification and/or through participation in: continuing education, professional conferences, advanced academic courses, workshops, research projects, seminars, publications, clinical practice, and/or extended orientation.

Faculty member–An individual employed to teach in the nursing program who meets the requirements as stated in §215.7 of this title (relating to Faculty Qualifications).

Faculty petition–A request submitted to the board petitioning to employ an individual who does not meet the requirements stated in §215.7 of this title relating to Faculty qualifications).

Faculty workload–The sum of all activities which require the time of the faculty member and which are related, directly or indirectly, to his/her professional duties and responsibilities.

Governing institution–A college, university, or hospital responsible for the administration and operation of an accredited nursing program.

Health care professional–An individual who holds at least a bachelor's degree in the health care field, including, but not limited to: respiratory, physical, occupational therapists; dieticians, pharmacists, physicians, social workers and psychologists.

Mission–The purpose and overall role of the educational unit in nursing which are consistent with those of the governing institution.

Mobility–The ability to advance without educational barriers into a higher level nursing program.

Pass rate–The percentage of first

time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses.

Philosophy-The underlying belief system of the educational nursing unit.

Program goals/outcomes-The outputs or results of the program or activities of the provider.

Shall and must-Mandatory requirements.

Should-A recommendation.

Teaching assistant-A registered nurse licensed in Texas, who is employed to assist and work under the supervision of a Master's or Doctorally prepared faculty member and who meets the minimum requirements in §215.7(i) of this title (relating to Faculty Qualifications).

Waivered faculty-An individual who has a baccalaureate degree in nursing, is currently licensed in Texas, and has received a waiver from the board to be employed as a faculty member for a limited period of time.

§215.3. New Programs.

(a) Phase I: development of a new program.

(1) An institution wishing to establish a nursing program shall advise the board of its intent in writing 12-18 months prior to the anticipated start of the program.

(2) The institution shall submit one copy of a proposal to the board's office for staff review. The proposal shall have been completed under the direction/consultation of a registered nurse who holds at least a master's degree in nursing and who has teaching/administrative experience in the type of program being proposed.

(3) The proposal shall include the following information:

(A) mission of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program;

(D) documentation of present and anticipated needs in the region to be served for the type of program being proposed with rationale for why the program should be established;

(E) potential effect on other nursing programs in the area;

(F) organizational structure of the educational institution showing the relationship of the proposed nursing program within the organization;

(G) tentative timetable;

(H) tentative budget plans including evidence of financial resources adequate for planning, implementing, and continuing the nursing program;

(I) source of potential qualified director and faculty;

(J) source of anticipated student population;

(K) description of support staff for the proposed program;

(L) description of physical facilities; and

(M) description of available clinical resources, including the number and size of health occupation(s) programs utilizing the clinical resources and letters of support from affiliate agencies.

(4) Following staff review of the proposal and site visit, the institution will be notified as to whether or not further clarification and/or revisions are necessary.

(5) At least three weeks prior to a regularly scheduled board meeting, the institution shall submit one copy of the final proposal to the board's office and one copy to each board member. A public hearing will be scheduled.

(6) Following the site visit and public hearing, the proposal will be reviewed at a regularly scheduled board meeting. The board may approve the proposal, may defer action on the proposal, or may deny further consideration of the proposal.

(b) Phase II: planning stage.

(1) Following approval, a minimum of twelve months of planning is needed for development of the new program. Documentation that the program has been approved by the Texas Higher Education Coordinating board shall be provided to the board when received.

(2) The following timetable is required.

(A) At least twelve months prior to anticipated admission of students, appoint a qualified director and employ secretarial staff.

(B) At least nine months prior to anticipated admission of students, appoint qualified faculty, adequate in number to develop the curriculum and for the first year of operation.

(C) The director and faculty shall plan the program of learning.

(c) Phase III: application for initial accreditation.

(1) Initial accreditation must be granted prior to admission of students.

(2) At least six months prior to the anticipated admission of students, the director of the nursing program shall submit one copy of the application for initial accreditation to the board's office for staff review.

(3) Following staff review and a site visit, the director will be instructed as to whether or not further clarification and/or revisions of the application are necessary.

(4) At least three weeks prior to a regularly scheduled board meeting, the director shall submit one copy of the final application to the board's office and one copy to each board member.

(5) The board shall review the application and supporting evidence at a regularly scheduled meeting. If the program is based upon sound educational principles and is in compliance with the board's requirements as specified in §§215.2-215.19 of this title (relating to Definitions; New Programs; Accreditation Pass Rate of Graduates on the National Council Licensure Examination for Registered Nurses; Administration and Organization; Faculty Qualifications; Faculty Policies; Faculty Organization; Faculty Development and Evaluation; Mission and Goals (Philosophy and Outcomes); Curriculum; Curriculum Changes; Extended Campus/Extension Site; Students; Educational Resources and facilities; Affiliate Agencies: Records and Reports; and Total Program Evaluation), then initial accreditation may be granted.

(6) Site visits shall be conducted by board representatives to survey the nursing educational program at least annually until full accreditation is granted.

§215.8. Faculty Policies.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution. Policies which differ from those of the governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(b) Policies concerning workload for faculty and the dean/director shall be in writing.

(1) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.

(2) If the director is required to teach, he or she shall carry only a minimum teaching load.

(c) The number of faculty members shall be determined by such factors as:

(1) the number and level of students enrolled;

(2) the curriculum plan;

(3) activities and responsibilities required of faculty;

(4) the number and geographic locations of affiliate agencies; and

(5) the acuity level of clients in affiliate agencies.

(d) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(e) The ratio of faculty to students in the direct care of clients shall not exceed one to ten students per instructor. The appropriate ratio shall be determined by the dean/director in consultation with faculty and affiliate agencies. Factors to be considered should include:

(1) student's level of knowledge/skill;

(2) course objectives;

(3) acuity level of patients; and

(4) the affiliate agency's:

(A) goals and priorities;

(B) client census;

(C) staffing ratio;

(D) qualifications and longevity of nursing personnel;

(E) percentage of temporary personnel staffing;

(F) physical layout of facility, etc.; and

(G) current usage by health science students.

(f) Faculty shall be responsible for the clinical learning activities of students.

(1) Faculty shall supervise students in direct care of clients in only one facility at a time.

(2) Faculty may assign alternative learning experiences or observations to students in more than one setting at a time where students do not provide direct care to clients.

(g) Teaching assistants may be used to assist qualified faculty members with student clinical instruction.

(1) Teaching assistants shall be under the direct supervision of an experienced qualified faculty member.

(2) If a faculty member is supported by a teaching assistant, the ratio of faculty to students shall not exceed 2:15 (Faculty + Teaching Assistant: Student). The same factors identified in subsection (e) of this section should be used to determine the appropriate faculty with teaching assistant to student ratio.

(3) When acting as a teaching assistant, the RN shall not be responsible for other staff duties, such as supervising other personnel and/or direct patient care.

(h) Clinical preceptorships may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after students have received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.

(1) Criteria for selecting clinical preceptors shall be developed in writing.

(2) When clinical preceptors are used, written agreements between affiliate agency, clinical preceptor and nursing program shall delineate the functions and responsibilities of the parties involved.

(3) Written clinical objectives shall be specified and shared with the clinical preceptor prior to or concurrent with the experience.

(4) The designated faculty member shall be responsible for the student's learning experiences and shall meet periodically with the clinical preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) The designated faculty member shall be readily available when students are in the clinical area.

(6) Faculty, in courses which use clinical preceptors for a portion of clinical learning experiences, shall have no more than 12 students in a clinical group. The preceptor shall be responsible for the clinical learning experiences of no more than two students.

(7) Faculty which use clinical preceptors as the sole method of student instruction and supervision in clinical settings shall be responsible to coordinate the preceptorships for no more than 24 students.

(i) Teaching activities shall be coordinated among full-time, part-time faculty, clinical preceptors, and teaching assistants.

§215.13. Curriculum Changes.

(a) A nursing program wishing to implement curriculum changes or alterations in course offerings shall contact the board's staff and request the guidelines for developing the proposal.

(1) Proposals for major curriculum changes must be submitted to board staff at least six weeks prior to the proposed implementation date using guidelines prepared by the board.

(2) Proposals for minor curriculum changes must be submitted to board staff at least six weeks prior to implementation using guidelines prepared by the board.

(b) Major curriculum changes that require board staff approval shall include but are not limited to:

(1) reorganization of the entire curriculum;

(2) increase or decrease in length of program;

(3) major changes in program mission and goals (philosophy and outcomes), which alter the present program;

(4) significant course content changes and/or new required nursing courses added to the curriculum; and

(5) increase or decrease in number of theory and clinical hours of more than 10%.

(c) Minor changes that must be submitted to the board for staff approval include but are not limited to:

(1) transition or bridging courses for mobility options;

(2) changes in non-nursing courses which are prerequisite or corequisite to nursing courses; and

(3) increase or decrease in number of theory and clinical hours, not to exceed 10%.

(d) Minor changes such as editorial updates of mission and goals or redistribution of course content should be reported to the board annually.

(e) Documentation of Coordinating Board approval must be provided prior to implementation of curriculum changes, as appropriate.

(f) Following staff review, the director will be notified as to whether or not further clarification and/or revisions of the proposal are necessary.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332680 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse Examiners

Effective date: September 1, 1994

Proposal publication date: August 3, 1993

For further information, please call: (512) 835-8650

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Chapter 222. Advanced Nurse Practitioners Carrying Out Prescription Drug Orders

• 22 TAC §222.3

The Board of Nurse Examiners adopts an amendment to §222.3, concerning functions, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6892).

House Bill 756 passed during the 73rd Legislative Session amended the definition of professional nursing which applies to ANP's approved by the Board for limited prescriptive authority as authorized by House Bill 18, Omnibus Rural Health Rescue Act of 1989.

The purpose of this amendment will clarify the intent that only advanced nurse practitioners approved by the Board for limited prescriptive authority may request, receive, sign for, and distribute professional drug samples.

Three identical comments were received requesting additional language be added emphasizing the requirement for protocols to dispense professional samples.

The following were letters of comment neither for nor against: Texas Medical Association; Texas Osteopathic Medical Association; and Texas Academy of Family Physicians.

The staff responded in writing to these organizations clarifying that the reference to subsection (a) addresses the need for protocols. No further input was received.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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 23, 1993.

TRD-9332674 Louise Waddill, Ph D., R.N
Executive Director
Texas Board of Nurse Examiners

Effective date. December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call. (512) 835-8650

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Chapter 223. Fees

• 22 TAC §223.1

The Board of Nurse Examiners adopts an amendment to §223.1, concerning fees, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6892).

House Bill 756 and House 2180 passed during the 73rd Legislative Session provide for the issuance of a temporary license; combines the endorsement and temporary license fee; negates the temporary permit for endorsement applicants and authorized the Board to issue a RN Retiree license. Modifications were also made to the NPA regarding the hearing procedures. The Board is adopting a fee change to conform to these changes.

Nurses seeking licensure by endorsement will pay $75 rather than $60. Potential candidates for nursing licensure with criminal backgrounds or who have a history of substance abuse will be required to pay a $100 fee for a declaratory order of eligibility; if a hearing is requested before the ALJ, a docketing fee is required. Inactive RNs 65 years old and older may request an RN Retired Certificate.

A concern was expressed that the docketing fee in nondisciplinary matters was set at a rate that may have an undue chilling effect on persons exercising their right to a hearing. A recommendation was made that the Board should explore ways in which to make the declaratory order process less cumbersome.

The Texas Nurses Association was not opposed to the amendment, merely voiced concerns.

The agency agrees that continued research needs to be done to consider options for the declaratory order problem in cooperation with education.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1 which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it

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 23, 1993.

TRD-9332675 Louise Waddill, Ph D , R N
Executive Director
Texas Board of Nurse Examiners

Effective date: December 15, 1993

Proposal publication date. October 8, 1993

For further information, please call (512) 835-8650

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Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

General Information

• 22 TAC §511.11

The Texas State Board of Public Accountancy adopts new §511.11, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6877).

The new section allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the new section will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

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 12, 1993

TRD-9232686 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date December 15, 1993

Proposal publication date October 8, 1993

For further information, please call (512) 505-7066

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Certification by Examination

• 22 TAC §511.28

The Texas State Board of Public Accountancy adopts an amendment to §511 28, concerning Certification as a CPA, with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6877) The changes are changing "UCPA" to "UCPAE" and deleting "examination" in subsection (a) and (a)(2)

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

§511.28. Examination Fee.

(a) An applicant who submits an initial application for the UCPAE must pay the requisite fee as follows:

(1) (No change.)

(2) examination fee set by board rule for each subject on the UCPAE.

(b) (No change.)

(c) An applicant who submits an application for the reciprocal equivalency examination, must pay the requisite fee as set by the board and identified in §521.2 of this title (relating to Examination Fees) of the board's rules.

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 12, 1993.

TRD-9332687 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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CPA Examination

• 22 TAC §511.60

The Texas State Board of Public Accountancy adopts new §511.60, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6877).

The new rule allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the new rule will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the new rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

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 12, 1993.

TRD-9232688 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.69

The Texas State Board of Public Accountancy adopts an amendment to §511. 69, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6878).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

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 12, 1993.

TRD-9232689 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.73

The Texas State Board of Public Accountancy adopts an amendment to §511. 73, concerning Certification as a CPA, with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6878). The changes are changing the caption form "Caqex" to "CAQEX."

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

§511.73. CAQEX. Uniform Examination-Subjects. The board shall utilize the Canadian Chartered Accountant Uniform CPA Qualification Examination (CAQEX) available from the American Institute of Certified Public Accountants covering the following subjects:

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

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

Issued in Austin, Texas, on November 12, 1993.

TRD-9332690 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.76

The Texas State Board of Public Accountancy adopts an amendment to §511. 76 concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6878).

The amendment allows the board to recognize and use the Canadian Chartered Ac-

countant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

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 12, 1993.

TRD-9232691 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.78

The Texas State Board of Public Accountancy adopts an amendment to §511. 78, concerning Certification as a CPA, with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6879). The changes, all of which are in subsection (a), are capitalization of "Examination," changing "UCPA" to "UCPAE" and moving "UCPAE" to follow "Examination."

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

§511.78. Inspection of Questions and Answers.

(a) Within 90 days following the release of the Uniform Certified Public Accountant Examination (UCPAE) result, any candidate who sat for that examination may inspect a copy of the questions and answers thereto made by him or her on the examination, with the grade clearly shown, together with a copy of the solutions to such questions. All requests for inspections of copies of questions and answers shall be made at the board office during regular office hours, and copies of the examination or answers may not be made.

(b) The reciprocity equivalency exam is not subject to disclosure, inspection or review.

(c) Any exam prepared and graded by the AICPA as defined in §511.11 of this title (relating to Definitions) after November 1995, may not be released to any individual or organization.

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 23, 1993.

TRD-9332692 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511. 80, concerning Certification as a CPA, with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6879). The changes are capitalization of "Examination," changing "UCPA" to "UCPAE", and moving "UCPAE" to follow "Examination" in subsection (a), and changing "UCPA" to "UCPAE" in subsections (c) and (d) and deleting "accounting practice" in subsection (a)(3).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law; and §15, which requires a grade of at least 75 on each subject of the examination.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

§511.80. Granting of Credit.

(a) The board shall grant conditional credit to a candidate for the satisfactory completion of the written Uniform Certified Public Accountant Examination (UCPAE) under the following conditions:

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

(3) the candidate earns a grade of 75 or higher on the subject of the examination; and

(4) (No change.)

(b) The board shall grant credit after the establishment of conditional credit to a candidate for the satisfactory completion of any subject under the following conditions;

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

(c) A candidate receiving and retaining credit for every subject on the (UCPAE), subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a certified public accountant.

(d) A candidate who has received and retained credit for any or all subjects on (UCPAE) may transfer such credits to another licensing jurisdiction if the candidate pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

(e) A candidate who earns a grade of 75 or higher on a reciprocal equivalency examination shall be considered by the board to have completed the examination and is eligible to receive a certificate as a certified public accountant subject to completing the work experience requirements.

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 12, 1993

TRD-9232693 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date. October 8, 1993

For further information, please call: (512) 505-7066

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Examination Investigation and Board Action

• 22 TAC §511.102

The Texas State Board of Public Accoun-

tancy adopts an amendment to §511. 102, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6879).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1 , §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross references to statutes: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9332719 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.103

The Texas State Board of Public Accountancy adopts an amendment to §511. 103, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6880).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross references to statutes: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9332720 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.104

The Texas State Board of Public Accountancy adopts an amendment to §511. 104, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6880).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1 , §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross references to statutes: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9332721 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.105

The Texas State Board of Public Accountancy adopts an amendment to §511. 105, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6881).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9232722 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.106

The Texas State Board of Public Accountancy adopts an amendment to §511. 106, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6881).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9232723 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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Certification by Reciprocity

• 22 TAC §511.140

The Texas State Board of Public Accountancy adopts an amendment to §511. 140, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6882).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9232724 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.141

The Texas State Board of Public Accountancy adopts an amendment to §511. 141, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6882).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9332725 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.142

The Texas State Board of Public Accountancy adopts an amendment to §511. 142, concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6883).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §13 and §15.

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 23, 1993.

TRD-9232726 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date. October 8, 1993

For further information, please call. (512) 505-7066

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Certification by Reciprocity

• 22 TAC §511.143

The Texas State Board of Public Accountancy adopts the repeal of §511. 143, concerning Certification as a CPA without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6883).

The amendment allows the board to enforce other more pertinent rules.

The results of enforcing the amendment will be that the board will not be enforcing an obsolete rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §12

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 12, 1993.

TRD-9232694 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 15, 1993

Proposal publication date. October 8, 1993

For further information, please call: (512) 505-7066

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Chapter 521. Fee Schedule

• 22 TAC §521.2

The Texas State Board of Public Accountancy adopts an amendment to §521 2 concerning Certification as a CPA, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6883).

The amendment allows the board to recognize and use the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX) which was given nationally for the first time in November 1993.

The results of enforcing the amendment will be that the board will be able to use CAQEX as a means of evaluating licensure applicants

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15.

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 12, 1993.

TRD-9232699 William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: December 15, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 505-7066

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Part XXV. Structural Pest Control Board

Chapter 593. Licensing

• 22 TAC §§593.1, 593.7, 593.21

The Texas Structural Pest Control Board adopts amendments to §§593.1, 593.7, and 593.21 without changes tot he proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6598).

The amendments implement new authority to license noncommercial technicians.

The amendments establish identical training and licensing requirements for noncommercial technicians to those existing for commercial.

The Texas Vegetation Management Association generally supported change; however, they requested a longer apprenticeship period.

The Texas Structural Pest Control Board will be addressing the apprenticeship period for all technicians in a future rule change.

The amendments are adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons engaged in structural pest control.

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 23, 1993.

TRD-9332673 Benny M Mathis, Jr.
Executive Director
Structural Pest Control Board

Effective date: December 15, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 835-4066

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• 22 TAC §593.13

The Texas Structural Pest Control Board adopts the repeal of §593.13 concerning noncommercial apprenticeship, without changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6283).

The repeal removes old noncommercial apprentice license requirements which are being replaced by noncommercial technician licenses.

The repeal will remove old requirements which are being replaced.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons engaged in structural pest control.

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 23, 1993.

TRD-9332672 Benny M. Mathis, Jr
Executive Director
Structural Pest Control Board

Effective date: December 15, 1993

Proposal publication date: September 17, 1993

For further information, please call: (512) 835-4066

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Chapter 595. Compliance and Enforcement

• 22 TAC §595.2, §595.3

The Texas Structural Pest Control Board adopts amendments to §595.2 and §595.3 concerning compliance and enforcement, without changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6600).

The amendments implement new authority to license noncommercial technicians.

The amendments establish identical training and licensing requirements for noncommercial technicians to those existing for commercial.

Texas Vegetation Management Association generally supported change, however, they requested a longer apprenticeship period.

The Texas Structural Pest Control Board will be addressing the apprenticeship period for all technicians in a future rule change.

The amendments are adopted under Texas Civil Statutes, Article 135b-6, which provide with the authority to the Texas Structural Pest Control Board license and regulate persons engaged in structural pest control.

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 23, 1993.

TRD-9332670 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board

Effective date: December 15, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 835-4066

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Chapter 597. Unlawful Acts and Grounds for Revocation

• 22 TAC §597.1

The Texas Structural Pest Control Board adopts an amendment to §597.1 concerning unlawful acts and grounds for revocation, without changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6600).

The amendment is necessary because changes in the licensing status of noncommercial employees have expanded the responsibilities of certified noncommercial applicators.

The amendments make noncommercial applicators responsible for regulatory violations involving licensing of their technicians.

The Texas Vegetation Management Association generally supported change; however, they requested longer apprenticeship period.

The Texas Structural Pest Control Board will be addressing the apprenticeship period for all technicians in a future rule change.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provides the Texas Structural Pest Control Board with the authority to license and regulate persons engaged in structural pest control.

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 23, 1993.

TRD-9332669 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board

Effective date: December 15, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 835-4066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

- **25 TAC §§29.1104, 29.1126, 29.1127**

On behalf of the State Medicaid Director, the Texas Department of Health submits adopted amendments to §§29.1104, 29.1126 and 29.1127, concerning the Texas Medicaid Reimbursement Methodology, in-home total parenteral hyperalimentation services and in-home respiratory therapy services for ventilator-dependent persons, with changes to the proposed text as published in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5315).

These amendments are required to comply with the Governor's Health Care Cost Containment Initiative in the fiscal year 1994-fiscal year 1995 Appropriations "Act. This initiative states that appropriations may not be used to increase Medicaid reimbursement rates for outpatient services until the specified cost savings are realized.

These amendments postpone any cost-of-living adjustment for these services for the 1994-1995 biennium and clarify that any future cost-of-living adjustments are dependent on available funding.

No comments regarding these amendments were received. However, the department changed all references from the Texas Department of Human Services to the Texas Department of Health as a result of the administrative transfer of the rules to the Texas Department of Health.

The amendments are adopted under the Human Resources Code, §32.021 and Texas Civil Statues, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§29.1104. Texas Medicaid Reimbursement Methodology (TMRM).

(a) Reimbursement for physicians and certain other practitioners.

(1) (No change.)

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

(A)-(C) (No change.)

(D) Conversion Factor-The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is $26.873 for fiscal year 1992 and 1993. If funding is available, the conversion factor will be updated based on the adjustments described in subparagraph (E) of this paragraph at the beginning of each state fiscal year biennium. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment of the conversion factor for the 1994-1995 biennium. The department may, at its discretion, develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E)-(F) (No change.)

(3) (No change.)

(b)-(c) (No change.)

§29.1126. In-home Total Parenteral Hyperalimentation Services.

(a)-(d) (No change.)

(e) The Texas Department of Health (department) or its designee reimburses each provider on a monthly basis. Reimbursement is based on one-twelfth of the maximum yearly fee established by the department. If funding is available, the department will adjust the allowable fees or rates each state fiscal year by applying the projected rate of change of the implicit price deflator for personal consumption expenditures (IPD-PCE). The department uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally-recognized sources available to the department at the time rates are prepared. The first adjustment will be effective January 1, 1993. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 fiscal years. The department or its designee does not reimburse more than a one-week supply of solutions and additives if the solutions and additives are shipped and not used because of the recipient's loss of eligibility, change in treatment, or inpatient hospitalization. The provider must exclude from its monthly billing any days that the recipient is an inpatient in a hospital or other medical facility or institution. Payment for partial months will be prorated based upon actual days of administration. Hospital outpatient departments furnishing in-home total parenteral nutrition must be separately enrolled as a provider meeting all requirements stipulated in subsection (d) of this section. Reimbursement to hospital outpatient departments furnishing in-home total parenteral nutrition may not exceed the maximum yearly fee established by the department.

§29.1127. In-home Respiratory Therapy Services for Ventilator-Dependent Persons.

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

(f) The department or its designee reimburses each respiratory therapy provider on a per-visit basis. Reimbursement for the visit is based on the lesser of the provider's customary charge or the maximum allowable fee or rate established by the department or its designee. Reimbursement for supplies furnished by the respiratory care practitioner is the lesser of the provider's customary charges or the maximum allowable fees or rates established by the department or its designee. If funding is available, the department updates its allowable fees or rates each state fiscal year by applying the implicit price deflator for personal consumption expenditures. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 state fiscal years.

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 24, 1993.

TRD-9332618 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: December 15, 1993

Proposal publication date: August 10, 1993

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

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter G. Community Mental Health and Mental Retardation Centers

- **25 TAC §§401.453, 401.460, 401.463, 401.465, 401.466**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §401.453 and §401.460, and new §§401.463, 401.465, 401.466, concerning community mental health and mental re-

tardation centers. Sections 401.453, 401.460, and 401.465 are adopted with changes to the proposed text as published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5190). Section 401.463 and §401.466 are adopted without changes and will not be republished. The amendments are adopted contemporaneously with the adoption of the repeal of §401.463 and §401.464.

Definitions for "denial of services," "involuntary reduction of services," and "termination of services" have been deleted from §401.453. Permissive language has been replaced in §401.460(l)(2). References have been updated.

Written comments were received from the Texas Alliance for the Mentally Ill in Austin. The commenter suggested replacing the permissive language in §401. 460(l)(2) from "should" to "shall." The department responds by modifying the text as requested. The commenter also suggested including updated information about mental illness and mental retardation and the newest methods of treatment and training in Exhibit B-Guidelines for Board of Trustee Training. The department responds that such information is implied in §401.460(l).

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

§401.453. Definitions.

Local MHMR authority-A local service provider designated by the department to plan, facilitate, coordinate, and provide the delivery of mental health and/or mental retardation services in a local service area.

§401.460. Standards of Administration for Boards of Trustees of Community Centers.

(a)-(k) (No change.)

(l) (No change.)

(1) (No change.)

(2) Utilizing input from consumers, family members, and advocates, trustee training programs shall provide orientation in consumer perspectives and issues.

(3) (No change.)

(m) (No change.)

§401.465. References. Reference is made in this subchapter to the following federal and state laws and rules:

(1) Anti-Drug Abuse Act of 1988 (Public Law 100-690);

(2) theTexas Health and Safety Code, Title 7, Chapter 534 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq as amended);

(3) the Texas Civil Statutes, Articles 717k and 717q;

(4) the Texas Civil Statutes, Article 6252-17;

(5) the Local Government Code, §§271.003-271.009;

(6) the 25 TAC, Chapter 401, Subchapter E, governing Contracts Management;

(7) the Texas Civil Statutes, Article 6252-17a;

(8) the Texas Health and Safety Code, Title 7, §533.007;

(9) the Administrative Procedure Act, Government Code, Chapter 2001;

(10) the Texas Health and Safety Code, Title 7, Chapter 593;

(11) the 42 U.S.C., §1396; and

(12) the Texas Human Resources Code, Chapter 73.

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 19, 1993.

TRD-9332436 Ann K Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: August 6, 1993

For further information, please call. (512) 206-4670

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• 25 TAC §401.463, §401.464

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §401.463 and §401.464, concerning community mental health and mental retardation centers.

The sections are repealed to allow for the reorganization of the subchapter.

The repeals 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 powers.

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 19, 1993.

TRD-9332437 Ann K. Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: August 6, 1993

For further information, please call: (512) 206-4670

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Chapter 403. Other Agencies and the Public

Subchapter H. Interstate Transfer

• 25 TAC §§403.221-403.237

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§403.221-403.237, concerning interstate transfer.

The sections are repealed to allow for the contemporaneous adoption of new sections which reorganize the information into a more clear and concise manner.

The repeals 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 powers.

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 19, 1993.

TRD-9332440 Ann K. Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: September 28, 1993

For further information, please call. (512) 206-4670

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• 25 TAC §§403.221-403.232

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§403.221-403.232, concerning interstate transfers. Sections 403. 222-403.225 and 403.227-403.230 are adopted with changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6612). Sections 403.221, 403.226, and 403.231, 403.232 are adopted without changes. The new sections are adopted contemporaneously with the repeal of existing Chapter 403, Subchapter H, concerning the same.

The application of the rule has been modified to include mental health authorities. Definitions for "mental health authority," "single-portal authority," and "TXMHMR service system" have been included in §403.223. The term "TXMHMR service system" has been added throughout the subchapter as a means of incorporating mental health and mental retardation elements as well as department facilities and mental health/mental retardation authorities. Language has been modified in §403.225(a) to clarify that a detention of 96

hours applies only to persons being transferred into Texas who have been involuntarily committed in another state. Language has been added to §403. 225(b) to include commitments to single-portal authorities. Language in §403. 225(c) has been modified to be in compliance with the law which prohibits a guardian from voluntarily admitting a person with mental retardation into long term care. Language has been added to §403.225(d) to be in compliance with the law regarding the voluntary admission of a minor with mental illness. Requirements regarding travel arrangements in §403.227 and §403.228 have been clarified. A provision requiring submission of a diagnosis of mental retardation has been added to §403.229.

No comments were received regarding adoption of the new sections.

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

§403.222. Application. The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and its mental retardation authorities and mental health authorities (MRA/MHA).

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

Consumer Services and Rights Protection-The central office division responsible for coordinating interstate transfers.

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

Facility-Any state hospital, state school, or state center of the Texas Department of Mental Health and Mental Retardation, and any entity that may hereafter be made a part of the department.

MHA or mental health authority-A local service provider designated by the department to plan, facilitate, coordinate, and provide the delivery of mental health services in a local service area.

MRA or mental retardation authority-A local service provider designated by the department to plan, facilitate, coordinate, and provide the delivery of mental retardation services in a local service area

Single-portal authority-A mental health authority which has been designated by the Texas Board of Mental Health and Mental Retardation to serve as the agency with responsibility for coordinating and facilitating the delivery of mental health services to involuntarily committed persons in its local service area.

TXMHMR service system-All facilities of the Texas Department of Mental Health and Mental Retardation and its mental retardation authorities and mental health authorities (MRA/MHA).

Transfer-The importation or deportation of an individual under the provisions of the Texas Mental Health Code, Texas Health and Safety Code, Title 7, §571.008, the Texas Mental Health and Mental Retardation Act, Texas Health and Safety Code, Title 7, §533.011, or the Interstate Compact on Mental Health, Texas Health and Safety Code, Title 7, Chapter 612.

§403.224. Residency.

(a) In order to transfer an individual to another state from a facility in Texas, the individual must be a resident, former resident, or have a family member who is a resident of the receiving state.

(b) In order to transfer an individual from a state facility in another state into the TXMHMR service system, the individual must be a resident, former resident, or have a family member who is a resident of the State of Texas.

(c) Residency in the State of Texas is established if:

(1) the individual is physically present in Texas;

(2) a family member, parent, or guardian of the individual is physically present in Texas;

(3) the individual, family, parent, or guardian intends to remain in Texas; or

(4) it has been determined the individual wishes to return to Texas.

(d) As a general rule, the residency of a minor child follows:

(1) the residency of the minor child's parents; or

(2) the residency of the minor child's legally appointed guardian or the minor child's conservator

§403.225. Legal Bases for Institutionalization.

(a) The State of Texas will give full faith and credit for 96 hours to another state's commitment. Individuals involuntarily committed by that state who are transferred into Texas may be detained for a period not to exceed 96 hours. Detention in excess of 96 hours must be pursuant to:

(1) a voluntary admission;

(2) a commitment order of a Texas court; or

(3) an order of protective custody.

(b) An appropriate court in the county of the facility or single-portal authority's location is authorized to conduct commitment proceedings for individuals transferred to the mental health facility or single-portal authority from another state.

(c) The detention of a person with mental retardation in excess of 96 hours, pursuant to appropriate admission, is authorized when an application for voluntary admission has been made by the person or the parents of a minor child. After a diagnosis of mental retardation has been determined, regular voluntary admission to a facility may be accomplished if appropriate.

(d) The voluntary admission of a person with mental illness is authorized when a written application for voluntary admission is made and signed by the person if legally of age (16 years old in Texas), or by the parent of a minor, legal guardian of a minor, or the managing conservator. If the managing conservator is a state agency and the person is less than 16 years old, the consent of the person is also necessary.

§403.227. Requests for Persons With Mental Retardation to be Transferred Out of Texas.

(a) All requests for transfers out of Texas shall be made utilizing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Interstate Transfer Data Sheet" form, which are referred to in §403.231 of this title (relating to Exhibits) as Exhibits A and B, respectively.

(b) When requesting the transfer of an individual, the mental retardation facility shall:

(1) obtain the signature of the individual to be transferred, the parent if the individual is a minor, or the guardian, as appropriate, on the "Consent to Interstate Transfer and to Release Confidential Information" form;

(2) complete the "Interstate Transfer Data Sheet" form;

(3) forward to Consumer Services and Rights Protection the following:

(A) the completed and signed "Consent to Interstate Transfer and to Release Confidential Information" form;

(B) the completed "Interstate Transfer Data Sheet" form;

(C) a copy of the individual's current individual habilitation plan;

(D) a copy of a diagnosis of mental retardation;

(E) a copy of the most recent monthly program summary from the individual's unit record;

(F) a copy of the social history and most recent psychological examination; and

(G) a brief cover letter signed by the facility superintendent/director or designated representative stating why the transfer is desired.

(c) Upon receipt of a transfer request, Consumer Services and Rights Protection shall contact the receiving state and make every reasonable effort to obtain authorization for the transfer.

(d) Consumer Services and Rights Protection shall ensure that all interested parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

(e) When a decision is made by the receiving state to accept the individual for immediate transfer, the following shall accompany the individual upon transfer to that state:

(1) a copy of the birth certificate;

(2) copies of all legal documents;

(3) a copy of the individual's Social Security card;

(4) a copy of the immunization record;

(5) a copy of the weight and height record;

(6) a copy of the seizure record, if appropriate;

(7) a copy of the treatment and diet record;

(8) a copy of the most recent medical and dental examination record;

(9) copies of all laboratory reports of exams conducted within the past 30 days and any additional significant reports made within the past year (including, X-ray, EEG, and EKG);

(10) all personal belongings;

(11) transfer program summary, and

(12) a 14-day supply of all prescribed medication

(f) When a decision is made by the receiving state to accept the individual for immediate transfer, the mental retardation facility of the sending state shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel which is acceptable to the individual being transferred;

(2) be responsible for all transfer expenses;

(3) ensure arrangements are made for an escort or escorts to accompany and assist the individual in reaching the final destination; and

(4) inform Consumer Services and Rights Protection of the completed transfer.

§403.228. Requests for Persons With Mental Illness to be Transferred out of Texas.

(a) All requests for transfers out of Texas shall be made utilizing the "Consent to Interstate Transfer and to Release Confidential Information" form and the "Interstate Transfer Data Sheet" form, which are referred to in §403.231 of this title (relating to Exhibits) as Exhibits A and B, respectively.

(b) When requesting the transfer of an individual, the mental health facility shall:

(1) document eligibility of residency in receiving state;

(2) establish through contact with the individual and the individual's family, friends, or other available sources whether interstate transfer would be in the best interest of the individual;

(3) obtain the signature of the individual to be transferred, the parent if the individual is a minor, or the guardian, as appropriate, on the "Consent to Interstate Transfer and to Release Confidential Information" form;

(4) complete the "Interstate Transfer Data Sheet" form;

(5) forward to Consumer Services and Rights Protection the following.

(A) the completed and signed "Consent to Interstate Transfer and to Release Confidential Information" form;

(B) the completed "Interstate Transfer Data Sheet" form;

(C) a comprehensive medical history;

(D) the history of mental illness and psychiatric evaluation;

(E) a current diagnosis;

(F) a list of current medication;

(G) a psychological evaluation (if available); and

(H) a brief cover letter signed by the facility superintendent/director or designee stating why the transfer is desired;

(6) inform Consumer Services and Rights Protection of any changes in the individual's status, the request, or of anything that would affect the request of the transfer.

(c) Upon receipt of a transfer request, Consumer Services and Rights Protection shall contact the receiving state and make every reasonable effort to obtain authorization for the transfer.

(d) Consumer Services and Rights Protection shall ensure that all interested parties are informed of the progress made on the transfer request as allowed by the signed "Consent to Interstate Transfer and to Release Confidential Information" form.

(e) When a decision is made by the receiving state to accept the individual for immediate transfer, the mental health facility of the sending state shall:

(1) make all travel arrangements, choosing the most comfortable and expeditious mode of travel acceptable to the individual being transferred;

(2) be responsible for all transfer expenses;

(3) ensure arrangements are made for an escort or escorts to accompany and assist the individual in reaching the final destination;

(4) ensure all personal belongings and a 14-day supply of all prescribed medications accompany the individual upon transfer to the receiving state, and

(5) inform Consumer Services and Rights Protection of the completed transfer.

§403.229 Requests for Persons With Mental Retardation to Transfer into Texas.

(a) Persons desiring the transfer of an individual into the TXMHMR service system should send a letter of request to Consumer Services and Rights Protection, Texas Department of Mental Health and Mental Retardation, P.O Box 12668, Austin, Texas 78711-2668. The letter of request must include the following:

(1) the basis for claiming residence in Texas for the person requesting the transfer or for the individual to be transferred,

(2) the reasons for requesting the transfer and why it would benefit the individual,

(3) a consent to the release of records to the department and to the proposed transfer, signed by the individual if competent and of legal age, by the parent of a minor, or by the guardian of the individual;

(4) the individual's social history or summary prepared within the last 12 months and updated within the last three months;

(5) a psychological report prepared within the last 12 months and updated within the last three months to include adaptive behavior level and an estimate of general intellectual functioning as measured by a standardized psychometric instrument,

(6) a copy of a diagnosis of mental retardation;

(7) a complete medical history signed by a physician;

(8) a copy of the immunization record;

(9) a copy of the individual's Social Security card;

(10) a copy of the birth certificate or appropriate substitute;

(11) the habilitation plan, if available;

(12) the completed "Interstate Transfer Data Sheet" form or appropriate substitute; and

(13) copies of applicable legal documents.

(b) Upon receipt of the letter of request, Consumer Services and Rights Protection shall review the documents to determine eligibility for admission into the TXMHMR service system. Consumer Services and Rights Protection shall notify the requesting authority if the individual has been determined ineligible for admission.

(c) Consumer Services and Rights Protection shall ensure that all interested parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document.

(d) If the individual has been determined eligible for admission into the TXMHMR service system, then the individual shall be referred to the appropriate mental retardation authority for a placement search of the least restrictive environment which also meets the needs of the individual.

(e) If appropriate, the mental retardation authority shall forward the application to a Texas mental retardation facility where the individual's name will be placed on the register for an appropriate residential placement, or will take other action as deemed appropriate.

(f) Consumer Services and Rights Protection shall notify the sending state of the action taken by the department on the request for transfer and shall supply necessary transfer information.

§403.230. Requests for Persons With Mental Illness to Transfer into Texas.

(a) Individuals desiring to be transferred into the TXMHMR service system or persons desiring the transfer of an individual into the TXMHMR service system should send a letter of request to Consumer Services and Rights Protection, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711. The letter of request must include the following:

(1) the basis for claiming residence in Texas for the person requesting the transfer or for the individual to be transferred;

(2) the reasons for requesting the transfer and why it would benefit the individual;

(3) authorization for the sending state to release medical records to the department signed by the individual or the guardian;

(4) a consent to the transfer and a consent to discuss the proposed transfer with designated persons, both signed by the individual or the guardian;

(5) a comprehensive medical history;

(6) the history of mental illness and psychiatric evaluation;

(7) a current diagnosis;

(8) a list of current medication;

(9) a psychological evaluation (if available); and

(10) the completed "Interstate Transfer Data Sheet" form or appropriate substitute.

(b) Upon receipt of the letter of request, Consumer Services and Rights Protection shall review the documents to determine the individual's eligibility for admission into the TXMHMR service system. Consumer Services and Rights Protection shall notify the requesting authority if the individual has been determined ineligible for admission

(c) Consumer Services and Rights Protection shall ensure that all interested parties are informed of the progress made on the transfer request as allowed by the signed consent to release confidential information document.

(d) If the individual has been determined eligible for admission into the TXMHMR service system, then the individual shall be referred to the appropriate mental health authority or mental health facility.

(e) Disputed issues relating to the benefit to be derived from a proposed transfer and issues of a medical or psychiatric nature relating to eligibility for admission into the TXMHMR service system shall be referred to the deputy commissioner for mental health services by Consumer Services and Rights Protection.

(f) Consumer Services and Rights Protection shall notify the sending state of the action taken by the department on the request for transfer and shall supply necessary transfer information.

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 19, 1993.

TRD-9332441 Ann K Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date. September 28, 1993

For further information, please call. (512) 206-4670

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Subchapter K. Client-Identifying Information

• 25 TAC §§403.291-403.308

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§405.291-405.308, concerning client-identifying information

The sections are repealed to allow for the contemporaneous adoption of new sections that implement the provisions of Senate Bill 207 and House Bills 2458 and 1462 (73rd Legislature).

The repeals 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 powers.

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 19, 1993.

TRD-9332439 Ann K Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date. December 10, 1993

Proposal publication date. September 28, 1993

For further information, please call: (512) 206-4670

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The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§403.291-403.308, concerning client-identifying information. Sections 403.291, 403.293-403.295, 403.297, 403.301-403.303, 403. 305, and 403.306 are adopted with changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6615-6622). Sections 403.292, 403 296, 403.298-403.300, 403.304, 403.307, and 403.308 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the repeal of existing Chapter 403, Subchapter K, concerning the same.

Minor typographical errors are corrected throughout the document. Language has been added to §403.291(c) clarifying that the subchapter also applies to clients who have a chemical dependency diagnosis or prognosis. In §403 293, definitions of "competent" and "incompetent" have been revised to reflect current terminology. The term "designated provider" has been changed to "other designated providers" for the purpose of consistency. The definition of "facility" has been clarified

Language has been added to §403.295(h) which requires the treating physician to inform the client of the client's right to prohibit the disclosure of information in certain situations Language has been modified in §403.297(c)(2) to parallel the language in the statute. The information used in the consent forms (Exhibits C and D) have been incorporated into a new Exhibit C which is now referenced in §§403 299, 403.300, and 403.306. Language concerning a person acting under the direction of the guardian has been deleted in §§403.301-403.302.

Section 403.303(i) has been revised to clarify the subsections being discussed. Section 403.305 has been revised to include a reference to a subpoena duces tecum.

Written comments were received from the Commission on Jail Standards, Austin; Texas Alliance for the Mentally Ill, Austin; Advocacy, Inc., Austin; MHMR Services for the Concho Valley, San Angelo; MHMR Authority of Brazos Valley, Bryan; and a private citizen

One commenter suggested including a provision in the rule which allowed for the release of client-identifying information "which is more conducive of the provision of a coordinated level of continuous service for those MHMR clients which [sic] become involved in the criminal justice system." The department responds that recent legislative changes will allow TXMHMR to share certain information on offenders with mental impairments with criminal justice agencies, however, §403 297(c)(1) already allows for such release

One commenter wanted to know who would be responsible for deciding in the consent to release information form under which date, event, or condition consent will expire if not otherwise revoked before The commenter expressed concern that certain community MHMR centers impose additional requirements that prevent families from obtaining confidential information for which they have permission to obtain. The department responds that the client, or the client's representative, decides the date, event, or condition on which the consent expires. In addressing the commenter's concern, the department responds that additional requirements or excessive control beyond what law allows is strictly prohibited.

Regarding §403.295(h), one commenter wanted language added which required the treating physician to inform the client of the intent to release information and, in order for the client to be given the opportunity to exercise his or her right, to inform the client of the client's right to give written contrary instructions. The department agrees with the commenter and the requested language has been added.

The same commenter wanted to know who determined if a client was capable of "rational communication" as stated in §403.296(a). The department responds that the determination is made by the appropriate staff who have been deemed capable of making such a determination by the facility, community MHMR center, or other designated provider.

The same commenter wanted to know who at the facility determines the probability of imminent physical injury or immediate mental or emotional injury as stated in §403.297(c)(2). The department responds by modifying the language to parallel language in the statute in which the professional makes the determination.

The same commenter suggested three work days as a reasonable timeframe as stated in §403 297(g) and (h). The department refrains from such prescriptive procedures as it would cause an undue burden for some individuals. Reasonable time must be determined on a case-by-case basis.

One commenter felt there was an inconsistency with the terms "designated provider" and "other designated providers." The department responds that the terms have the same meaning. Clarifying language has been added to eliminate confusion. The same commenter wanted to know if "other designated providers" had to comply with the rule regarding confidential information they receive. The department responds that, yes, other designated providers must comply with the rule as stated in §403.292

Regarding §403 291(c), one commenter felt it would be impossible to exclude any mention of chemical dependency when providing a client's mental health client-identifying information The department understands the difficulty of separating a client's chemical dependency information from the mental health information, however, the department does not wish to limit an organization from doing so if that organization is capable of separating the information

The same commenter strongly disagrees with §403 295(c) and considers it to be a violation of the informed consent regulations and federal regulations. The department responds that the information contained in §403. 295(c) has been taken directly from law.

Regarding §403.295(g) and (h), the same commenter wanted to know if the physician did not release the information because the client did not consent, would the physician be protected from a charge of failing to use due care The department responds that §403.295(g) and (h) refer only to the disclosure of information that the physician believes to be in the best interest of the client and which is not already required to be disclosed by law. This is a voluntary action on the part of the physician and is not related to, for example, the physician's responsibility to report child or elderly abuse which is required by law.

The same commenter noted inconsistencies in §403.297(c)(6). The department agrees that the language appears inconsistent; however, this is the language of the law. The department notes that this element of the rule is situation driven and legal counsel should be sought.

Regarding §403.303(b), the commenter felt that if the information requested by the client is considered harmful then the statement declaring it harmful would also be of harm. The department responds that clients must be given this legitimate reason when their records are withheld. The professional is responsible for explaining this to the client in a way which would not be harmful

The same commenter suggested requiring the client's date of birth on the consent form for clarification should more than one client have the same name. The department agrees and the revised consent form reflects this commenter's suggestion.

One commenter expressed serious concerns regarding the internal release of client-identifying information to literally dozens of staff members at a community MHMR center and its designated providers who are not involved in the client's treatment and who use the information to the detriment of the client. The department responds that while this rule applies to the external disclosure of confidential information, internal access of client-identifying information must be limited to individuals who are directly involved in the client's treatment. Confidential information used other than for the benefit of the client is strictly prohibited.

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 powers.

§403 291. Purpose.

(a) The purpose of this subchapter is to protect the rights of clients with regard to the disclosure of identifying information by providing guidelines for use by:

(1) employees of the department, community mental health and mental retardation centers, and other designated providers whose duties include the release of such client-identifying information in appropriate situations; and

(2) members of the general public who request client-identifying information.

(b) The diagnostic (mental health, mental retardation, chemical dependency) and legal (competent or incompetent, minor or adult, with or without guardian) status of the client must always be taken into consideration in any situation involving disclosure of client-identifying information.

(c) The requirements in this subchapter for the disclosure of client-identifying information for clients receiving chemical dependency services apply to all clients who have a chemical dependency diagnosis, prognosis, or are receiving chemical dependency services even if they are also receiving mental health and/or mental retardation services. Should an individual be diagnosed as having mental illness or mental retardation in addition to chemical dependency, the portions of the individual's record which refer to mental illness or mental retardation may be released under the requirements of this subchapter if no mention or reference is made about the chemical dependency diagnosis, treatment, or record.

(d) It is emphasized that any questions that arise concerning the status of a client and the law governing disclosure in a given situation should be addressed to legal counsel prior to the disclosure of client-identifying information.

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

Adult–A person:

(A) who is 18 years of age or older; or

(B) who is under 18 but:

(i) is or has been legally married; or

(ii) whose disabilities of minority have been legally removed.

Center–A community mental health and mental retardation center established pursuant to the Texas Health and Safety Code, Title 7, Chapter 534.

Client–A person who, voluntarily or involuntarily, is seeking, receiving, or who has received mental health, mental retardation, or chemical dependency services from the department or center.

Client-identifying information–The name, address, social security number, or any information by which the identity of a client can be determined either directly or by reference to other publicly available information. The term includes, but is not limited to, a client's medical record, graphs, or charts; statements made by the client, either orally or in writing, while receiving services; photographs, videotapes, etc.; and any acknowledgement that a person is or has been a client of the facility, center, or other designated provider. The term does not include a client-identifying number assigned by a facility. The statutes, regulations, and rules requiring that client-identifying information be kept confidential apply regardless of the means or methods utilized for the storage and retrieval of such information.

Competent–A term used to describe a person who has the ability to comprehend the effect and consequences of giving an authorization for disclosure of client-identifying information and who has not been adjudicated incompetent by a court, or for whom an order of restoration has been executed and recorded subsequent to the client's having been adjudicated incompetent.

Department–The Texas Department of Mental Health and Mental Retardation (TXMHMR).

Facility–All state hospitals, state schools, or state centers, and their respective community-based services, day care centers, and clinics, and the central office of the Texas Department of Mental Health and Mental Retardation.

Incompetent–A term used to describe a person:

(A) who has been adjudicated incompetent by a court and for whom no subsequent order of restoration has been executed or recorded; or

(B) who does not, in fact, have the ability to comprehend the effect or consequences of giving an authorization for disclosure of client-identifying information.

Legal counsel–At a facility, staff of the department's legal services office; at a center or other designated provider, the attorney(s) in its service.

Legally authorized representative–A legally authorized representative means:

(A) a parent or legal guardian if the client is a minor, or a legal guardian if the client has been adjudicated incompetent to manage the client's personal affairs;

(B) an agent of the patient authorized under a durable power of attorney for health care;

(C) an attorney ad litem appointed for the client; or

(D) a parent, spouse, adult child, or personal representative if the client is deceased.

Minor–A person who is not an adult. Specifically, a minor is a person under 18 and:

(A) who is not and never has been legally married; and

(B) whose disabilities of minority have not been legally removed.

Other designated provider–An individual, entity, or organization which contracts with the department or community mental health and mental retardation center to provide community-based mental health and mental retardation services.

Professional–A person authorized to practice medicine in any state or nation, or a person licensed or certified by the State of Texas in the determination, diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or a person reasonably believed by the client to so be.

Qualified service organization–An individual, partnership, corporation, governmental agency, or any other legal entity which:

(A) provides services for chemical dependency programs, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy; and

(B) has entered into a written agreement with a program under which that entity:

(i) acknowledges that in receiving, storing, processing, or otherwise dealing with any client records from the programs, it is fully bound by these regulations; and

(ii) if necessary, will resist in judicial proceedings any efforts to obtain access to client records except as permitted by state and federal law and these regulations.

§403.294. Statutes and Federal Regulations Governing Disclosure.

(a) The state code provisions which govern the disclosure of information concerning clients receiving mental health and mental retardation services are the Texas Health and Safety Code, §576.005 and §§611.001-611. 005. In addition, the Persons With Mental Retardation Act has a disclosure of information provision which applies to clients who have mental retardation. This provision is the Texas Health and Safety Code, §§595.001-595.010 Both code provisions should be interpreted to-

gether in reaching a determination as to whether information should be disclosed for clients receiving mental retardation services.

(b) Texas Human Resources Code, §48.0385, establishes authority for the Texas Department of Protective and Regulatory Services (TDPRS) to have access to client records necessary to conduct investigations into allegations of abuse and neglect of persons served.

(c) The Secretary of the United States Department of Health and Human Services has promulgated extensive regulations governing the disclosure of records for clients receiving chemical dependency services. See 42 Code of Federal Regulations, Part 2.

(d) The Secretary of the United States Department of Education has promulgated extensive regulations governing the disclosure of educational records of school-age children. See 45 Code of Federal Regulations 99ff. Any questions concerning the disclosure of such educational records should be referred to legal counsel.

§403.295. General Provision for Release of Client-Identifying Information.

(a) All requests for client-identifying information by persons or organizations, other than employees and agents of the department or employees of community centers or other designated providers who need the information for the purpose of fulfilling their duties, should be made to the head of the facility, center, or other designated provider (or designee) from which the client receives or has received services. Employees and agents of the Texas Department of Protective and Regulatory Services shall also direct inquiries and requests for client records to the chief executive officer of the facility, center, or other designated provider.

(b) The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, provide that all information collected, assembled, or maintained by governmental bodies, and agencies operating in part or whole with state funds, pursuant to law or ordinance in connection with the transaction of official business is public information and available to the public during normal business hours; however, the act does set out certain exceptions. One such exception is information deemed confidential by law, such as records which directly or indirectly identify a client, former client, or proposed client. A copy of the Texas Open Records Act, §3, which contains the exceptions to the compulsory disclosure requirements of the act, is referred to in §403.306 of this title (relating to Exhibits) as Exhibit A.

(c) Any records received from another governmental or private source that become part of the client's record may be released under the guidelines established in this subchapter.

(d) Except as otherwise described in these rules, an inquiry as to whether a person is a client of a facility, community center, or other designated provider, should not be affirmed or denied, but should be answered by stating that information cannot be given without proper authorization.

(e) A client, parent, or legal guardian's verbal consent for release of client-identifying information is not adequate. In no case should identifying information be released to the family of an adult client, friends, news media, or others without the prior written consent of the individual or the legally authorized representative.

(f) Identifying information regarding other clients must be expunged from records released.

(g) If a treating physician determines that it is in the best interest of a client receiving mental health services under the treating physician's care, the treating physician may disclose necessary information that may identify the client, but only to:

(1) a law enforcement officer; or

(2) the client's legally authorized representative.

(h) A disclosure under subsection (g) of this section may not be made if the client gives contrary written instructions to the treating physician. When considering disclosure of information under subsection (g) of this section, the treating physician must inform the client of the following, unless the client is unavailable:

(1) of the intent to disclose the information;

(2) to whom the information will be disclosed; and

(3) of the client's right to prohibit the information from being disclosed by providing contrary written instructions.

§403.297. When Consent for Disclosure is not Required: Clients Receiving Mental Health or Mental Retardation Services.

(a) When consent has been previously given Consent for disclosure of client-identifying information is not required if consent to disclose the information has previously been given by the legally authorized person and the duration of the consent has not expired, provided the information to be disclosed is identical to that for which consent was given, and disclosure is to the same person or entity for the same purpose as set out in the consent

(b) When required by certain court proceedings. In court proceedings, client-identifying information may be disclosed without the consent of the client or the person authorized to consent for the client, as follows:

(1) when the proceeding is brought by the client against a professional, as in a malpractice proceeding, and disclosure is relevant to the claim or defense of the professional;

(2) when the proceeding is brought to collect on a claim for services provided;

(3) when the facility/center has examined and treated a client pursuant to a court-ordered examination after informing the client that future communications and records are not subject to the privileges of confidentiality;

(4) when the proceeding is a criminal prosecution in which the client is a victim, witness, or defendant; however, records which are released in response to a subpoena may only be released to the judge of the court in which the prosecution is pending.

(c) When required in other than court proceedings. Client-identifying information may be disclosed without the consent of the client or the person authorized to consent for the client, as follows:

(1) to government agencies when authorized by law (for example, to the Texas Department of Protective and Regulatory Services in cases of client/child abuse);

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client;

(3) to qualified personnel for audit or research purposes when such research is being conducted in accord with department rules;

(4) to persons involved in the collection of fees for mental or emotional health services to clients;

(5) to other professionals under the direction of the treating professional who are participating in the diagnosis, evaluation, and treatment of the client,

(6) to persons participating in an official legislative inquiry regarding state hospitals or state schools except that no client-identifying information shall be released without proper consent (this exception only applies to records created by employees of the state hospitals or state schools);

(7) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(8) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of clients,

(9) to Advocacy, Incorporated, in the investigation of a complaint by or on behalf of a client who does not have a legal guardian or who is a ward of the state Excepted from this disclosure without consent are records subject to attorney-client privilege, e.g., records of an investigation conducted at the request of a departmental attorney in preparation for potential litigation

(d) When between components of the TXMHMR service system, including department facilities, community centers, and other designated providers. Client-identifying information may be disclosed without the consent of the client or the person legally authorized to consent for the client between components of the TXMHMR service system provided·

(1) that the client and/or legal guardian has been informed that the records may be exchanged at the time of or prior to release,

(2) that the client and/or legal guardian is informed of the purpose of the release, e g , to facilitate continuing care for the client, and

(3) that this advisement is documented in the client's record, dated, and signed by the client and/or legal guardian and staff

(e) When to attorney ad litem Client records may be disclosed without the consent of the client or legal guardian to the attorney ad litem representing the client in legal process

§403 301. Who Can Give Consent for Disclosure: Clients Receiving Mental Health and Mental Retardation Services.

(a) If a client is a competent adult, then the client is the only person who has the power to authorize and consent to disclosure of client-identifying information.

(b) If the client is an incompetent adult, then the guardian of the person is the only person who may authorize and consent to disclosure of client-identifying information

(c) If the client is a minor receiving mental retardation services, then the client does not have the capacity to consent to disclosure of client-identifying information Only a parent, guardian of the person, managing conservator or possessory conservator of the minor client may authorize and consent to disclosure of client-identifying information to any third party other than an attorney representing the client.

(d) If the client is a minor under 16 years of age receiving mental health services, then the client does not have the capacity to consent to disclosure of client-identifying information. A parent, guardian of the person, managing conservator or possessory conservator of the minor client may authorize and consent to disclosure of client-identifying information to a third party other than an attorney representing the client.

(e) If the client is a competent minor at least 16 years of age but under 18 years of age receiving voluntary mental health services, then the client can unilaterally authorize and consent to the disclosure of client-identifying information. The parent, managing conservator, or possessory conservator of such a minor voluntary client also may unilaterally authorize and consent to the disclosure of client-identifying information.

(f) If the client is a minor at least 16 years of age but under 18 years of age receiving court-ordered mental health services, then only a parent, guardian of the person, managing conservator or possessory conservator may authorize and consent to disclosure of client-identifying information to a third party other than an attorney ad litem representing the client.

(g) If the client is deceased, consent may be given by the personal representative, usually the executor or administrator of the client's estate. For clients with mental retardation, if a personal representative has not been appointed, consent may be given by the client's spouse, or if no spouse, by any responsible member of the client's family

(h) A possessory conservator has the right of access to medical, dental, and educational records of a minor to the same extent as the managing conservator. However, before releasing records to the possessory conservator, all references in the records to the place of residence of the managing conservator must be deleted.

§403 302 Who Can Give Consent for Disclosure: Clients Receiving Chemical Dependency Services.

(a) If the client is a competent minor or adult being treated for chemical dependency, consent for disclosure must be evidenced by the signature of the client. If the client is an incompetent minor or adult being treated for chemical dependency, then the guardian must give consent.

(b) If the client has been adjudicated incompetent by a court and a guardian has been appointed, consent for disclosure must be evidenced by the signature of the client's court-ordered guardian.

(c) For any period for which the head of a facility, center, or other designated provider determines that a client, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her behalf, the head of the facility may exercise the right of the client to consent to a disclosure for the sole purpose of obtaining payment for services from a third-party payor.

(d) If the client is deceased, consent may be given by a personal representative (executor or administrator of the client's estate). If a personal representative has not been appointed, consent may be given by the client's spouse, or if no spouse, by any responsible member of the client's family.

(e) Consent for disclosure of information pertaining to a client receiving chemical dependency services to said client's attorney may be made upon the written application of the client endorsed by the attorney.

(f) A possessory conservator has the right of access to medical, dental, and educational records of a minor to the same extent as the managing conservator. However, before releasing records to the possessory conservator, all references in the records to the place of residence of the managing conservator must be deleted.

§403.303. Disclosure to a Client of Information Contained in His or Her Records.

(a) The content of a client's record is to be made available to the client upon request; however, parts of the client's record may be withheld from the client if a professional determines that access by the client to parts of the record would not be in the client's best interest. In the case of a person with mental retardation, a qualified professional responsible for supervising the client's habilitation may also make this determination. The reasons for the determination that access by the client to parts of the record would not be in the client's best interest must be documented in the client's record for clients receiving mental retardation services, and according to subsections (b)-(i) of this section for clients receiving mental health services.

(b) Pursuant to the Texas Health and Safety Code, §611.0045, should a professional deny access to the client receiving mental health services to any portion of the client's record, then the professional shall give the client a signed and dated written statement that having access to the record would be harmful to the client's physical, mental, or emotional health. The professional shall include a copy of the written statement in the client's record. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(c) The professional who denies access to a portion of a record under subsection (a) of this section shall redetermine the necessity for the denial at each time a re-

quest for the denied portion is made. If the professional again denies access, the professional shall notify the client of the denial and document the denial as prescribed by subsection (b) of this section.

(d) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the client selects the professional to treat the client for the same or a related condition as the professional denying access.

(e) The content of a confidential record shall be made available to the following persons who are acting on the client's behalf:

(1) a person who has the written consent of the client, or a parent if the client is a minor, or a guardian if the client has been adjudicated as incompetent to manage the client's personal affairs; or

(2) the client's personal representative if the client is deceased.

(f) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the client that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the client's commitment.

(g) If a summary or narrative of a confidential record is requested by the client or other person requesting release under subsection (a) of this section, the professional shall prepare the summary or narrative within a reasonable time.

(h) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under subsection (a) of this section within a reasonable time and may charge a reasonable fee.

(i) Notwithstanding the Medical Practice Act, Texas Civil Statutes, §5.08, Article 4495b, subsections (b)-(h) of this section apply to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug abuse/addiction.

(j) When a client has authorized an attorney to have access to the client's records, the records shall be made available to the attorney. If it has been determined that access by the client to parts of the record would not be in the client's best interest, this fact should be brought to the attention of the attorney, but the attorney should be permitted to view such parts.

§403.304. Notice Upon Disclosure of Information Concerning Clients Receiving Chemical Dependency Services.

(a) The following written statement must accompany any written disclosure or follow any oral disclosure from records of clients receiving chemical dependency services other than disclosures to employees and agents of the department who need the information to carry out their official duties: "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The federal rules prohibit you from making any further disclosure of this information without the specific written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any client receiving chemical dependency services."

(b) If disclosure of information is made without consent in a medical emergency, a written memorandum shall be made and filed in the client's record which states the following:

(1) the client's name or case number;

(2) the name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(3) the name of the individual making the disclosure;

(4) the date and time the disclosure was made;

(5) the nature of the emergency; and

(6) the information disclosed.

§403.305. Deposition, Subpoenas, and Subpoenas Duces Tecum-Staff Compliance and Conduct.

(a) If consent of the client or person legally authorized to give consent for the client has been given, then the facility/center shall testify in court or by deposition or affidavit on matters relating to the client or make available records in reference to the client when asked to do so.

(b) In civil proceedings, if consent has not been given by the client receiving mental health or mental retardation services or the authorized person, a subpoena and/or subpoena duces-tecum is sufficient to permit the release of records if the request is made for records pursuant to Texas Rule of Civil Evidence, Rule 510(d). Any of the following situations would allow the release of client-identifying information if a subpoena were issued for that purpose:

(1) when the proceedings are brought by the client against a professional, including but not limited to malpractice proceedings, and in any license revocation proceedings in which the client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the client waives his or her right in writing to the privilege of confidentiality of any information, or when a representative of the client, acting on the client's behalf, submits a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the client; or

(4) when the judge finds that the client, after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure;

(5) as to a communication or record relevant to an issue of the physical, mental, or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(6) when the disclosure is relevant in any suit affecting the parent-child relationship;

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect of the resident of an "institution" as defined in the Texas Health and Safety Code, §242.002(6).

(c) In civil proceedings, every effort should be made by the facility/center to cooperate and work out an arrangement which is satisfactory to all concerned and which adequately protects the rights of the client. The facility/center should attempt to obtain the written consent of the client or person legally authorized to consent for the client if possible. If the facility/center is unable to work out a satisfactory arrangement, then legal counsel should be contacted immediately and its advice sought concerning the proper manner in which to proceed.

(d) In criminal proceedings in which consent has not been given by the

client or authorized person, a subpoena is sufficient to permit the release of records of a client who is receiving mental health or mental retardation services who is a defendant, victim, or witness.

(e) In both civil and criminal proceedings for clients receiving chemical dependency services, records shall not be disclosed except in keeping with §403.298 of this title (relating to When Consent for Disclosure is not Required: Clients Receiving Chemical Dependency Services).

(f) Whenever there is doubt as to the proper procedure to be followed in such matters, the subpoenaed party should immediately contact legal counsel.

§403.306. Exhibits. The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668:

(1) Exhibit A-Texas Open Records Act, §3;

(2) Exhibit B-Sample Notice Form: Confidentiality of Records of Clients Receiving Chemical Dependency Services; and

(3) Exhibit C-Authorization and Consent for the Disclosure of Client Record Information.

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 19, 1993.

TRD-9332438 Ann K. Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 12, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 206-4670

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Subchapter N. Administrative Hearings Arising Under the Persons with Mental Retardation Act

• 25 TAC §§403.401-403.419

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§403.401-403.419, concerning administrative hearings arising under the persons with mental retardation act. Sections 403.403, 403.406, 403. 407, 403.409, 403.410, 403.412-403.415, 403.418, and 403.419 are adopted with changes to the proposed text as published in the August 6, 1993, issue of *Texas Register* (18 TexReg 5191). Sections 403.401-403.402, 403.404, 403.405, 403.408, 403.411, 403.416, and 403.417 are adopted without changes and will not be republished. The repeal of existing §§405.661-405.678 of Chapter 405, Subchapter AA, which addressed the same issues as the new subchapter, is contemporaneously adopted in this issue of the *Texas Register.*

References in §403.403 and §403.418 to APTRA (Administrative Procedure and Texas Register Act) have been updated to reflect a name change to APA (Administrative Procedure Act). Revisions have been made in the definitions of discharge and transfer in §403.403 and in §403.406(b) which clarify that only discharges or transfers from a facility of the department are covered by the provisions of this subchapter. Also in §403.403, the definition of residential care facility has been deleted. Technical revisions to correct the omission of words and other grammatical errors have been made in §§403.409, 403.412-403.415, and 403.419. In §403.410, language has been updated to reflect name changes for some of the organizations referenced in the section. Reference in §403.410 to the hearing officer requesting the assistance of a departmental attorney related to the proper conduct of the hearing has been deleted, since hearings will be conducted by attorneys from the State Office of Administrative Hearings (SOAH) knowledgeable on the topic Executive directors of community centers have been added to the distribution list in §403.419.

A public hearing was held on August 23, 1993, but no testimony was offered Written comments were received from the parent of a state school resident and from the Parent Association for the Retarded of Texas (PART).

Both commenters recommended that a department employee should never serve as a hearing officer. The department responds that §403.407(a) and (b) have been revised to reflect that hearing officers will be appointed by SOAH. The department also notes that employees have not served as hearing officers for a number of years, instead, the department has contracted with private attorneys to provide that service.

One commenter suggested that 14 days' advance notice of the hearing date should be required in §403.409(a) instead of 10 The department agrees and has changed the language accordingly.

Concerning the same subsection, one commenter questioned why the department was more concerned about the distance a hearing officer must travel and the costs to the department instead of the welfare of the individual who was to be the subject of the hearing. The department responds that this is no longer an issue, since hearing officers will be provided by the SOAH, and notes that the language has been deleted.

One commenter requested that the parent or guardian be included at all stages of the hearing process and that adequate notice be provided. The department responds that the sections contain no provisions that exclude the parent of an individual who is a minor or a legal guardian of the individual who has been determined by a court to lack capacity. In addition, the sections explicitly set forth requirements for notification.

One commenter requested that the hearing officer should not be able to designate a department employee to provide assistance in the evaluation of evidence; the commenter further requested that if such assistance is necessary, it should provided by someone without any connections with the department. The department responds that having a department employee who is familiar with the Persons with Mental Retardation Act (PMRA) and other relevant statutes, with department rules and policies, and with other issues involving mental retardation provide assistance could be even more important now that the SOAH will be selecting the hearing officer.

Both commenters stated that if a hearing officer must be replaced at any time before the final decision, as is permitted in §403.407(b) then the entire hearing must be repeated. The department responds that the proceedings are audiotaped and that in the rare instance that a hearing officer is not able to complete the hearing, this tape would allow a replacement officer to handle the remaining duties.

One commenter questioned why ARC and Advocacy, Inc., were named in §403. 410(e) (changed to §403.410(d)) as possible resources for obtaining legal representation The commenter suggested that by naming these organizations, the department was attempting to circumvent the wishes of parents. The department responds that these two organizations are just two of the five organizations listed in that subsection. The intent was to suggest possible resources for those individuals or parents who wished to obtain legal representation for a hearing This is not a new provision but is similar to a provision in Chapter 405, Subchapter AA, which this subchapter is replacing. The department stresses that the individual or parent is not required to consult with any of these organizations

A commenter stated that a prehearing conference should not be convened unless all participants in the hearing consented. The department responds that the language will stand as proposed and notes that the decision to convene a prehearing conference is at the discretion of the hearing officer for the purpose of insuring a complete yet efficient administrative hearing process.

One commenter remarked that the sections were not simply worded and questioned the use of "rules of privilege recognized by law" in §403 414(a) and "trial de novo" in §403.417(d). The department responds that these are terms and concepts familiar to the attorneys who will serve as hearing officers and, therefore, will be retained in the sections The former refers to "privileged communications," i.e. statements made by persons with a protected relationship such as husband/wife, attorney/client, doctor/patient, priest/penitent, etc , which the law protects from forced disclosure on witness stand at the option of the spouse, client, patient, penitent, etc. who is a witness "Trial de novo" means that any trial in county court contest-

ing a hearing officer's decision is a new trial and will be held as if the hearing had not taken place.

The same commenter questioned the use in §403.414(b) of the phrase "the hearing officer may take official notices of generally recognized facts within the area of the department's specialized knowledge." The department responds that this is a common procedure in courts of law and administrative hearings which permits the inclusion in the record of specialized information.

A commenter noted that this subchapter is simply a repeat of a recently adopted subchapter governing placement appeals procedures. The department responds that some of the procedures and much of the process in the two subchapters are similar. However, this subchapter deals only with those specific situations for which the PMRA requires access to an administrative hearings, to contest discharge from a facility or the findings of a determination of mental retardation (previously a comprehensive diagnosis and evaluation). The PMRA does not provide for an administrative hearing when the individual is recommended for movement from the facility into a community setting but is not discharged from the facility. The placement appeals process is described in a separate chapter for that reason.

A commenter requested information regarding how many administrative hearings had been resolved in the favor of families. The department provided that information directly to the commenter

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

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

APA-Administrative Procedure Act, Government Code, Chapter 2001.

Commissioner-The commissioner of mental health and mental retardation.

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.

Deputy commissioner-The department's deputy commissioner for Mental Retardation Services.

Discharge-When an individual receiving residential mental retardation services from a facility refuses further services, chooses a service provider not associated with the department, or is deemed to no longer require the department's services. This does not apply when the individual moves from a facility into a community-based setting.

Facility-A state school or state center of the Texas Department of Mental Health and Mental Retardation which provides mental retardation services.

Head of the facility or community center-The superintendent or director of a facility or the executive director of a community center.

Hearing officer-Any person designated or appointed by the deputy commissioner to conduct administrative hearings pursuant to this subchapter.

Individual-A person who is seeking or receiving mental retardation services provided by a facility or community center.

Parent-The natural or adoptive mother or father of the individual, but not a mother or father whose parent-child relationship has been legally terminated.

Party-Each person or agency named or admitted as a party pursuant to the provisions of this subchapter and statutes under which the hearing is requested or held. A person who is entitled to request and who does request an administrative hearing pursuant to the Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act) is a party. The following will always be considered parties to such an administrative hearing:

(A) the individual who is requesting or receiving services;

(B) the parents of the individual who is a minor;

(C) the guardian of the individual;

(D) the head of the facility or community center, in that person's official capacity; and

(E) the department.

Person-Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the department.

Pleadings-Written statements filed by parties concerning their respective positions, claims, and rights in administrative hearings.

PMRA-Persons with Mental Retardation Act, the Health and Safety Code, Title 7, Subtitle D.

Transfer-The transfer of an individual from residential services at one facility to another facility.

§403.406. Who May Request an Administrative Hearing.

(a) An administrative hearing to contest the findings of a determination of mental retardation as described in §403.405 of this title (relating to Request for an Administrative Hearing) may be requested by the person who filed the request for a determination of mental retardation or the person's legal representative.

(b) An administrative hearing to contest a proposed or denied transfer or discharge from a facility may be requested by the:

(1) individual who is the subject of the proposed or denied transfer or discharge;

(2) parent of a minor individual;

(3) guardian of an individual who is authorized to make such decisions; or

(4) legal representative of any of the above-named persons.

§403.407. Appointment of a Hearing Officer.

(a) Within seven calendar days of being notified by the head of the facility or community center of the need for an administrative hearing as described in §403.405 of this subchapter (relating to Request for an Administrative Hearing), the deputy commissioner shall request the appointment of a hearing officer by the State Office of Administrative Hearings (SOAH).

(b) At any time before final judgment is rendered, another hearing officer shall be appointed to perform any remaining functions without having to repeat the previous proceedings in the case if the first hearing officer should die, become disabled, withdraw, or be removed from employment, or withdraw, or be removed from the proceeding.

(c) The hearing officer may designate one or more employees of the department or other knowledgeable persons to assist in the evaluation of evidence presented at the hearing.

(d) The hearing officer shall have all authority granted under the PMRA, as well as the authority to administer oaths, examine witnesses, and rule upon the admissibility of evidence and amendments to pleadings.

(e) The hearing officer may, on the officer's own motion or on the written request of any party, issue a subpoena to require the attendance of witnesses and production of documents. No charge will be made for the issuance of a subpoena, but the cost of enforcing a subpoena shall be borne by the party who requested the subpoena.

§403.409. Notice of Hearing.

(a) No less than 14 calendar days in advance of the hearing date, notice of the hearing shall be served on all participants, including the individual, the parent of the individual who is a minor, and the guardian of the individual, if appropriate, and the

head of the facility or community center, as well as the legal counsel or lay representative(s) as described in §403.410 of this title (relating to Representation of Parties).

(b) The notice shall include:

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

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

(3) a short and plain statement of the matters asserted;

(4) a copy of the request for the hearing;

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

(6) a copy of this subchapter.

(c) The hearing officer shall ensure that written notice of the hearing is served personally or by certified mail, return receipt requested.

§403.410. Representation of Parties.

(a) The individual who is the subject of the administrative hearing and the person who requested the hearing shall have the right to be present and to be accompanied and represented by any person of their choosing, including legal counsel and lay representatives. The individual may be represented independently of a parent or guardian.

(b) The department and the head of the facility may be represented by a departmental attorney.

(c) Designation of representatives shall be communicated to the hearing officer and shall be recorded and filed with the pleadings and other documents pertaining to the administrative hearing.

(d) The facility, community center, or the hearing officer may assist the individual or the person requesting the hearing in obtaining representation by referring them to the public responsibility committee for the facility or community center, the local chapter of the Arc (formerly the Association for Retarded Citizens (ARC), the Parents Association for the Retarded of Texas (PART), the Arc of Texas (formerly the Texas Association for Retarded Citizens (ARC)), Advocacy Inc., and the local legal aid society for assistance in obtaining representation.

(1) If the individual who is to be the subject of the hearing is also the person who requested the hearing and cannot obtain representation, the facility or community center may appoint a person who is willing to serve as the representative for the individual.

(2) The facility or community center may:

(A) request that a member of the public responsibility committee for the facility represent the individual, or

(B) may appoint an employee of the facility who is willing to serve as the representative.

§403.412. Prehearing Conference.

(a) The hearing officer may, upon the officer's own motion or upon the motion of any party, direct the parties and their legal representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

(1) simplification of issues;

(2) possibility of admissions of certain assertions of fact or of stipulations concerning the use in evidence by any party of matters of public record;

(3) procedures to be used in the hearing;

(4) limitation, where appropriate, of the number of witnesses;

(5) taking of depositions in accordance with the provisions of APA; and

(6) such other matters as may aid in the simplification of the proceedings and disposition of the matters in controversy.

(b) At the prehearing conference, the hearing officer shall determine whether the individual who is the subject of the hearing is represented and may assist the individual in obtaining representation. The hearing officer shall also inform the parties and their representatives of the nature of the proceedings and the manner in which the administrative hearing will be conducted.

(c) With the consent of all parties, the prehearing conference may be conducted by conference telephone call.

(d) Actions taken at the prehearing conference shall be recorded in an order by the hearing officer.

§403.413. Notice of Filing; Service of Notice; Certificate of Service.

(a) Whenever any party files any pleading or motion other than the initial request for an administrative hearing, a copy of such pleading or motion shall be served on the other parties or their representatives.

(b) All notices required by this subchapter shall be served personally or by certified mail, return receipt requested. The willful failure of any party to make such service shall be grounds for the entry of an order by the hearing officer striking the pleadings of such party.

(c) A certificate by the party or the party's representative who is required to serve a notice or copy of a pleading or motion stating that it has been served on the other parties shall be prima facie evidence of such service. The following form of certificate will be sufficient for this purpose: I certify that I have this _____ day of _____, 19_____, served copies of the forgoing upon all other parties to this proceeding by (here state the manner of service). (signature of party or representative)

§403.414. Rules of Evidence; Official Notice; Witnesses; Transcription.

(a) In administrative hearings held pursuant to this subchapter, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of the State of Texas shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any administrative hearing held pursuant to this subchapter and the PMRA, the hearing officer may take official notice of all facts judicially cognizable. 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 staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed.

(c) Any interested person may appear at the administrative hearing and give oral or written testimony. The hearing officer shall have the authority to limit the number of witnesses whose testimony is merely cumulative.

(d) The proceedings shall be tape-recorded. Any part of the tapes shall be transcribed on the written request of any party. The facility may pay the cost of the transcript or assess the cost to one or more parties as described in Operating Instruction

401-3, concerning Inspection of Department Records.

§402.415. Applicable Rules of the Department; General Administrative Procedures.

(a) Insofar as they do not conflict with this subchapter or the PMRA, the provisions of Chapter 403, Subchapter O of this title (relating to Practice and Procedures with Respect to Administrative Hearings of the Department in Contested Cases) shall apply to and govern administrative hearings conducted pursuant to this subchapter and the PMRA. However, any action which may be or is required to be taken by the department, the commissioner, an examiner, or a hearings office may be taken by the hearing officer and any document which may be or is required to be filed with the department, the commissioner, an examiner, or a hearings office under Chapter 403, Subchapter O of this title (relating to Practice and Procedures with Respect to Administrative Hearings of the Department in Contested Cases) shall be filed with the hearing officer in an administrative hearing held pursuant to this subchapter and the PMRA.

(b) Administrative hearings held pursuant to this subchapter shall be conducted in accordance with the provisions of the PMRA and of APA to the extent such provisions are not in conflict with the PMRA.

§403.418. References Reference is made to the following statutes and department rules:

(1) the Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act (PMRA));

(2) the Administrative Procedure Act (APA), the Government Code, Chapter 2001

(3) Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases).

§403.419. Distribution.

(a) This subchapter shall be distributed to.

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

(2) the commissioner,

(3) the medical director and deputy commissioners,

(4) associate and assistant deputy commissioners,

(5) management and program staff in Central Office;

(6) superintendents and directors of all department facilities;

(7) executive directors of community centers; and

(8) those persons designated or appointed as hearing officers.

(b) A copy of this subchapter shall be provided upon request to any individual requesting or receiving mental retardation services from a facility or community center and the legal representative of such individuals.

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 19, 1993.

TRD-9332430 Ann K Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: August 6, 1993

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

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Chapter 404. Protections of Clients and Staff

Subchapter E. Rights of Persons Receiving Mental Health Services

• 25 TAC §§404.151-404.166

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§404.151-.166, concerning rights of persons receiving mental health services.

The purpose of the repeal is to allow for the contemporaneous adoption of a new subchapter which implements provisions of Senate Bills 205, 207, and 210 (73rd Legislature).

No public comment was received on the proposed repeal.

These sections are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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 19, 1993

TRD-9332428 Ann K Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: September 17, 1993

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

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• 25 TAC §§404.151-404.167

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§404.151-404.152, 404.156, and 404.165-404.167 without changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6285). Sections 404.153-404.155, and 404. 157-404.164 are adopted with changes. Exhibits A, B, and C, "Patient's Bill of Rights," "Teen's Bill of Rights," and "Children's Bill of Rights," respectively, are also adopted with changes. The new sections are adopted contemporaneously with the repeal of the subchapter they replace, also known as Chapter 404, Subchapter E, relating to rights of persons receiving mental health services

The purpose of the new subchapter is to comply with provisions of Senate Bills 205, 207, and 210 (73rd Legislature), all effective as of September 1, 1993, or earlier.

The definitions of "intrusive searches," "psychiatric hospital," "residential services," and "rights protection officer" are revised to clarify their intent in §404.153. In addition, the definition of "grounds privileges" is deleted. Reference to the right to provision of services without discrimination is consolidated within §404.154(a)(1) and a later reference is deleted Language is deleted from §404.154(2) to comply with current state laws Section 404.154(5) is revised to clarify that the individual has the right to information about those rules which relate to expectations of the individual's conduct The provision is also revised to clarify documentation requirements.

Documentation requirements in §404 154(7) and (14) are clarified, and §404.154(11) is revised to note the extension of the right to the parent or conservator of a minor Section 404 154(18) is revised to note its extension to the parent or conservator of a minor or the legal guardian of the person, if applicable. The intent of the term "behavior therapy" is also clarified. A new provision is added (§404 154(22)) addressing the right of the individual to file written notification prohibiting information from being disclosed when the physician believes the disclosure is in the individual's best interest and the disclosure is not otherwise specifically permitted by law.

Section 404.154(23) is revised to correspond with federal regulations The provision is further revised to reflect that documentation of a denial of access shall be in keeping with statute. Section 404.154(25) is revised to reflect the right to reasonable protection of personal property. It is clarified that §404 154(29) applies to transpor-

tation to, from, and between community-based services. Provisions relating to transportation mandated by House Bill 771 (73rd Legislature) are added. Section 404.154(30) is revised to include phone numbers for the Office of Consumer Services and Rights Protection's toll free TDD line and the Texas Department of Health's Health Facility Licensure and Certification Department's toll free line. These phone numbers are also added to §404.161.

Mail-opening procedures are clarified in §404.155(a)(1). It is clarified that individuals have the right to go outdoors and have access to parts of the facility away from the individual's living area is with or without supervision, as clinically appropriate. The term "grounds privileges" is deleted and replaced by an explanation of its intent as the term conflicts with the concept of access as a right. Provisions for limiting these rights are clarified in §404.155(a)(2).

It is clarified in §404.155(b)(8) that the individual may select a person to be notified prior to discharge or release if the individual grants permission. Section 404.155(b)(10) is revised to clarify the effective date. Section 404 155(b)(11) is revised to correspond with statutory language and include provisions for converting oral requests to the required written request

Section 404.157(a)(2) is revised for clarity. Section 404.157(b)(1) is revised to correspond with statutory language requiring the individual to be released upon the completion of the in-person examination (unless an application for court-ordered services will be filed) or, if detained beyond the examination, no later than 4 00 p.m the following business day unless an order has been obtained. Section 404.157(c) is revised to clarify when an application for court-ordered services may be filed for a person receiving voluntary services. Section 404.157(e) is revised to clarify examples of situations which might be considered coercive.

Section 404.158 and §404 159 are revised to clarify their application to individuals apprehended and presented for services Time references are revised to clarify exceptions in the event of weekends, holidays, or extreme weather emergencies In addition, requirements regarding the preliminary examination are clarified

A reference in §404 160 is corrected Section 404 161 is revised to require the use of the "Teen's Bill of Rights" and the "Children's Bill of Rights" in department facilities, community centers, and Psychiatric Hospitals Operated by Community Centers. Recommendations for age ranges corresponding with each document are also provided in §§404.161 and 404 162, as is a requirement that the "Patient's Bill of Rights" be provided to the parent or conservator of a minor in addition to the "Teen's Bill of Rights" and/or "Children's Bill of Rights " The sections are also revised to clarify that the use of additional brochures/materials regarding rights information is permitted

Section 404.163 is revised to note that community centers may use the MHRS 9-1 form or a form of their own design which includes the same information. Section 404.164 is revised to recognize that the rights protection officer must be free of conflicts of interest.

A public hearing to accept oral testimony on the proposed sections was held September 25, 1993, in Austin, where testimony was accepted from John Copeland of The Haven, DeSoto Written comments were received from 12 individuals or organizations, including: Abilene Regional MHMR Center, Abilene; Advocacy, Inc. , Austin; Glen Oaks Hospital, Greenville, The Haven, DeSoto; Haynes and Boone, L L P. Austin; Joyce L. Jones-Price, San Antonio, MHMR Services for the Concho Valley, San Angelo, The Pavilion, Amarillo, Regional Hospital of Texoma, Sherman; Evelyn A. Swenson-Britt, San Antonio, TEXAMI, Austin, Texas Hospital Association, Austin, and Texas Society of Psychiatric Physicians, Austin All commenters offered recommendations for changes

A commenter questioned whether the new provisions would actually provide additional safeguards to patient rights The commenter noted that while its hospital agrees with the intent of respecting the rights of all patients regardless of age, the new requirements would further complicate an already exhausting admission process at considerable expense and effort. The department responds that the new requirements are all mandated by statute, and, for the most part, simply update old requirements The "Teen's Bill of Rights" and "Children's Bill of Rights" are designed to ensure that younger children are informed of their rights in a way that is meaningful to them, thus ensuring they are able to comprehend and protect their rights

The same commenter expressed concern about some limitations contained in the Patient's Bill of Rights The commenter noted that these limitations restricted the hospital's absolute responsibility for protecting the patients from themselves and others during times of crisis The department responds that the rights outlined in the Patient's Bill of Rights are guaranteed in law However, many include provisions which allow for limitation of the rights for clinical necessity As a result, the rights carefully balance the individual's freedoms against safety and treatment

A commenter requested that language be added addressing the right of the individual to file written notification prohibiting information from being disclosed when the physician believes the disclosure is in the individual's best interest and the disclosure is not otherwise specifically permitted by law The department agrees, and explanatory language is added as §404 154(22)

Regarding §404 154(5), a commenter requested that the term "all" be changed to "those" to clarify the intent of the provision The commenter noted that this change would clearly tie the kinds of rules and regulations to be provided to the individual patient. The department agrees, and language is so revised.

The same commenter noted that §404.154(7) is not a requirement to participate in the treatment planning process; rather, it is instead a requirement that persons be notified of their right to participate. The commenter asked that language be revised to require staff to document that the legal representative was informed of this right, not that the representative was notified to participate. The department responds that in order to exercise the right to participate, the representative needs to be aware of the times and locations of treatment planning sessions. Language is therefore revised to require documentation of the provision of this information The commenter is correct in noting that it is then the representative's decision as to whether or not to participate.

A commenter expressed concern that §404.154(9) might result in self-treatment by allowing the patient, through a series of refusals, to direct his or her own care The commenter noted that another right addressed the individual's right to refuse medication or to take part in research, and suggested that this was sufficient to protect the patient. The commenter suggested that the right be deleted. The department responds that the intent of this right is to prohibit a mental health professional from linking participation in one program to agreement to participate in another treatment modality, e.g., prohibiting the individual from taking part in a psychosocial program as a punitive response to the individual's refusal of another treatment

A commenter requested clarification regarding the application of §404. 154(11) to minors, both under and over the age of 16 The department responds that Senate Bill 207 notes that if the individual is a minor, then the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. This language is added to the section

Concerning §404.154(14), a commenter noted that the documentation should be revised to require staff to note that the representative was informed of his or her right to participate in the aftercare planning process. The commenter noted that the provision is not a requirement that the representative participate The department responds that in order to exercise the right to participate, the representative needs to be informed of the time and location of aftercare planning sessions Language is revised to require documentation of the provision of this information The commenter is correct in noting that it is then the representative's decision as to whether or not to actually participate

A commenter requested that the reference to behavior therapy in §404. 154(18) be revised to clarify its meaning The department agrees, and the phrase, "when aversive procedures are used or a right otherwise guaranteed in this rule is re-

stricted" is added.

A commenter asked whether §404.154(22) contradicted federal regulations regarding release of confidential information about minors receiving substance abuse treatment. The department agrees, and language is revised to correspond with federal legislation.

A commenter expressed concern about the apparent lack of confidentiality surrounding information provided by third parties as addressed in §404. 154(22)(A). The commenter recommended that stronger safeguards be placed in this section to protect the confidentiality of the patient's record and those providing information about the patient. Another commenter asked whether provisions allowing a physician to refuse to release some parts of an individual's record applied to the information outlined in §404.154(22)(A). The department responds that the provisions are outlined in the section as established in Senate Bill 207. However, exceptions to release of the records when clinically justified are applicable to this section as well.

Another commenter noted that the language in Senate Bill 207 uses "shall," whereas the corresponding language in §404.154(22)(A) reads "may." The department agrees, and the wording is changed.

A commenter asked that §404.154(25) be revised to state, "reasonable protection of personal property." The department agrees, and language is revised.

A commenter asked that §404.154(29) be revised to reflect additional provisions related to transportation of individuals to, from, and between department facilities, community centers, and psychiatric hospitals as outlined in House Bill 771 (73rd Legislature). These provisions were overlooked in redrafting the subchapter, and (C)-(E) have been added to meet the legislative mandate.

Another commenter asked whether §404.154(29)(A) prohibited male staff from transporting female clients routinely. The department responds that although male staff may physically drive the vehicle, a female attendant must be present. Language is added to clarify the intent of this section.

A commenter noted that §404.154(29)(B) applied to police or sheriff's department personnel who are not subject to the provisions of this subchapter. The department responds that although this is true, the individual has the right to be informed of his or her rights regarding transportation from one facility to another. Complaints received regarding violations of this right should be forwarded to the appropriate regulatory authorities.

A commenter asked whether the provisions of §404.155 apply to children or adolescents receiving residential services in a facility licensed by the Texas Department of Human Services. The department responds that its jurisdiction is limited to facilities which it operates, funds, or licenses and psychiatric hospitals which are licensed by the Texas Department of Health. Therefore, these rights are not applicable to facilities singularly licensed by the Texas Department of Human Services.

Concerning §404.155(A), a commenter noted that certain limitations on visitation were necessary in order to protect acute patients from abuse or exploitation. The department responds that the section includes a provision for implementing such limitations when clinically justified. However, these limitations must be specific to the individual and reviewed frequently to ensure they are not enforced longer than is necessary.

A commenter asked that §404.155(A)(iii)(II) be revised to allow restrictions in the receipt of certain other materials when it is found to be potentially detrimental to the patient's overall course of treatment. The department responds that the section includes a provision for limiting this right when clinically justified. However, the limitation must be specific to the individual and must be reviewed frequently to ensure the limitation is not enforced longer than is necessary.

A commenter requested that the exception in §404.155(A)(iii)(III) be broadened to encompass any chronic limitation. The commenter cited some forms of mental retardation as an example. The department agrees that there may be chronic limitations other than physical that make it difficult for an individual to open packages, and language is added addressing this issue. However, the limitations must be reviewed at least every 30 days. Furthermore, a singular diagnosis of mental illness or mental retardation is not considered a chronic limitation which would prohibit an individual from opening packages. The determination should be individualized.

A commenter asked that §404 155(C) and (D) be revised to clarify that the determination of whether the individual does or does not require supervision is based on clinical indications. The department agrees, and language is added to both provisions to clarify this point.

A commenter asked that §404.155(b)(11) be revised to read, "The right to receive, within four hours after the facility administrator receives a written request for the list..." The commenter noted that the suggested language better reflected the intent of statute. The department agrees, and the language is revised.

A commenter expressed concern about accepting oral requests for discharge from a voluntarily committed individual, noting that requests for voluntary admissions would never be accepted in oral form only. The department responds that oral requests are permitted by statute, and the requirement to convert the request to written form ensures that there is a written record of the request.

A commenter noted that in order to track statute, the department did not need to require that two staff members time, date, and sign a request for discharge when converted from an oral request by a voluntary patient. The department responds that although statute only requires the individual to time, date, and sign the document, it is an additional safeguard to have the staff member who prepared the statement date, time and sign it as well. However, the requirement that two staff members do so is deleted, and only the staff member who prepares the document (as well as the individual) is now required to sign it.

A commenter noted that the new "four-hour rule" outlined in §404.157(b) could create problems if a 16- or 17-year-old requests discharge and his or her parent can not arrive at the hospital within four hours to pick up the minor. The department responds that the four-hour rule is statutory and must be followed. However, considering this issue early in the discharge planning process and developing provisions for addressing it that are agreeable to both the minor and the parent or conservator may help to alleviate potential conflicts.

Several commenters noticed inconsistencies between language in §404.157 (b) and statutory language. One commenter noted that Senate Bill 205 requires the release of an inpatient "upon completion" of the in-person examination; another commenter noted that the same bill requires that the application for court-ordered treatment be obtained before 4:00 p.m. on the next succeeding business day. The department responds that language in this section is revised to mirror that found in statute.

Concerning §404.157(b)(1)(C), a commenter asked why procedures for release of minors receiving chemical dependency services who request discharge are specifically outlined in this section. The commenter asked whether provisions for release of minors receiving mental health services who request discharge are different, and suggested a need for clarification around the issue of who can request discharge for a minor. The department responds that a minor under the age of 16 admitted for mental health treatment cannot initiate the discharge process without the approval of the parent or legal representative who allowed the admission.

Several commenters noted that language in §404 157(c) incorrectly assigned responsibility for determining whether the individual meets the criteria for court-ordered services to the head of the department facility, community center, or psychiatric hospital. According to statute, the responsibility actually lies with the physician responsible for the individual's treatment. The department agrees, and language is revised to reflect this.

Another commenter expressed some confusion over the issue of the application of §404.157(c). The department responds that language is revised to clarify that the section applies to individuals receiving voluntary services.

A commenter had several questions concerning information to be included in the Medical Examination for Mental Illness. The commenter asked whether it needed to indicate both an order for commitment for mental health services and an order for psychoactive medication. The commenter also asked whether one or two hearings were required The department responds that these are two completely separate issues. If the individual meets the criteria for a person for whom a petition for an order authorizing administration of psychoactive medication may be filed, the petition must be filed separately. Furthermore, the hearing must be held separate from a hearing on the commitment order.

A commenter asked that the provision outlined in §404.157(e)(3) be revised to recognize situations in which the individual has agreed to receive treatment as a condition of parole, employment, or other situation Another commenter noted that the provision is neither addressed nor authorized by statute. The department responds that although not specified in statute, the situation is included as an example to further clarify the intent of the section. Language is added addressing conditions of treatment.

A commenter requested several clarifications concerning §404.160(a)(1). The commenter asked whether the term "persons" was intended to refer to physicians and third-party professionals in addition to hospital staff. The commenter also asked whether a specific standard or set of standards would be provided or whether the hospital and medical staff would be permitted to develop the standard consistent with accepted medical practices The department responds that "persons" does refer to physicians and third-party professionals treating a minor. The department is currently in the process of developing clinical admission standards for minors as part of the upcoming proposal of new Chapter 401, Subchapter J. Upon adoption, it is expected that the document will provide some guidance regarding education and training

A commenter noted that the reference to §404 154(a)(2) could not be found in the text of the rule The department responds that the reference should have been to §404 155(a)(2). The typographical error is corrected

A commenter expressed concern about the extension of rights to minors in §404 162 The commenter noted that the values of parents must be a concern when their children are treated in a hospital. The commenter noted that basic rights that are routinely given to adults, such as deciding whether they will engage in overt sexual acts, what time they will come in, what their telephone privileges will be, etc, are rights that the parents limit for their children. The commenter suggested that children should not be given more rights by the hospital than their parents would give them at home, and asked that the Children's Bill of Rights and the Teen's Bill of Rights be modified to incorporate consideration for the rights of parents and their authority for decisions relating to the care, treatment, and restriction of rights of their children while hospitalized The department responds that parents are involved in the treatment planning process and have significant input in decisions regarding the child's treatment. Neither the "Children's Bill of Rights" nor the "Teen's Bill of Rights" in any way, shape, or form implies that a minor will be permitted to exist in a rule-free environment while hospitalized. The purpose of hospitalization is to receive treatment, and individualized limitations of rights when clinically justified to promote treatment are permitted.

A commenter noted that §404.162(c) seems to imply that a psychiatric hospital may not provide the patient with any other rights information. The commenter suggested that while the hospital should be required to distribute the "Patient's Bill of Rights," it should be permitted to provide other additional information as long as that additional information is not in conflict with the Bill of Rights. The department agrees, and language clarifying the acceptability of additional brochures/materials is added. It is clarified, however, that only the "Patient's Bill of Rights," the "Teen's Bill of Rights," or the "Children's Bill of Rights" shall be used as the formal document for rights notification.

A commenter asked for clarification of the phrase, "must be made available in other languages of primary use by individuals admitted to each psychiatric hospital." The department responds that it is important that people be able to understand their rights. If a significant portion of the hospital's treatment population utilizes as its primary language something other than English, then the hospital should take steps to ensure the document is available in that language A hospital would not be expected to have a document available in Laotian, for example, if it had never before admitted an individual whose primary language is Laotian. In that case, however, an interpreter should be utilized for the oral explanation of the individual's rights.

A commenter asked whether the parent/conservator who is admitting a minor should be provided a copy of the "Patient's Bill of Rights" in addition to the "Teen's Bill of Rights" and/or "Children's Bill of Rights." The commenter noted that this seemed appropriate, since all of the rights of these individuals may not be reflected in the Teen's or Children's version. The department agrees, and language is added to clarify this

Regarding §404.163, a commenter expressed concern that the requirement to read an individual a total of 32 rights on admission negatively affects therapeutic bonding of patient to nurse. The commenter suggested that having rights posted and in the patient's handbook was sufficient, and that an oral presentation of rights was overkill The department responds that written and oral presentations of rights are necessary to ensure that individuals are knowledgeable about and able to protect their rights. Furthermore, the oral presentation is required by statute In brief, it's not just a good idea - it's the law.

A commenter suggested that no benefit was derived from requiring all employees to receive training in rights of persons receiving mental health services as required in §404.165 The commenter suggested revising the section to specify, on a functional basis, those types of personnel who are not required to receive instruction on the content of the subchapter. The department responds that there is no guarantee that non-direct contact staff-such as maintenance or clerical staff-will not have contact with individuals receiving services. As such, it is important that these individuals receiving training in rights to ensure they are able to uphold those rights and recognize violations of them.

These sections are adopted under provisions of Senate Bills 205, 207, and 210 (73rd Legislature); the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers; and under the Texas Health and Safety Code, §577.010 (Texas Mental Health Code, Article 5547-95), which provides the Texas Department of Mental Health and Mental Retardation with rulemaking powers specific to private psychiatric hospitals.

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

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.

Department facilities-The state hospitals and state centers which provide mental health services, and their respective community-based programs.

Emergency-A situation in which, in the opinion of the treating physician, the immediate use of medication, or, in the opinion of the treating physician or other appropriate professional, the immediate use of restrictive techniques is essential to interrupt imminent physical danger to self or others.

Hospital-A general or special hospital as defined in the Health and Safety Code, §241.003(4) and §241.003(11), that includes an identifiable part of the hospital for the provision of mental health services.

Inpatient services-Residential services provided in a department facility, a licensed hospital unit, a licensed crisis stabilization unit, or a psychiatric hospital.

Intrusive searches-The tactile and/or visual examination of an individual's partially clothed (a state of undress that would not be acceptable in public) or fully unclothed body, personal belongings, or space designated for the storage of the individual's personal belongings. Intrusive searches do not include:

(1) routine searches of belongings for contraband at the time of admission, return from pass, or transfer;

(2) superficial external patdowns by staff of the same sex;

(3) daily room checks for

housekeeping and chore completion,

(4) physical assessments by nurses and physicians, and

(5) searches of the person's outer clothing, hair, or mouth, unless the search is resisted by the person, in which case all procedures for intrusive searches are to be followed.

Mental health services-Includes all services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug addiction.

Office of Consumer Services and Rights Protection (CSRP) -The office located within the department's Central Office which maintains the toll-free telephone line 1-800-252-8154 to receive rights-related complaints from persons receiving services at department facilities and community centers and which is responsible for assisting persons receiving mental health services with needed services and rights protection.

Psychiatric hospital-

(1) An establishment licensed by the Texas Department of Health under Chapter 577 of the Texas Health and Safety Code offering inpatient services, including treatment, facilities, and beds for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care Although substance abuse services may be offered, a majority of beds (51%) must be dedicated to the treatment of mental illness in adults and/or children Services other than those of an inpatient nature are not licensed or regulated by the Texas Department of Health and are considered only to the extent that they affect the stated resources for the inpatient components, or

(2) that identifiable part of a hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health under Chapter 241 of the Texas Health and Safety Code

Residential services -Twenty-four hour services provided and/or contracted by the department or a community center (e g , structured group residential programs, halfway houses, hospital units providing MH services, licensed crisis stabilization units, etc) or a psychiatric hospital.

Rights protection officer - An employee appointed by the head of a department facility or community center to protect and advocate for the rights of persons receiving mental health services.

Unusual medications-Medication that has not been approved by the Food and Drug Administration for use in the United States, or medication that is being used to treat conditions for which its use has not been demonstrated through rational scientific theory and evidence in biomedical literature, controlled clinical trials, or expert medical opinion.

§404.154. Rights of All Persons Receiving Mental Health Services. Persons receiving mental health services from department facilities, community centers, and psychiatric hospitals have the following rights:

(1) The rights, benefits, responsibilities, and privileges guaranteed by the constitutions and laws of the United States and the State of Texas unless they have been restricted by specific provisions of law. These rights include, but are not limited to, the right to impartial access to and provision of treatment, regardless of race, nationality, religion, sex, ethnicity, sexual orientation, age or disability; the right to petition for habeas corpus; the right to register and vote at elections, the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued, all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations

(2) The right to presumption of mental competency in the absence of a judicial determination to the contrary. Any questions regarding applicability of this right or a limitation on it should be referred for appropriate legal advice

(3) The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each individual

(4) The right to appropriate treatment in the least restrictive appropriate setting available consistent with the protection of the individual and the protection of the community.

(5) The right to be informed of those rules and regulations of the department facility, community center, or psychiatric hospital relating to expectations of the individual's conduct Staff must document in the medical record the date and manner in which this information was provided

(6) The right to communication in a language and format understandable to the individual for all services provided.

(7) The right to participate actively in the development and periodic review of an individualized treatment plan (extending to a parent or conservator of a minor, and the legal guardian of the person, when applicable); and the right to a timely consideration of any request for the participation of any other person in this process, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified of the date, time, and location of each meeting so that he or she could participate.

(8) The right to explanations of the care, procedures, and treatment to be provided; the risks, side effects, and benefits of all medications and treatment procedures to be used, including those that are unusual or experimental; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the parent or conservator of a minor, the legal guardian of the person, when applicable, and to any other person authorized by the individual served.

(9) The right to refuse particular treatments without prejudice to participation in other programs, or without compromising access to other treatments or services solely because of the refusal.

(10) The right to meet with the professional staff members responsible for the individual's care and to be informed of their professional discipline, job title, and responsibilities. In addition, the individual has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the individual's care.

(11) The right to obtain an independent psychiatric, psychosocial, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional of the individual's choice at the individual's own expense. The department facility, community center, or psychiatric hospital administrator shall allow the individual to obtain the examination or evaluation at any reasonable time. If the individual is a minor, the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation

(12) The right to be granted an in-house review of the individual treatment plan or specific procedure upon reasonable request as provided for in the written procedures of the department facility, community center, or psychiatric hospital.

(13) The right to an explanation of the justification of any transfer of the individual to any program within or outside of the department facility, community center, or psychiatric hospital

(14) The right to participate ac-

tively in the development of a discharge plan addressing aftercare issues which include the individual's mental health, physical health, and social needs. This right extends to a parent or conservator of a minor, or the legal guardian of the person, when applicable. The individual also has the right to a timely consideration of any request for the participation of any other person in this discharge planning, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified of the date, time, and location of each meeting so that he or she could participate.

(15) The right to information, upon request, pertaining to the cost of services rendered (itemized when possible), the sources of the program's reimbursement, and any limitations placed upon the duration of services. At department facilities and community centers, no person will be denied services due to an inability to pay for them.

(16) The right to be free from unnecessary or excessive medication, which includes the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in an emergency. This right extends to the parent or conservator of a minor or the legal guardian of the person, if applicable. For individuals receiving inpatient services at department facilities, community centers, or other mental health facilities when those services are operated by the department or funded by the department through a contractual or other agreement, this right may only be limited in accordance with the provisions of Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(17) The right to give or withhold informed consent to participate in research programs without compromising access to services to which the individual is otherwise entitled.

(18) The right to give or withhold informed consent for the use or performance of any of the following (exceptions to this right must be in accordance with applicable laws, standards, or, for department facilities and community centers, department rules, and must be fully explained to the individual and the person authorized to give consent, if applicable):

(A) surgical procedures;

(B) electroconvulsive therapy (prohibited for minors under the age of 16);

(C) unusual medications;

(D) behavior therapy when aversive procedures are used or a right otherwise guaranteed in this rule is restricted;

(E) hazardous assessment procedures;

(F) audiovisual equipment; and

(G) other procedures for which consent is required by law.

(19) The right to withdraw consent at any time in any matter in which the person receiving services has previously granted consent, without limiting or compromising access to services or other treatment(s).

(20) The right to be informed of the current and future use and disposition of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape recorders, television, movies, or photographs.

(21) The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's consent. At department facilities and community centers, client-identifying information shall be disclosed in accordance with Chapter 403, Subchapter K of this title (relating to Client-Identifying Information). At psychiatric hospitals, client-identifying information shall be disclosed in accordance with the provisions of the Texas Health and Safety Code, §§576. 005 and 611.001-611.005 and 42 Code of Federal Regulations, Part 2.

(22) The right to be informed of a treating physician's intent to disclose information (when the physician determines such disclosure is in the individual's best interest) to a law enforcement officer or the individual's legally authorized representative when the disclosure is not specifically permitted by other law (e.g., information provided to law enforcement officers legally authorized to conduct investigations concerning complaints of abuse or denial of rights. Unless the individual is unavailable, this includes the right to be informed:

(A) of the intent to disclose the information;

(B) to whom the information will be disclosed, and

(C) of the client's right to prohibit the information from being disclosed by providing contrary written instructions.

(23) The right to have access to information contained in one's own record. The right extends to the parent or conservator of a minor (unless the minor is receiving chemical dependency services) and to the legal guardian of a person declared to be legally incompetent. Department facilities and community centers should also reference Chapter 403, Subchapter K (relating to Client-Identifying Information) regarding this right.

(A) Confidential information about another person who has not consented to the release shall be deleted from the record prior to its release, unless it is:

(i) information relating to the individual that another person has provided;

(ii) the identity of the person responsible for that information; or

(iii) the identity of any person who provided information that resulted in the individual's commitment.

(B) This right may be limited by a mental health professional if the professional determines that release of a portion of the information would be harmful to the individual's physical, mental, or emotional health.

(C) Any denial of access to information shall be in keeping with, documented, and reviewed regularly according to provisions outlined in the Texas Health and Safety Code, §611.004 or §611.0045. Individuals also have the right to an independent review of any denial of access in accordance with Public Law 99-319 (Protection and Advocacy Act for Mentally Ill Individuals) or the Texas Health and Safety Code, §611.0045.

(24) The right to be free from mistreatment, abuse, neglect, and exploitation. See Chapter 710, Subchapter A of this title (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities), Chapter 710, Subchapter B of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), and Chapter 710, Subchapter C of this title (relating to Patient Abuse in Private Psychiatric Facilities).

(25) The right to reasonable protection of personal property from theft or loss. At department facilities, the head of the facility must institute procedures to protect and adequately secure the personal property of persons served, including clothing. Community centers and psychiatric hospitals should develop and post procedures regarding protection and security of personal property of persons served.

(26) The right not to be se-

cluded or have physical restraint applied to the individual unless it has been prescribed by a physician, except in emergency situations. If physical restraint or seclusion is utilized, the reason for the medical order, the length of time restraint or seclusion has been ordered, and the behaviors necessary for the individual to be removed from restraint or seclusion shall be explained to the individual, and the restraint or seclusion shall be discontinued as soon as possible. Department facilities and community centers should reference Chapter 405, Subchapter F (relating to Restraint and Seclusion in Mental Health Facilities) for more information regarding this right.

(27) The right to fair compensation for labor performed for the department facility, community center, or psychiatric hospital in accordance with the Fair Labor Standards Act. Persons receiving services at department facilities and community centers have the right to be informed of the availability of employment opportunities at the department facility or in the community which may lead to competitive employment, as outlined in the Texas Health and Safety Code, §533.008 (§2.17A of the Texas Mental Health and Mental Retardation Act).

(28) The right to be free from intrusive searches of person or possessions unless justified by clinical necessity, ordered by a physician, and witnessed. Any searches involving removal of any item of clothing shall be witnessed by an individual of the same sex as the person being searched and shall be conducted in a private area. Only physicians will perform body orifice searches.

(29) The right to be transported to, from, and between department facilities (including community- based services), community centers, and psychiatric hospitals in a way that protects the dignity and safety of the individual. This includes:

(A) the right of females to be transported or accompanied by a female attendant unless the individual is accompanied by her father, husband, adult brother, or adult son,

(B) the right of all individuals not to be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available;

(C) the right of all individuals not to transported with state prisoners,

(D) the right of all individuals not to be physically restrained, unless necessary to protect the health and safety of the individual or of a person traveling with the individual, in which case procedures outlined in the Texas Health and Safety Code, §574.045 shall be followed; and

(E) the right of all individuals to be provided reasonable opportunities to get food and water and use a bathroom.

(30) The right to initiate a complaint. At department facilities and community centers, this includes the right to be informed of how to contact the facility or center rights protection officer (as outlined in §404.164 of this title (relating to Rights protection Officer at Department Facilities and Community Centers)), the facility or center public responsibility committee, and the Office of Consumer Services and Rights Protection in Central Office (toll-free 1-800-252-8154, toll-free TDD 1-800-538-4870). At psychiatric hospitals, this includes the right to be informed of how to contact the Health Facility Licensure and Certification Division of the Texas Department of Health (toll-free 1-800-228-1570)

(31) The right of any individual to make a complaint regarding denial of rights without any form of retaliation.

(32) The right to have these rights and any additional rights explained aloud in a way the person served can understand within 24 hours of admission to services (refer to §404.163 of this title, relating to Communication of Rights to Individuals Receiving Mental Health Services) and upon request Persons admitted voluntarily have the right to have these rights and any additional rights explained aloud in a way the person served can understand prior to admission to services and upon request

§404.155. Rights of Persons Receiving Residential Mental Health Services

(a) Personal Rights.

(1) The following personal rights shall be provided to all persons receiving residential mental health services

(A) The right to communicate with persons outside the department facility, community center, or psychiatric hospital, in keeping with the general rules of the facility, including,

(i) receiving visitors at reasonable times and places, allowing for as much privacy as possible,

(ii) making phone calls at reasonable times, allowing for as much privacy as possible, and

(iii) communicating by uncensored and sealed mail with others, except in the following situations

(I) When there is reason to suspect that the mail contains items such as illicit drugs or weapons which may present imminent risk of harm to the individual or others, the treating physician may authorize observing the opening of the mail by writing a specific order into the individual's chart explaining the potential harm, the reason for suspicion, and what mail is to be opened. The mail may then be opened by the individual in the presence of two members of the individual's treatment team. After inspecting the mail and removing any items which might present imminent risk of harm to the individual or others, the mail shall be given to the individual; those observing the opening of the mail may not read it.

(II) If the individual is unable to open personal mail because of a physical limitation, a staff member may assist if documentation of the need for assistance is provided in the individual's record and if the individual requests or agrees to such assistance. An order authorizing this assistance must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic physical limitation, when the order may remain in effect until there is an improvement in the individual's condition. Other orders may be renewed as long as the condition exists. Staff members may offer to read mail to individuals unable to read because of illiteracy, blindness, or other reason, but staff members may not read the mail if the individual declines the offer.

(III) Employees may observe the opening of packages received by individuals deemed not capable of protecting personal property. An order authorizing this limitation must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic limitation, when the order must be reviewed at least every thirty days. A diagnosis of mental illness or mental retardation is not in itself considered a chronic limitation Any cash or articles received shall be recorded in the individual's record and placed in appropriate safekeeping accessible to the individual.

(B) The right to keep and use personal possessions This includes the right to wear one's own clothing and religious or other symbolic items This right may be limited only if the use of the possession is determined by the treatment team to present imminent risk of harm, to present a security risk, or to prevent the individual from participating in the treatment plan. This includes the right to be free from searches of belongings except those searches based on

reasonable belief that failure to search may present imminent risk of harm to the individual or others. A clinical justification must exist and be documented in the individual's record if access to or the use of any personal possession is limited or if a search of the individual's belongings is conducted.

(C) The right to have an opportunity for physical exercise and for going outdoors, with or without supervision, as clinically indicated, at least daily. A physician's order limiting this right must be reviewed and renewed, if necessary, at intervals no longer than every three days and the findings of the review must be documented in the individual's record.

(D) The right to have access, with or without supervision, as clinically indicated, to appropriate areas of the campus of the department facility, community MHMR center, or psychiatric hospital away from the individual's living unit, including, but not limited to, recreation and canteen/snack areas. The access should be available as frequently as the individual's clinical condition and schedule of therapeutic activities allow.

(E) The right to have opportunities for suitable interactions with individuals of the opposite sex, with or without supervision, as appropriate for the individual.

(2) For persons receiving inpatient services, the exercise of these rights may be limited by the treating physician only to the extent that the restriction is necessary to maintain the individual's physical and/or emotional well-being or to protect another person. If a restriction is imposed, the treating physician shall document the reasons for the restriction and the duration of the restriction in the individual's record. Unless otherwise specified, the written order must be reviewed within seven days, and if renewed, it must be renewed in writing at intervals no greater than every seven days. The treatment team should consider strategies to help the individual regain or resume the practice of the right

(A) A physician or physician's designee shall inform the individual of the clinical reasons for the restriction and its duration as soon as possible. The parent/conservator of a minor or the legal guardian of an individual, if applicable, shall also be informed of the restriction and its duration as appropriate

(B) The right to communicate with legal counsel, the department, the courts, or the state attorney general may not be restricted.

(3) Except for the general rules of the program, there is no provision for limiting these rights for persons voluntarily admitted to a residential program other than an inpatient unit.

(b) Additional rights. In addition to the rights outlined in subsection (a) of this section, persons receiving residential mental health services shall also have the following rights:

(1) The right to have unrestricted visits from attorneys, internal advocates, representatives of Advocacy, Inc. with the consent of the person served, private physicians, or other mental health professionals at reasonable times and places. At department facilities, this right shall also include unrestricted visits from public responsibility committee members at reasonable times and places.

(2) The right to be informed in writing and by any other means necessary for communication, at the time of admission to and discharge from inpatient services and upon request, of the existence and purpose of the protection and advocacy system in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319). The notice must include the protection and advocacy system's telephone number and address. In Texas, the system is called Advocacy, Inc.

(3) The right to wear suitable clothing which is neat, clean, and well-fitting. At department facilities and community centers, clothing will be obtained and provided for individuals not having such clothing

(4) The right to religious freedom No person shall be forced to attend or engage in any religious activity

(5) The right to a timely consideration of a request for transfer to another room if another person in the room is unreasonably disturbing the individual, with the right to be informed of any reasons for any denial of such a request

(6) The right to receive appropriate treatment of any physical ailments essential to the treatment of a mental disorder and for a physical disorder arising in the course of an individual's inpatient psychiatric care The manner in which these physical disorders are treated is the decision of the physician, consistent with good professional judgment. If the physician determines the procedures required for treatment to be elective rather than essential, the individual has the right to consult with a provider outside the facility for treatment at the individual's own expense

(7) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital notify a person chosen by the individual of the admission if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record. If such notification is refused upon admission, the individual served shall be reinformed of this right as the individual's condition changes.

(8) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital notify a person chosen by the individual prior to discharge or release if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record.

(9) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital provide information about the right to make health care decisions and execute advance directives as allowed by state law.

(10) Effective May 1, 1994, the right to written information, in the individual's primary language, if possible, about any prescription medications ordered by the treating physician. This information shall, at minimum, identify the major types of prescription medications; specify the conditions for which the medications are prescribed; identify the risks, side effects, and benefits associated with each type of medication; and include sources of detailed information about each particular medication. This right extends to the individual's family on request unless prohibited by state or federal confidentiality laws.

(11) The right to receive, within four hours after the facility administrator or designee receives a written request, a list of the medications prescribed for administration to the individual while the individual is in the department facility, community center, or psychiatric hospital. The list must include the name, dosage, and administration schedule of each medication and the name of the physician who prescribed each medication. This right extends to a person designated by the individual and to the individual's legal guardian or managing conservator, if applicable If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the individual or another appropriate, designated party.

(A) If an individual informs a person associated with or employed by the department facility, community center, or psychiatric hospital of the individual's desire to leave, the employee or person shall, as soon as possible, assist the individual in creating the written request and present it to the individual to sign, date, and time.

(B) Without regard to whether the individual agrees to sign the paperwork, the request will be documented and processed by staff.

(12) The right to have a periodic review of the need for continued inpatient treatment.

§404.157. Rights of Persons Voluntarily Admitted to Inpatient Services.

(a) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency or the person who requested admission on the individual's behalf have the right to request discharge. Any such person expressing a request for release shall be given an explanation of the process for requesting release and afforded the opportunity to request release in writing.

(1) When a written request for release is presented to any direct care staff of the department facility, community center, or psychiatric hospital, it should be signed, dated and timed by the individual or a person legally responsible for the individual.

(2) If an individual informs a person associated with or employed by the department facility, community center, or psychiatric hospital of the individual's desire to leave, the employee or person shall, as soon as possible, assist the individual in creating the written request and present it to the individual to sign, date, and time. Without regard to whether the individual agrees to sign paperwork requesting discharge from services, the request will be documented and processed by staff. The refusal or inability of the individual to sign the request for discharge will be documented on the unsigned written request.

(3) All written or prepared requests for discharge will be timed, dated, and signed by the staff member, who shall provide information to the individual that pursuant to law, during the ensuing period of up to 24 hours, the individual will be observed and evaluated to determine the clinical appropriateness of seeking an involuntary commitment to services. The form and format for requesting release and the information to be provided may be prescribed by the department.

(b) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency have the right to be discharged within four hours of a request for release unless the individual's treating physician (or another physician if the treating physician is not available) determines that there is cause to believe that the individual might meet the criteria for court-ordered mental health services or emergency detention.

(1) Each such person detained beyond four hours has the right to be examined in person by a physician and assessed for discharge readiness within 24 hours of the filing of a request for release, with results of the assessment and recommendation resulting documented in the medical record and disclosed to the individual. All such persons have the right not to be detained beyond the completion of the in-person examination unless:

(A) the person who filed the request for release files a written withdrawal of the request or asks a staff member to withdraw the request (the staff member must put the request in writing);

(B) the person served, in the physician's clinical judgment, meets the criteria for involuntary commitment outlined in the Texas Health and Safety Code, §573.022, and an application for court-ordered mental health services, chemical-dependency services or emergency detention will be filed and an order obtained not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs and the individual is detained under the provisions of the relevant statute; or

(C) the person receiving inpatient treatment for chemical dependency is a minor admitted with the consent of the parent, guardian, or conservator, and the individual who gave that consent objects in writing to the release of the minor after consultation with personnel of the department facility, community center, or psychiatric hospital.

(2) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction to extend the period under which the individual may be detained. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the individual may be detained until 4 p.m. on the first succeeding business day.

(c) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency have the right not to have an application for court-ordered mental health or chemical dependency services filed while receiving voluntary services unless, in the opinion of the physician responsible for the individual's treatment, the individual meets the criteria for court-ordered services as outlined in the Texas Health and Safety Code, §573.022 and either:

(1) requests discharge;

(2) is absent without authorization;

(3) is unable to consent to appropriate and necessary psychiatric or chemical dependency treatment; or

(4) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the individual's treatment and the physician completes a certificate of medical examination for medical illness that, in addition to the information required by the Texas Health and Safety Code, §574.011, includes the opinion of the physician that:

(A) there is no reasonable alternative to the treatment recommended by the physician; and

(B) the individual will not benefit from continued inpatient care without the recommended treatment.

(d) Each of these persons has the right to be informed by the physician of the intent to file an application for court-ordered mental health services based on the criteria outlined in subsection (c) of this section.

(e) Each of these person has the right to be free from threatening or coercive representations of actions that will result if the individual requests to leave a department facility, community center, or psychiatric hospital against medical advice, including representations that:

(1) the individual will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the individual within 48 hours prior to the representation;

(2) the individual's insurance company will refuse to pay all or any portion of the medical expenses previously incurred; or

(3) the person will be reported to an enforcement or regulatory agency (i.e., Department of Protective and Regulatory Services) merely because the person refuses to follow a treatment recommendation. However, this does not preclude reminding the individual of the consequences of requesting release as relate to any agreements the individual entered into as a condition of treatment, i e., treatment as a condition of parole.

§404.158. Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other than for Chemical Dependency). The rights of each person apprehended and presented for emergency detention for inpatient mental health services at a department facility, community center, or psychiatric hospital are granted under the relevant sections of the Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq.).

(1) Each person apprehended or detained, but not yet admitted, has the following rights:

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment.

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transferred back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return

(D) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that any one of the criteria for emergency detention no longer applies.

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in the proceeding for further detention.

(F) The right to a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or psychiatric hospital following apprehension to determine whether the person meets the criteria for admission for emergency detention. If a physician is not available to conduct the examination, steps shall immediately be taken to arrange for the examination as soon as possible, but in no case more than 24 hours after apprehension.

(2) If the person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or psychiatric hospital shall immediately advise the person of the following rights:

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or Sunday or a legal holiday or before 4 p m. on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p m of the first succeeding business day In the case of an extreme weather emergency or disaster, a judge may also extend the period of detention by written order for no more than 24 hours at a time.

(B) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573.022, no longer applies.

(C) The right to be returned to the location of apprehension, place of residence, or other suitable place if released from emergency detention, unless the person is arrested or objects to the return.

(D) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour of which detention begins under an order of protective custody except that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the hearing shall be held no later than the next day that is not a Saturday, Sunday, or legal holiday. In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time

(E) The right to have an attorney appointed if the person does not have an attorney when application for court-ordered services is filed.

(F) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(G) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

§404.159. Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services The rights of each person apprehended and presented for emergency detention for inpatient chemical dependency services at a department facility, community center, or psychiatric hospital are granted under the relevant sections of the Texas Alcohol and Drug Abuse Services Act (Texas Civil Statutes, Article 5561c-2)

(1) Each person apprehended or detained, but not yet admitted, for emergency detention has the following rights

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transported back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return.

(D) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573 022, no longer applies

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in proceedings for further detention

(F) The right to have a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or psychiatric hospital following apprehension to determine whether the person meets the criteria for admission for emergency detention If a physician is not available to conduct the examination, steps shall immediately be taken to arrange for the examination as soon as possible, but in no case more than 24 hours after apprehension.

(2) If a person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or psychiatric hospital shall immediately advise the person of the following rights

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or a Sunday or legal holiday or before 4 p m on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p m of the first succeeding business day In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time

(B) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that the criteria for emergency detention, as outlined in the Texas Health and Safety Code, §573 022, no longer applies

(C) The right to be transferred back to the location of apprehension, or other suitable place, if released from emergency detention, unless the person is

arrested or objects to the return.

(D) The right to be informed that no later than the 24th hour after the hour of initial detention, the head of the department facility, community center, or psychiatric hospital may file a petition for court- ordered treatment, except that if the 24-hour period ends on a Saturday, Sunday, or legal holiday, the petition shall be filed no later than 4 p.m. of the first succeeding business day that is not a Saturday, Sunday, or legal holiday.

(E) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour on which detention begins under an order of protective custody to determine whether the person should remain detained in the department facility, community center, or psychiatric hospital, except that if the period ends on Saturday, Sunday, or legal holiday, the hearing must be held no later than the next business day that is not a Saturday, Sunday, or legal holiday. In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time.

(F) The right to have an attorney appointed when application for court-ordered services is filed (if the person does not have an attorney).

(G) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(H) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing.

(I) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

(J) The right to refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused.

(K) The right to be informed that beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life.

(L) The right to request that a hearing be held in the county of which the person is a resident, if within the state

§404.160. Special Rights of Minors Receiving Inpatient Mental Health Services. In addition to the applicable rights addressed in §404.154-404.159 of this title (relating to Rights of All persons Receiving Mental Health Services; Rights of Persons Receiving Residential Mental Health Services; Additional Rights of Persons Receiving Residential mental health Services at Department; Rights of Persons Voluntarily Admitted to Inpatient Services; Rights of Persons Apprenhended for Emergency Detention for Inpatient Mental Health Services (Other than for Chemical Dependency; and Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services)), minors admitted to inpatient mental health services shall have the following rights:

(1) The right to treatment by persons who ave specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors.

(2) The right to receive inpatient services in an area separated from adults receiving services.

(3) The right to regular communication with the individual's family Other than in keeping with the general rules of the facility, this right may only be limited when the limitation is necessary to protect the individual's welfare in keeping with procedures outlined in §404 155(a)(2) of this title (relating to Rights of Persons Receiving Residential Mental Health Services)

§404 161. Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers

(a) The department will publish a rights handbook which will contain interpretations written in simple and nontechnical language of the various rights afforded individuals receiving mental health services, an explanation of the circumstances under which those rights may be limited, and an explanation of the appeals process. This handbook will be revised by the Office of Consumer Services and Rights Protection as necessary

(b) The department will publish a "Teen's Bill of Rights" and a "Children's Bill of Rights" ("The Little Dinosaur Named Wilbur," with supplementary material) which are adopted by reference as Exhibits B and C of this subchapter, respectively, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The Teen's Bill of Rights and the Children's Bill of Rights will contain interpretations written in simple and nontechnical language of the rights afforded minors receiving mental health services, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Teen's Bill of Rights and the Children's Bill of Rights will be revised as necessary.

(1) The "Teen's Bill of Rights" is generally recommended for minors over the age of 8.

(2) The "Children's Bill of Rights" is generally recommended for minors under the age of 8

(3) Notwithstanding these guidelines, staff should consider the developmental level of the minor being admitted in determining the appropriate document to be provided. Minors may also request and receive the rights handbook

(c) The handbook, "Teen's Bill of Rights," and/or "Children's Bill of Rights" published by the department will be used as the formal document for rights notification for individuals admitted to department facilities, their community programs, and psychiatric hospitals operated by community centers Community centers may distribute the handbook published by the department or may choose to publish their own version Handbooks published by community centers must contain all rights outlined in the handbook published by the department and must be approved by the Office of Consumer Services and Rights Protection prior to their distribution

(d) Each handbook distributed must include the toll-free number of the Office of Consumer Services and Rights Protection (CSRP) in Central Office (1-800-252-8154), the toll free TDD number of CSRP (1-800-538-4870), the toll free number of Advocacy, Inc (1-800-223-4206, both voice and TDD capabilities), the name, telephone number, and mailing address of the rights protection officer, and the mailing address of the public responsibility committee for the facility or community center which distributes it

(e) Immediately upon admission into services, each individual and the parent or conservator of a minor and the legal guardian of the person, when applicable, must be given the appropriate rights handbook The parent, conservator, or legal guardian of a minor shall also receive a copy of the rights handbook in addition to the "Teen's Bill of Rights" and/or "Children's Bill of Rights "

(f) All handbooks must be printed in English and Spanish, and must be made

available in any other language used by a significant percentage of the service area's population. Copies of the rights handbook must be displayed prominently at all times in all areas frequented by persons receiving services (e.g., dayrooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one. The head of each department facility and community center shall appoint an individual responsible for ensuring that these requirements are met.

(g) Nothing in this section shall preclude the use or distribution of additional brochures or materials outlining rights information provided the information does not conflict with information presented in the rights handbook.

§404.162. Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center.

(a) The department will publish a Patient's Bill of Rights, which is herein adopted by reference as Exhibit A of this subchapter, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, which will contain interpretations written in simple and non-technical language of the various rights afforded individuals receiving mental health services at psychiatric hospitals, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations The Patient's Bill of Rights will be revised as necessary.

(b) The department will publish a "Teen's Bill of Rights" and a "Children's Bill of Rights" ("The Little Dinosaur Named Wilbur," with supplementary material) which are adopted by reference as Exhibits B and C of this subchapter, respectively, with copies available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, TX 78711-2668. The Teen's Bill of Rights and the Children's Bill of Rights will contain interpretations written in simple and non-technical language of the rights afforded minors receiving mental health services at psychiatric hospitals, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Teen's Bill of Rights and the Children's Bill of Rights will be revised as necessary.

(c) The Patient's Bill of Rights, the Teen's Bill of Rights, and the Children's Bill of Rights published by the department will be used as the formal document for rights notification for individuals admitted to psychiatric hospitals which are not operated by community centers. At psychiatric hospitals operated by community centers, individuals admitted for services will receive the rights handbook as outlined in §404.161 of this title (relating to Rights Handbooks for Persons Receiving Mental Health Services at Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers).

(d) The Patient's Bill of Rights, the Teen's Bill of Rights, and the Children's Bill of Rights must be printed in English and Spanish, and must be made available in other languages of primary use by individuals admitted to each psychiatric hospital.

(e) Immediately upon admission into services, each individual must be given the Patient's Bill of Rights, Teen's Bill of Rights, and/or Children's Bill of Rights.

(1) A copy must also be given to the individual's parent or conservator of a minor and the legal guardian of the person, when applicable, and to any other person requested by the individual.

(2) The parent/conservator of a minor shall receive a copy of the Patient's Bill of Rights in addition to the Teen's Bill of Rights and/or Children's Bill of Rights

(f) Copies of the Patient's Bill of Rights, Teen's Bill of Rights, and/or Children's Bill of Rights must be displayed prominently at all times in all areas frequented by persons receiving services (e g , dayrooms, recreational rooms, waiting rooms, lobby areas) A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one

(g) Nothing in this section shall preclude the use or distribution of additional brochures or materials outlining rights information provided the information does not conflict with information presented in the rights handbook

§404 163 Communication of Rights to Individuals Receiving Mental Health Services

(a) In addition to receiving a rights handbook, each newly admitted individual, the parent or conservator of a minor, and the guardian of the person, shall be informed orally of all rights in his or her primary language using plain and simple terms within 24 hours of admission into services Persons admitted for voluntary services shall be given this information prior to admission to services The notification will also include an explanation of the circumstances under which those rights may be limited, and an explanation of how a complaint may be filed. This notification also must occur at least annually and upon any changes to this information. The method used to communicate the information should be designed for effective communication, tailored to meet each person's ability to comprehend, and responsive to any visual or hearing impairment.

(b) Oral communication of rights shall be documented on a form bearing the date and signatures of the individual and/or the parent, conservator, or guardian, and the staff member who explained the rights The form should be filed in the individual's chart. Psychiatric hospitals should use the form provided on the Patient's Bill of Rights. Department facilities should use the Receipt of Information Record (MHRS 9-1 form). Community centers may use the MHRS 9-1 form or a form of their own design which contains all of the applicable elements, so long as the form is used only for the documentation of communication of rights.

(c) When the individual receiving services is unable or unwilling to sign the document which confirms that rights have been orally communicated, a brief explanation of the reason should be entered onto that document along with the signatures of the person who explained the rights and a third-party witness

(d) If the individual does not appear to understand the rights explanation, staff will attempt to provide another explanation periodically until understanding is reached or until discharge. The necessity for repeating the rights communication process will be documented, signed, and dated by staff.

§404 164 Rights Protection Officer at Department Facilities and Community Centers

(a) The head of each department facility and each community center shall appoint a rights protection officer for the facility or center The rights protection officer must be able to perform the duties of this office without any conflicts of interest.

(b) The name, telephone number, and mailing address of the rights protection officer must be prominently posted in every program or residential area frequented by service recipients, including community outreach or contract programs Individuals desiring to contact the rights protection officer must be allowed access to facility or center telephones to do so

(c) Duties required of the rights protection officer are specified at the discretion of the head of the facility or center, but must include the following:

(1) receiving complaints/allegations of violations of rights, allegations of inadequate provision of services, and requests for advocacy from service recipients, their families, their friends, service provid-

ers, other facility or center personnel, other agencies, the general public, and the Office of Consumer Services and Rights Protection;

(2) thoroughly investigating each such complaint received;

(3) representing the expressed desires of the individuals served and advocating for the resolution of their grievances;

(4) reporting the results of investigations and advocacy to service recipients and the complainants, consistent with the protection of the service recipients' right to have any identifying information remain confidential;

(5) ensuring that the rights of individuals receiving services have been thoroughly explained to facility and center personnel through periodic training. The rights protection officer may provide the training directly or by consulting with facility or center training personnel; and

(6) reviewing all policies, procedures, behavior therapy programs, and rules which affect the rights of persons receiving services.

§404.166. References. Reference is made to the following Texas laws, federal laws, departmental rules, and other standards.

(1) Texas Department of Mental Health and Mental Retardation (the Texas Health and Safety Code, Chapters 531-535);

the (2) Texas Mental Health Code (Texas Health and Safety Code, §§572.003, 573.022, 573.025, 576.001-576.024, and 611.002);

(3) Treatment of Chemically Dependent Persons (Texas Health and Safety Code, Chapters 461 and 462),

(4) 42 Code of Federal Regulations, Part 2,

(5) Public Law 99-319, The Protection and Advocacy Act for Mentally Ill Individuals (42 United States Code, §10802, et. seq.),

(6) Chapter 403, Subchapter K, of this title (relating to Client-Identifying Information),

(7) Texas Administrative Code (TAC), Title 40, Chapter 710, Subchapter A (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities),

(8) TAC, Title 40, Chapter 710, Subchapter B (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers),

(9) TAC, Title 40, Chapter 710, Subchapter C (relating to Patient Abuse in Private Psychiatric Hospitals);

(10) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in TDMHMR Facilities);

(11) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment With Psychoactive Medication);

(12) Fair Labor Standards Act;

(13) Joint Commission on the Accreditation of Healthcare Organizations, Accreditation Manual for Hospitals (1991),

(14) TDMHMR Mental Health Community Services Standards (1991), Chapter 3; and

(15) RAJ v. Jones settlement agreement.

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 19, 1993.

TRD-9332429 Ann K. Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: September 17, 1993

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

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Chapter 405. Client (Patient) Care

Subchapter D. Comprehensive Diagnosis and Evaluation

• 25 TAC §§405.81-405.92

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of existing §§405.81-405.92, concerning comprehensive diagnosis and evaluation. The sections are replaced by new §§405.81-405.92, concerning determination of mental retardation and appropriateness for admission to mental retardation services, which are contemporaneously adopted in this issue of *Texas Register*.

The purpose of the repeal is to permit the adoption of new sections that comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

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

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 19, 1993.

TRD-9332426 Ann K. Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: December 10, 1993

Proposal publication date: August 10, 1993

For further information, please call: (512) 465-4670

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• 25 TAC §§405.81-405.92

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§405.81-405.92, governing Determination of Mental Retardation and Appropriateness for Admissions to Mental Retardation Services. Sections 405.81, 405.85, and 405.89-405.92 are adopted without changes to the proposed text as published in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5295) and will not be republished. Sections 405.82-405.84, and 405.86-405.88 are adopted with changes to the text as proposed. The definition of interdisciplinary team in §405.83 has been modified to specify that the team is comprised of employees of a facility or community center. Also, §405.87 has been revised to clarify that the interdisciplinary team (IDT) referenced as making a recommendation for placement in a residential care facility must be a state facility or community center IDT.

A public hearing was held on August 23, 1993; no testimony was offered.

Written comments were received from Advocacy, Inc., Austin, the Arc of Texas, Austin, Austin-Travis County Mental Health and Mental Retardation Center, Austin, Austin Independent School District, Austin, Texas Psychological Association, Austin, and the Texas State Board of Examiners of Psychologists, Austin.

A commenter suggested that the subchapter be titled "Determination of Mental Retardation and Admission to Mental Retardation Services." The department responds that the current title adequately describes the purpose of the subchapter.

A commenter suggested that the department should prepare an information and procedures booklet for distribution by local mental retardation authorities (MRA) that would inform consumers and their families about how to prepare for the intake/admission process. The department responds that local MRAs around the state will be consulted concerning the need for such a booklet, but notes that some MRAs already have developed similar documents.

One commenter requested that the definition of mental retardation services in §405.83 be revised to add the word "supports" as one category of services. The department responds that the definition is the same as that in the Texas Health and Safety Code, as amended by House Bill 771. Concerning the same section, two commenters requested that the definition of residential care facility be expanded to encompass facilities with fewer than 15 beds. One commenter suggested that

the definition as written is not consistent with the intent of the legislature. The department responds that the Texas Health and Safety Code, §491.003, does not support such an interpretation.

Two commenters requested that the term "psychologist" not be used in §405. 84 to describe persons who are certified by the department to perform determinations but who do not meet the licensure requirements of the Texas State Board of Examiners of Psychologists. Several different possibilities and rationales were offered. The department agrees and has revised language in that section and in §405.85 to reference "associate psychologist"; in addition, a definition of "associate psychologist" has been added to §405.83.

A commenter stated that requiring community center or facility employees who were certified as comprehensive diagnosis and evaluation psychologist to resubmit credentials as required in §405.84 is unduly cumbersome. The department agrees and has revised the language in that section accordingly. Additional revisions in §405.84 clarify the requirements for certification, that certificates will be issued to all "associate psychologist" certified by the department, and that the certification is valid only for the purpose of performing determinations of mental retardation as part of the associate psychologist's duties as an employee of a state facility or community center. The term "associate psychologist" has been added, as appropriate, in §405 85

A commenter suggested that the Persons With Mental Retardation Act (PMRA) should be amended to include a specified time for admission to services The department responds that the suggestion will be considered as planning begins for the next legislative session

A commenter requested that §405 85(a) be reworded to use the phrase "eligible for MR services," arguing that as written, the provision could be confusing to consumers, family members, and staff The department considers the language as proposed to be sufficiently clear

A commenter suggested that the intake meeting and the admission team meeting should be combined whenever possible The department responds that these aspects of the process are best dealt with on the local level by the community center or facility The commenter also recommended that the forms required for the intake/admission team meeting should not duplicate the information already provided in the required assessments and documents The department agrees and will be consulting with community centers and facilities on this issue

A commenter suggested that a computerized data base should be established to enable individual programs to share information, e g , HCS and case management The department responds that the suggestion has been taken under advisement, but that the issue of access to information concerning the availability of program is currently being addressed in new rules being developed concerning continuity of services

A commenter suggested that §405 86(c) should directly address the placement on a waiting list of individuals who are considered appropriate for services but for whom no vacancy in the desired service program exists. The department responds that the language as proposed is sufficiently clear

A commenter recommended that §405.87(b)(1) be amended to specify the composition of the IDT. The department responds that the paragraph is intended to describe the responsibilities and actions of the IDT, not the composition. The definition of IDT in §405.83 specifies the composition The department also notes that the structure of this section closely follows that of the Texas Health and Safety Code, §593.013, which it references

A commenter suggested clarifying language to §405.88(a). The department concurs with the suggestion and has revised the subsection, although not using the language suggested.

A commenter requested that reference to the American Association for Mental Retardation (AAMR) classification system not be included in the Determination of Mental Retardation Report (Psychological Assessment) format listed in §405 90 The department agrees and has deleted references in both that report format (Exhibit A) and the Medical Evaluation report format (Exhibit B)

Two commenters suggested that the report format should include directions to list the applicable axes from the DSM The department responds that such a reference can be included at the discretion of the person conducting the determination

A commenter recommended that the department should coordinate with the Texas Education Agency to establish a common format for the determination of mental retardation The department responds that House Bill 771 amendments to the Texas Health and Safety Code charged TXMHMR with the responsibility for development of the form to be used by all physicians and psychologists licensed by the State of Texas and psychologists certified by the department as they make determinations of mental retardation

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532 015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority

§405 82 Application The provisions of this subchapter apply to

(1) facilities of the Texas Department of Mental Health and Mental Retardation which provide services to individuals with mental retardation,

(2) community mental health and mental retardation centers in their role as mental retardation authorities (MRA),

(3) physicians and psychologists licensed by the state who make determinations of mental retardation, and

(4) associate psychologists employed by a community center or facility who seek certification by the department

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

Adaptive behavior-The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

Admissions team-A group of professionals as specified by the TXMHMR Community Standards for Mental Retardation Services whose function is to determine the appropriateness of admissions of individuals into mental retardation services

Associate psychologist-A community center or facility employee who is certified by the department as permitted in the Texas Health and Safety Code, §593 006, to conduct determinations of mental retardation. Criteria for such certification are described in §405 84 of this title (relating to Certification of Associate Psychologists by the Department)

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

Deputy commissioner-The deputy commissioner for Mental Retardation Services

Determination of mental retardation A determination that an individual meets the criteria for a diagnosis of mental retardation, based on an interview with the individual and a professional assessment that employs diagnostic techniques adapted to that individual's cultural background, language, ethnic origins, and physical or sensory disabilities

Diagnostic services As specified in 42 Code of Federal Regulations (CFR), §440 130(a), any medical procedures or supplies recommended by physicians or other licensed practitioners of the healing arts, within the scope of their practice under state law, to enable them to identify the existence, nature, or extent of illness, injury, or other health deviation in a recipient

Facility A state school, state hospital, or state center of the Texas Department of Mental Health and Mental Retardation which provides mental retardation services

Interdisciplinary team (IDT) A group of mental retardation professionals and paraprofessionals employed by a facility or community center plus the individual with mental retardation and any legally authorized representative who assess the treatment, training, and habilitation needs of the individual and make recommendations for services

Mental retardation-Significantly

subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (birth to 18 years of age.)

Mental retardation services-Programs and assistance provided or contracted for by a community center or facility for individuals with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

Residential care facility-A facility for more than 15 individuals with mental retardation which is operated by the department or a community center and provides 24-hour domiciliary services, including services directed toward enhancing the health, welfare, and development of the residents.

Subaverage general intellectual functioning-Measured intelligence on standardized general intelligence tests of two or more standard deviations below the age-group mean for the tests used.

§405.84. Certification of Associate Psychologists by the Department.

(a) A person seeking certification as a psychologist by the department for the purpose of making determinations of mental retardation must:

(1) be employed by a community center or facility;

(2) have a master's degree or a doctoral degree in psychology from an accredited university or show evidence of eligibility for psychological associate status by the Texas State Board of Examiners of Psychologists;

(3) produce evidence of graduate course work in individual intellectual assessment,

(4) have supervised experience in adaptive behavior assessment, and

(5) have one year's experience in the field of mental retardation.

(b) Documentation of the credentials described in subsection (a) of this section shall be submitted along with a letter requesting certification to the deputy commissioner at the Texas Department of Mental Health and Mental Retardation, P O Box 12668, Austin, Texas 78711-2668

(c) Persons who were employed by a community center or facility as of August 31, 1993, and previously were certified as a psychologist for purposes of performing a comprehensive diagnosis and evaluation assessment may request certification without submitting the documentation required in subsection (a) of this section.

(d) Certificates will be issued by the department to those persons certified as associate psychologists for the purpose of making a determination of mental retardation. This certification applies only to determinations performed as part of the person's responsibilities as an employee of a community center or facility.

§405.86. Admission to Community-Based Services.

(a) After a determination of mental retardation has been finalized, the admissions team shall determine the individual's appropriateness for mental retardation services in compliance with the provisions of the TXMHMR Community Standards for Mental Retardation Services. The admissions team shall:

(1) review the individual's previous diagnostic information;

(2) interview the individual and family members regarding the services being requested and the individual's interests, choices, and goals; and

(3) determine the need for additional assessments.

(b) In conjunction with the individual and family, the team shall:

(1) determine what services are suited to the needs of the individual and consistent with rights guaranteed in the Texas Health and Safety Code, Title 7, Chapter 592 (Rights of Persons with Mental Retardation), and

(2) develop an initial plan for services or make referrals to more appropriate service agencies.

(c) If the individual is considered appropriate for admission to community-based services, the individual shall be enrolled in appropriate services as available.

(d) An individual may receive emergency services without a determination of mental retardation under the provisions of the Texas Health and Safety Code, Title 7 §593 0275. However, a determination of mental retardation must be performed as described in §405. 85 of this subchapter (relating to Determination of Mental Retardation) and a determination of appropriateness for admission as described in subsections (a) and (b) of this section within 30 calendar days following the date the services began.

§405 87. Admission or Commitment to a Residential Care Facility.

(a) When admission or commitment to a residential care facility is sought, a facility or community center IDT shall meet to consider the appropriateness of the placement As required in the Texas Health and Safety Code, Title 7, §593 013, no individual may be admitted or committed to a residential care facility unless an IDT recommends the placement.

(b) The IDT shall:

(1) interview the individual, the parent if the individual is a minor, and the guardian of the individual, if appropriate;

(2) assess or review the individual's:

(A) determination of mental retardation;

(B) social and medical history;

(C) medical assessment, which shall include an audiological, neurological, and vision screening,

(D) social assessment; and

(E) determination of adaptive behavior level;

(3) determine the individual's need for additional assessments, including educational and vocational assessments,

(4) obtain any additional assessment(s) necessary to plan services; and

(5) recommend services to address the individual's needs that consider the individual's interests, choices, and goals.

(c) The assessments in subsection (b) of this section should follow the appropriate report formats described in §405.90 of this subchapter (relating to Report Formats).

(d) The IDT shall prepare a written report of its findings and recommendations that is signed by each team member and shall send a copy of the report within 30 calendar days to the individual, the parent of the individual who is a minor, and the individual's guardian, as appropriate

(e) If the individual is being considered for court commitment to a residential care facility, the IDT report must have been completed within six months prior to the date of the court hearing. An IDT report ordered by a court shall be submitted promptly to the court, the individual or the individual's legal representative, the parent of the individual who is a minor, and the guardian of the individual, if appropriate.

(f) An individual may be admitted to a residential care facility on an emergency basis without a determination of mental retardation and an IDT recommendation under the provisions of the Texas Health and Safety Code, Title 7,

§593.027(c). However, within 30 days of an admission for emergency services:

(1) a determination of mental retardation must be performed as described in §405.85. of this subchapter (relating to Determination of Mental Retardation); and

(2) an IDT must meet and make a recommendation as described in subsections (a)-(d) of this section.

(g) An individual may be admitted to a residential care facility for respite services without a determination of mental retardation and an IDT recommendation under the provisions of the Texas Health and Safety Code, Title 7, §593.028.

§405.88. General Provisions.

(a) Each community center and facility shall make necessary provisions to assess non-English speaking individuals and individuals who have communication deficits.

(b) All assessments shall be confidential, as required in:

(1) the Texas Health and Safety Code, Title 7, Subtitle D, (Persons with Mental Retardation Act), and

(2) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(c) The determination of mental retardation and appropriateness for admission is to be distinguished from subsequent assessments completed in conjunction with annual habilitation planning meetings. The former is performed to determine if an individual is eligible for mental retardation services, to complete a diagnostic classification, and to develop an initial plan for services.

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

Issued in Austin, Texas, on November 19, 1993.

TRD-9332427 Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board

Effective date: December 10, 1993

Proposal publication date: August 10, 1993

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

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Subchapter E. Electroconvulsive Therapy

- **25 TAC 405.101-405.104, 405.107-405.110, 405.112-405.116**

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts amendments to §§405.104, 405.107, 405.109, 405.110, 405.112, 405.113, concerning electroconvulsive therapy (ECT), and new §§405.114-405.116, without changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6285). Amendments to §§405.101-405. 103, new §405.108, and Exhibits A and C are adopted with changes. The amendments and new sections are published contemporaneously in this issue of *Texas Register* with the repeal of §405.108 and §405.114.

The amendments and new sections implement the provisions of Senate Bill 205 of the 73rd Texas Legislature, which requires the department to promulgate rules concerning requirements for informed consent to ECT, reporting of ECT, and registration of ECT stimulus apparatus. The new law prohibits the use of ECT in patients under the age of 16 and requires informed consent to be obtained from the patient or the guardian of the person of a patient who has been adjudicated incompetent to manage his or her own personal affairs. The legislation also requires the department to monitor the use of ECT by requiring submission of quarterly reports of ECT usage, which it summarizes and reports to the governor and presiding officers of the legislature on an annual basis.

The amendments also implement provisions of Senate Bill 210 of the 73rd Texas Legislature, which mandate that standards of care and treatment in psychiatric hospitals not be less restrictive than those in public mental hospitals.

Section 405.101, concerning purpose, is changed to more accurately identify the treatment facilities to which the provisions of the rule apply.

Section 405.102, concerning application, is changed to accurately describe the types of treatment facilities to which the rule applies.

Section 405.103, concerning definitions, is changed to define "multiple-monitored ECT," and "regressive" or "depatterning" ECT. These terms are added to the definition of "reportable therapies."

Section 405.108, concerning informed consent, is changed to include seizures as a potential risk or hazard of the procedure. It is clarified that a copy of the consent form and written supplement must be mailed or faxed to the guardian of the person prior to the initial informed consent in the event the guardian provides consent to ECT for the individual via telephone.

Section 405.110, concerning personnel and equipment procedures, is changed to delete reference to "equipment for tracheotomy."

Exhibit A, the form for obtaining informed consent, is changed to more accurately reflect the status of the procedure with the Food and Drug Administration. It os also changed to include seizures in the listing of risks and hazards. Paragraphs and other language that are standard parts of Texas Medical Disclosure Panel consent form for List A procedures have been added with conditional language. A final statement more clearly indicating the voluntary consent of the patient is added. A reference to the prohibition on ECT for persons under the age of 16 is included.

Exhibit C, the report of ECT usage, is changed to require specific numbers, not ranges, for a number of items. Several other changes of a clarifying nature are made. A section regarding maintenance ECT has been added.

A public hearing was held on September 28, 1993, at the Texas Department of Mental Health and Mental Retardation in Austin. Oral and/or written testimony was provided by representatives of Advocacy, Inc., Austin, and the World Association of Electroshock Survivors, Austin. Additional written comments were submitted by the World Association of Electroshock Survivors, Austin, as well as the Citizens Commission on Human Rights, Austin; the Depressive and Manic-Depressive Association, Austin; Texas Mental Health Consumers, Austin; the Texas Association of Nurse Anesthetists, Austin; the Texas Hospital Association, Austin; and Scott and White Hospital, Temple.

A commenter requested that the term "guardian" be replaced with the term "legally authorized representative," to be defined as "the parent, managing conservator, or guardian of a minor; or the guardian of the person of the adult." The department responds that the choice of the term "guardian of the person of a patient who has been adjudicated incompetent to manage his or her own personal affairs" is consistent with the provisions of Senate Bill 205. The intent of the legislation is to limit decisionmaking to the patient or to an individual who is the "full guardian" of a patient who has been adjudicated incompetent to make decisions on his or her own behalf. Thus, "legally authorized representative" would expand the scope of decisionmaking to include individuals who by law are not authorized to consent on the patient's behalf, i.e., parent, managing conservator, or guardian of a minor. ECT is prohibited for minors under the age of 16. A minor between the ages of 16 and 18 is treated as an adult and must consent on his or her own behalf or must be adjudicated incompetent, in which case only the guardian of the person can give or withhold informed consent on his or her behalf.

With reference to §§405.103, 405.108, and 405.110, a commenter suggested that the definition of informed consent and provisions relating to informed consent be expanded to encompass consent for general anesthesia. The department responds that language has been added in §405.108.

Concerning §405.104(c) and (d), a commenter suggested that language be added to indicate that the informed consent explanation be given in the patient's primary language, if possible. This requirement is contained in §405.108(f)(1) and (2).

With reference to §405.108(a), one commenter questioned who determines if the person giving consent is doing so with understanding, voluntarily, and without coercion. The commenter questioned the methodology for making this determination. The department acknowledges the subjective nature of this determination, which is typically made by the responsibility of the treating physician and treatment team.

Concerning §405.108(d)(3), several commenters requested that epilepsy, or sei-

zures, be added to the list of risks and hazards. The department responds that language has been added.

With reference to §405.109, one commenter noted the discrepancy between the limit of no more than 24 ECTs in a 12-month period and the limit indicated on Exhibit C, i.e., a range up to 31. The department agrees and the form has been modified to delete all ranges and require specific numbers (see discussion of Exhibit C, below).

Also regarding §405.109(b), several commenters noted that limiting the number of treatments in a time period is not as effective as limiting the number of treatments in a treatment series. The department responds that limiting the number of treatments in a consecutive eight-week period to 15 more effectively limits the excessive use of ECT than expressing the limit in terms of a treatment series, which could be concluded and started anew at a much more intensified rate. As written, the maximum number of treatments in an eight-week period is 15, not (for example) 24 (three treatments times five weeks for one series, three treatments for the next three weeks for another series or part of a series). The department emphasizes that the intent and effect of this provision is to discourage overutilization of ECT.

With reference to §405 110(d), a commenter requested that either pulse oximetry be added to the list of requirements, or that a statement be made requiring the recovery room to be equipped and staffed to meet commonly accepted standards for post-anesthesia units The department responds that the statement requiring compliance with commonly accepted standards is fully in keeping with its policy and has been added

Concerning the same section, a commenter requested that language be added to require compliance with customary standards of anesthesia practice with regard to patient evaluation for anesthesia, informed consent, induction, maintenance and recovery from anesthesia, including the availability/and or use of appropriate monitoring equipment The department responds that language has been added

With regard to §§405 112(b), (c)(1), and 405 114(b)(2), a commenter requested that language be revised to state "The report shall not name or otherwise identify mental hospitals or other facilities, individual physicians, or patients." The department responds that the rules derive directly from legislation, which does not provide that the identity of hospitals be protected

Concerning §405.114, a commenter requested that the annual report be routinely distributed to interested organizations, such as Advocacy, Inc The department responds that the report is a matter of public record and routine distribution to interested parties can be accomplished.

Several commenters requested that the department prohibit "multiple-monitored" and "regressive" or "depatterning" ECT The department agrees that regressive ECT poses unacceptably high risks and language prohibiting it has been proposed as an amendment to §405.104 of this title, relating to general requirements, in this issue of the *Texas Register*. The department has also proposed language requiring a second opinion from a fully-trained psychiatrist experienced in ECT prior to offering or providing multiple-monitored ECT; it is required that information describing the differences in benefits and risks of multiple-monitored, compared to conventional ECT, be provided as part of the informed consent process when this technique is proposed.

Regarding Exhibit A, concerning reference to the approval of ECT by the Food and Drug Administration in the informed consent form, several of the commenters requested that this language be either modified or deleted The department responds that it will revise the statement in keeping with the specific recommendations of the Acting Director, Device Evaluation Unit, Food and Drug Administration, as follows. "I understand that ECT is generally accepted by the psychiatric profession. The Food and Drug Administration regards ECT devices as reasonably safe and effective when used to treat severe depression, but the safety and effectiveness of these devices has not been determined for any other use "

A commenter disputed the statement on the form that "There is a division of opinion regarding the efficacy of ECT " The department responds that the statement derives from legislative mandate

A commenter disputed the inclusion of fractures as a possible risk of ECT The department responds that fractures are a risk that has been identified by the Texas Medical Disclosure Panel and must be included on the form

Also concerning Exhibit A, several commenters called for the addition of epilepsy to the list of risks and hazards The department responds that the warning, "remote possibility of seizures," has been added as new item 5 on the listing of risks and hazards on page two of the consent form A commenter challenged the detailed statement concerning risks of anesthesia as being overemphasized with reference to the anesthesia generally given for ECT The department responds that the information is required by the Texas Medical Disclosure Panel

Several commenters called for the department to reverse the order of the terms describing possible outcomes of ECT to "temporary improvement, no improvement, or in some instances, permanent improvement " The language has been changed to "temporary improvement, permanent improvement, or no improvement," to reflect the likelihood of outcome as supported in the medical literature

A commenter requested that an affirmative statement be added at the conclusion of the consent form, before the signature lines The department has revised the form

A commenter requested that standard paragraphs from the Texas Medical Disclosure Panel form for List A procedures be added The paragraphs address granting the physician permission to undertake other procedures as may be needed and the use of blood and blood products. The department responds that the paragraphs were deleted as unnecessary and unduly alarming to patients. The deletion was approved by Texas Department of Health representatives for the Texas Medical Disclosure Panel. The paragraphs have been added back to the form with a conditional statement that notes that the need for additional procedures or blood products would be extremely remote and would relate exclusively to emergency procedures necessary to sustain life only.

Regarding Exhibit C, several commenters noted that information gathered on the form should be collected as raw data, not as ranges or averages. The department responds that the ECT reporting form is being extensively revised. All items requesting answers in ranges (i.e., "1 to 3, 4 to 6," etc.) will be revised to require designation of specific numbers of occurrences.

A commenter noted that if the total number of ECTs exceeds the limitation, space should be provided on the form for justification. The department responds that the form is designed to collect discrete data elements, not free-form narrative. Justification is required in the clinical record of the patient, and the licensing and inspection agency, the Texas Department of Health, is empowered to investigate unusual patterns of use as necessary. If it becomes apparent that limitations are routinely exceeded, investigation and/or possible modification of the form may be warranted.

Also regarding Exhibit C, two commenters noted the omission of a question about number of ECT maintenance treatments on the form. This question has been added.

A commenter requested that Exhibit C be expanded to include an inventory of "assistants" for the procedure The purpose of the inventory would be to indicate the presence of a licensed anesthesiologist, licensed physician, nurse anesthetist, an individual with training in advanced cardiorespiratory life support, and/or a licensed physician under an approved residency program under the direct supervision of a fully-qualified psychiatrist The department responds that this information would require a separate form for each treatment Since this information is routinely documented in the patient's clinical record, a more appropriate (and less wieldy) method for assessing compliance with §405.109 would be at the time of inspection by the Texas Department of Health

Concerning Exhibit D, a commenter suggested that the department require the submission of the registration number for each machine registered The department responds that "ID/Serial Number" serves this purpose

The sections are adopted under Texas Civil Statutes, Article 5547-202, §2 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers; under the provisions of Senate Bill 205 of the 73rd Texas Legislature, Regular Session, which requires rulemaking specific to electroconvulsive therapy; and under the provisions of Senate Bill 210 of the 73rd Texas Legislature, which requires the standard of care in private psychiatric hospitals to not be less restrictive than that in public mental hospitals.

§405.101. Purpose. The purpose of this subchapter is:

(1) to establish uniform procedures for informed consent to ECT;

(2) to establish statewide reporting requirements for the use of ECT and other procedures;

(3) to establish statewide registration requirements for ECT equipment;

(4) to prohibit the use of ECT in persons under 16 years of age;

(5) to prohibit the administration of ECT by any person not licensed to practice medicine in Texas; and

(6) to provide explicit safeguards for patients in all facilities of the Texas Department of Mental Health and Mental Retardation, community mental health and mental retardation centers, private inpatient psychiatric hospitals licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 577, and psychiatric units of hospitals licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 241, by:

(A) establishing appropriate limits for the therapeutic utilization of electroconvulsive therapy (ECT);

(B) establishing current guidelines of the American Psychiatric Association and the Food and Drug Administration as the references of choice in questions of practice related to ECT, except to the extent that they conflict with the provisions of the Health and Safety Code, Title 7, Subtitle C, Chapter 578; and

(C) prohibiting the use of chemical or gaseous agents for convulsive therapy except as a research procedure conducted in accordance with Subchapter Q of this chapter (relating to Departmental Procedures for the Protection of Human Subjects Involved in Research)

§405.102. Application.

(a) The provisions of this subchapter apply to all organizations and individuals providing electroconvulsive therapy on an inpatient or outpatient basis, in or on a contractual basis with:

(1) all facilities of the Texas Department of Mental Health and Mental Retardation;

(2) community mental health and mental retardation centers;

(3) psychiatric hospitals licensed by the Texas Department of Health under the Health and Safety Code, Chapter 577; and

(4) psychiatric units of hospitals licensed by the Texas Department of Health under the Health and Safety Code, Chapter 241.

(b) Pursuant to the Health and Safety Code, Title 7, Subtitle C, Chapter 578, the following provisions of this subchapter apply to all organizations and individuals administering ECT in Texas.

(1) Section 405.104 of this title, relating to general requirements;

(2) Section 405.108 of this title, relating to informed consent to electroconvulsive therapy;

(3) Section 405.112(b) of this title, relating to reporting requirements;

(4) Section 405.114 of this title, relating to registration of ECT equipment, and

(5) Section 405.115 of this title, relating to enforcement and penalties

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

Chief executive officer-The superintendent or director of a state hospital, state school, or state center, the executive director of a community mental health and mental retardation center, or the person responsible for management and operation of a hospital or other healthcare facility or entity providing ECT.

Community mental health and mental retardation center-A community mental health and/or mental retardation center established by the Texas Health and Safety Code, Chapter 534.

Electroconvulsive therapy (ECT)-A treatment in which controlled, medically applied electrical current results in a therapeutic seizure, usually attenuated by anesthesia and muscle relaxants

Informed consent-The knowing consent of a patient or the guardian of the person of the patient in keeping with the provisions of §405. 108 of this title, relating to informed consent, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion If consent is given by the guardian of the person of a patient who has been adjudicated incompetent to manage his or her own personal affairs, then the decision must be based on knowledge of what the patient would desire, if known.

Insulin coma treatment-The production of a coma for therapeutic purposes through the administration of insulin

Multiple-monitored ECT-The induction of more than one adequate seizure during one episode of anesthesia.

Nurse anesthetist-A nurse credentialed by the Board of Nurse Examiners as a nurse anesthetist.

"Prefrontal sonic sound treatment"-A treatment, not described or defined in biomedical literature, which is defined in California statutes governing ECT and other treatments as "The direct stimulation and/or destruction of brain cells or brain tissue by ultrasound for therapeutic purposes."

Psychosurgery-Surgical intervention to sever fibers connecting one part of the brain with another or to remove or to destroy brain tissue with the intent of modifying or altering severe disturbances of behavior, thought content, or mood. For purposes of this subchapter, the term does not include such surgery for the relief of intractable physical pain or the treatment of neurological disease or abnormality.

"Regressive" or "depatterning" ECT-The prolonged use of daily or more frequent treatments

Reportable therapies-Electroconvulsive therapy, insulin coma treatment, "prefrontal sonic sound treatment," psychosurgery, multiple-monitored ECT, "regressive" or "depatterning" ECT, or any other convulsive or coma-producing therapy to treat mental illness

TXMHMR medical director-The department's medical director.

§405.108 Informed Consent to ECT

(a) Consent under this section is not valid unless the person giving consent understands the information presented and consents voluntarily and without coercion or undue influence.

(b) A person who gives consent may revoke consent for any reason at any time, with revocation effective immediately.

(c) Prior to each individual ECT treatment, consent to electroconvulsive therapy must be obtained. Unless the person consents in accordance with this subchapter, ECT may not be administered to:

(1) a patient who is 16 years or older and voluntarily receiving services;

(2) an involuntary patient who is 16 years or older and who has not been adjudicated incompetent to manage his or her own personal affairs;

(3) an involuntary patient who is 16 years or older and who has been adjudicated incompetent to manage his or her own personal affairs, unless:

(A) the patient has an appointed guardian of the person of the patient,

(B) the guardian of the person consents to treatment in accordance with this section; and

(C) the consent of the guardian is based on knowledge of what the patient would desire, if known.

(d) Consent shall be documented by the signature of the person giving consent on the form attached to this subchapter as Exhibit A, which shall include a supplemental statement about the individual patient containing the information in the form attached to this subchapter as Exhibit B, including:

(1) indications for therapy for the patient;

(2) medical evaluation results;

(3) contraindications to therapy; and

(4) results of psychiatric and other medical consultation(s) relevant to ECT.

(e) The consent form shall be fully completed to explicitly state the following information:

(1) the nature and seriousness of the mental condition requiring ECT;

(2) the nature of the procedures to be followed, including anesthesia, and their purposes, including the identification of any procedures which are experimental;

(3) the nature, degree, duration, and probability of significant risks and/or side effects and/or adverse effects resulting from ECT commonly known by the medical profession, including:

(A) memory changes of events prior to, during, and immediately following the treatment,

(B) fractures and dislocations of bones;

(C) the probability of significant temporary post-treatment confusion requiring special care; and

(D) the possibility of permanent memory dysfunction, especially noting the possible degree and duration of memory loss, the possibility of permanent, irrevocable memory loss, the remote possibility of seizures, and the remote possibility of death;

(4) that there is a division of opinion as to the efficacy of the procedure;

(5) the benefits reasonably to be expected;

(6) the probable degree or duration of improvement or remission expected with or without the procedure;

(7) a disclosure of any appropriate alternative procedures that might be advantageous for the patient;

(8) an offer to answer any inquiries concerning the procedures;

(9) an instruction that the consenting party is free to withdraw consent and to discontinue an individual treatment or a series of treatments at any time without prejudice to the care of the individual,

(10) an instruction that consent is for one individual treatment, and that additional treatments shall require renewed written informed consent, and

(11) the side effects of anesthesia shall also be explained

(f) Before a patient receives ECT, the hospital, facility, or physician administering the therapy shall ensure that

(1) the patient and the patient's guardian of the person, if any, receive a copy of the completed consent form, a written supplement containing related information concerning the individual patient, in the patient's primary language, if possible,

(2) the consent form and supplement are orally explained to the patient and the patient's guardian of the person, if any, in simple, nontechnical terms in the patient's primary language, if possible, or by means reasonably calculated to communicate with a hearing-impaired or visually-impaired person, if applicable,

(3) the patient or the patient's guardian of the person, as appropriate, signs the consent form, which states that the person has read and understood the consent form and written supplement, and

(4) the signed consent form is made a part of the patient's permanent medical record

(g) In cases in which the individual giving consent is the guardian of the person, the requirements of the consent process may be fulfilled through a phone conversation that includes all of the elements that would be discussed in person, witnessed by one individual who is not the physician who will be administering ECT A copy of the consent form and written supplement must be mailed or faxed to the individual giving consent prior to obtaining the initial informed consent. The consent must be obtained for each individual treatment

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 19, 1993.

TRD-9332423 Ann K Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date December 10, 1993

Proposal publication date. September 17, 1993

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

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• 25 TAC §405.108, §405.114

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §405 108 and §405 114, concerning electroconvulsive therapy

The purpose of the repeal is to allow for the contemporaneous adoption of a new subchapter which implements provisions of Senate Bills 205, 207, and 210 (73rd Legislature)

No public comment was received on the proposed repeal

These sections are adopted under the Texas Health and Safety Code, §532 015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers

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 19, 1993

TRD-9332422 Ann K Utley
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date December 10, 1993

Proposal publication date September 17, 1993

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

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Subchapter J. Surrogate Decision-making for Community-based ICF/MR and ICF/MR/RC Facilities

• 25 TAC §§405.231-405.249

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§405 231-405.249, governing surrogate decision-making for community-based ICF/MR and ICF/MR/RC facilities Sections 405 231-405 233, 405 235, 405 237-405 238, 405 242-405 245, 405 247, and 405 249 are adopted without changes to the proposed text as published in the August 20, 1993, issue of *Texas Register* (18 TexReg 5564) and will not be republished Sections 405 234, 405.236, 405 239-405 241, 405 246, and 405 248 are adopted with changes to the text as proposed

The sections enact provisions of Senate Bill 1142 of the 73rd Legislature, which added new Chapter 597 to the Texas Health and Safety Code, Title 7, Subtitle D, otherwise known as the Persons with Mental Retardation Act.

The definition of "highly restrictive procedure" in §405.234 has been revised to be consistent with the term as defined in the department's rules governing behavior management programs in the campus-based component of state facilities providing services to persons with mental retardation The definition of "individual" has been revised to reflect the proper statutory citation. In §405 236(d), language was added to clarify the basis for determining whether or not an individual was capable of providing consent Clarifying language also was added to §405.239(a)(2)(B) concerning the resolution of possible irregularities or potential problems with an individual's drug regimen

Section 405 240 is revised to clarify that the individual referred to is the individual for whom consent is sought

Section 405 246(f) is revised to clarify that the timeframe relates to working days References in §405 241 and §405 248 have been updated to reflect a name change from the Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA)

A public hearing was held on September 13, 1993, oral testimony was offered by Texas Health Care Association and EduCare Written comments were received from the parent of a state school resident, a private provider in the ICF/MR program, Texas Health Care Association, and EduCare

A commenter questioned how providers affected by the subchapter could be assured that the processes described in the sections would not cause a delay in the implementation of services and possibly result in a deficiency for the provider for non-compliance with implementation timeframes. The department responds that every effort will be made to expedite the appointment of surrogate consent committees. A department staff member has discussed the issue with the commenter in person and is satisfied that the commenter is comfortable with the department's response.

One commenter said that the failure of the legislature to pass Senate Bill 333, concerning the establishment of an Office of Public Guardianship should not deter the department, private providers, advocacy organizations, and consumers from pursuing that goal in the next session. The department agrees.

Two commenters urged that the processes described in the subchapter be implemented swiftly. One of the commenters additionally suggested that the department already should be making decisions on certain internal issues related to the implementation of the process. The same commenter recommended that the person designated in the department's Central Office to oversee the process should not be housed with the ICF/MR division which has oversight responsibilities for the ICF/MR program. The department responds that the provisions of the subchapter should be in effect by mid-December and that the internal issues referenced are being addressed concurrently with the development of the subchapter. However, the person in Central Office with oversight responsibilities for the surrogate decision-making process is a staff member within the ICF/MR division who was very involved not only in the development of the subchapter but of the legislation, as well.

A commenter recommended that once a surrogate-consent committee is named to act on behalf of a specific individual, that committee continue to act in that person's interest, if necessary, for two years with consecutive terms permitted. The department responds that committees will not be standing committees but will be appointed on a case-by-case basis, in part because the various issues for which committee consent is needed for a single individual may require different knowledge and expertise on the part of the members

One commenter requested that the definition of "actively involved" in §405 234 be expanded to specify that "observed interactions" could include written communication or phone contact with the individual and/or with facility staff The department responds that the language as written does not exclude the consideration of written communication or phone contact with the individual, however, the "observed interactions" must be with the individual, not with staff

A commenter asked for language in §405 237 clarifying that, once identified and assigned, a surrogate decision-maker will continue to act on behalf of the individual as need arises The department disagrees with the commenter's interpretation and responds that the question of who is to serve as a surrogate decision-maker must be decided on a case-by-case basis

One commenter questioned whether the language in §405.240(c) and (d) concerning the composition of the surrogate consent committees was intended to prevent family members from exercising the right to give or withhold consent for treatment. The department responds that this was not the intent, but has added clarifying language to the subsections. In addition, the department emphasizes that the purpose of the new subchapter is to provide an alternative consent process for use by community-based ICF/MR and ICF/MR/RC providers in those situations in which an individual in that setting lacks the capacity to provide consent and has no legally appointed guardian. A department staff member has discussed the issue with the commenter and is satisfied that the commenter is comfortable with the language as revised

Concerning the same provision in §405.240(c) and (d), another commenter questioned why subsection (c)(3) references the persons named in subsection (d) (2)(A) and (E) and suggested replacing the reference with specific language concerning the necessity of appointing an attorney to the committee. The department responds that the language has been clarified, noting, however, that the reference was not to an attorney but to requirement that a health care professional or other person with "demonstrated expertise or interest in the treatment of persons with mental disabilities" be included on each committee.

Another commenter requested that the training sessions referenced in §405. 240(d) should be held in several locations around the state and not limited to Austin and/or metropolitan areas. The department agrees and will schedule the training accordingly

In §405 241, a commenter requested that the one-year appointment be made a two-year appointment The department responds that the one-year requirement will be kept for now but that the issue will be revisited after some history has been developed on the efficiency of the program

A commenter questioned how a need for "urgent consideration" as described in §405 242(b)(9) could be addressed given the 5-day and 15-day timelines set forth in §405 243(b) and (d)(1) A second commenter also expressed grave concerns with the timelines, stating that the five days specified in subsection (b) for the department to appoint a committee added to the 15 days specified in subsection (d)(1) for the date of the committee's meeting negates the intent of allowing for timely and appropriate delivery of services as stated in the legislation The department responds that the times given are maximums and that every effort will be made to have the committees meet well within those timelines The internal operating guidelines which are being developed will specify ways in which the department will expedite the process In addition, the department notes that the 15 working days specified in subsection (d)(1) are not in addition to the five days specified in subsection (b), but are inclusive of those days

A commenter requested clarification in §405 244(d) that would protect the provider from responsibility for costs incurred if the committee or its chair called for an independent evaluation of the individual. The department responds that independent evaluations will be addressed in greater detail in the operating guidelines and in agreements worked out on an individual basis with providers

The new sections are adopted under the Texas Health and Safety Code, Title 7, Subtitle D, §597 002, which provides that the Texas Mental Health and Mental Retardation Board may adopt rules necessary to implement new Chapter 597 no later than 180 days after the effective date of the chapter, and under Texas Health and Safety Code, Title 7, §532 015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

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

Actively involved–Involvement with the individual which the IDT deems to be of a quality nature based on the following:

(A) observed interactions of the person with the individual;

(B) advocacy for the best interests of the individual;

(C) knowledge of and sensitivity to the individual's preferences, values, and beliefs;

(D) ability to communicate with the individual; and

(E) availability to the individual for assistance or support when needed.

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

Health care professional-A doctor of medicine or osteopathy, registered nurse, pharmacist, licensed psychologist, or certified psychological associate, who is licensed, certified, or registered to provide services by the State of Texas.

Highly restrictive procedure-The application of aversive stimuli, exclusionary time-out, physical restraint, a requirement to engage in an effortful task, or other techniques with similar degrees of restriction or intrusion to manage maladaptive behavior.

(A) Application of aversive stimuli-Application of any stimulus which may be unpleasant or noxious, startling, or painful, such that its intended effect is the suppression of the specific behavior upon which it is immediately contingent. For purposes of these rules such stimuli include olfactory, auditory, gustatory, tactile, and other stimuli which may result in physical discomfort or pain. Included in this category is low-level electric shock applied to the extremities (legs or arms) contingent on behavior dangerous to self or others.

(B) Exclusionary time-out-A procedure by which an individual is placed alone in an enclosed area in accordance with an approved systematic behavior intervention program contingent upon the exhibition of a maladaptive behavior, in which positive reinforcement is not available and from which egress is physically denied, including prevention by staff, until appropriate behavior is exhibited.

(C) Physical restraint-The use of personal or mechanical restraint to restrict the movement or routine functioning of a portion of an individual's body. Physical restraint includes contingent restraint and protective restraint as defined herein

(i) Contingent restraint-An intervention within a behavior intervention program involving the systematic application of any physical device, or the application of physical resistance by another person, to the body of an individual in such a way as to limit or control the physical activity of the individual following a previously identified response targeted for reduction or elimination.

(ii) Protective restraint-The use of any physical or mechanical device to limit or prevent severe self-injurious behavior that if left uncontrolled could result in serious tissue damage, medical complications or death (e.g., life-threatening pica, self-mutilative biting)

(iii) Personal restraint-The application of physical pressure to the body of an individual in such a way as to restrict the movement of the whole or a portion of the body except as part of a routine medical or dental procedure. Excluded also are physical guidance, prompting procedures, and emergency use to prevent injury to self or others.

(iv) Mechanical restraint-The application of a physical device to restrict the movement of the whole or a portion of an individual's body except as part of a routine medical or dental procedure and for bodily support and positioning.

(D) Effortful task-A task requiring physical effort by an individual following an undesirable response and in which the completion of the task is directed and may be manually guided by staff. Examples of effortful tasks include, but are not limited to:

(i) Required exercise-A procedure in which an individual performs and may be guided by staff to perform a series of physical movements which are incompatible with the undesirable response which they systematically follow. An example would be the guided movement of a self-abusive individual's arms through a series of positions away from the body.

(ii) Negative practice-A procedure in which an individual is required to repeatedly engage in an effortful task which is topographically similar to the undesirable response which the procedure systematically follows. An example is a program in which an individual who strikes others is required to repeatedly strike a punching bag following each occurrence of striking behavior.

(iii) Restitutional overcorrection-A procedure in which an individual is required to correct the consequences of a disruptive response by performing a task which restores the environment to a state even more improved than existed before the disruptive behavior. An example would be the requirement that a disruptive individual polish all the tables in the residence as a consequence of knocking one of them over.

Individual-A person residing in and receiving services from a provider of the ICF/MR or ICF/MR/RC program. (The term individual as used throughout this subchapter has been substituted for the term client as used in new Chapter 597 of the Texas Health and Safety Code upon which the subchapter is based, in keeping with current departmental usage.)

Interdisciplinary team (IDT)-An interdisciplinary team is a group of mental retardation professionals, paraprofessionals, and other concerned persons who review the individual's treatment, training, and habilitation needs and make recommendations for services. These group members function as a team and include:

(A) the individual, unless his/her participation is unobtainable or inappropriate;

(B) the parent of the individual who is a minor, the legal guardian, or managing or possessory conservator, as appropriate;

(C) as specified by the provider and as defined in the Code of Federal Regulations for participation in the ICF/MR program, persons who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation;

(D) persons who are directly involved in the delivery of mental retardation services to the individual;

(E) representative(s) of other agencies serving the individual as indicated; and

(F) any other actively involved adult not excluded by the individual from participation.

Intermediate Care Facility for Persons with Mental Retardation or Related Conditions (ICF/MR or ICF/MR/RC)-A community-based facility which has been licensed and/or certified by, and has a current contract with the State of Texas to provide ICF/MR or ICF/MR/RC services to individuals with mental retardation or related condition(s).

Major medical and dental treatment-A medical, surgical, dental, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.

Provider–An organization, corporation, Community MHMR Center, departmental Community Services outreach division, or any entity, except campus-based facilities of the department, which has a current contract with the State of Texas to provide ICF/MR or ICF/MR/RC services in the state of Texas.

Psychoactive medication–Any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

Surrogate consent committee–A group of three to five persons who meet the criteria set forth in §405 240 of this subchapter (relating to Appointment and Qualifications of a Surrogate Consent Committee), which is designated to provide consent for specific treatments and services to eligible individuals in ICF/MR and ICF/MR/RC facilities

Surrogate decision-maker–An actively involved spouse, adult child, parent or stepparent, adult sibling, or adult relative who has decision-making capacity and is willing to consent on behalf of an individual as described in §405.237 of this subchapter (relating to Appointment and Qualifications of a Surrogate Decision-Maker)

§405.236. Assessment of Capacity to Consent to Treatment.

(a) Unless an individual already has a legal guardian empowered by the court to make such decisions or managing or possessory conservator, capacity must be presumed for all individuals residing in ICF/MR or ICF/MR/RC facilities. As a result, when a consent allowed under this subchapter is required, the IDT must ensure that the individual is afforded the opportunity for providing consent before surrogate decision-making processes are utilized This requires minimally, that:

(1) the individual is informed of the risks and potential benefits associated with the consent decision which needs to be made;

(2) alternative treatments or courses of action are presented and discussed;

(3) individual choice, preference, values, and beliefs are promoted;

(4) the individual is informed of the timeframes involved such as immediacy of treatment and length of time that consent will be valid; and

(5) as needed, appropriate training is provided in the areas of problem-solving, decision-making, and/or the subject of the decision.

(b) If there is evidence which raises a question about the individual's capacity to give consent about the particular treatment or service, an assessment of the individual's capacity to give consent about the particular treatment shall be made The assessment conducted shall, minimally, take into consideration the following

(1) the results of the processes outlined in subsection (a)(1)-(5) of this section,

(2) discussions with and/or observations of the individual,

(3) review and discussion with close family members and friends identified by the individual, appropriate staff (including direct care, program, and professional staff) and any other person who plays a significant role in the individual's life,

(4) review of current functional assessments, and

(5) results of any other evaluation or assessment conducted and/or information obtained which is relevant in determining the individual's capacity to give consent.

(c) If the results of the assessment of capacity indicate that the individual:

(1) has the capacity to consent, the individual will make the decision regarding the specific treatment needed.

(2) lacks the capacity to provide consent regarding the specific treatment needed as allowed under law, either:

(A) a surrogate decision-maker will be appointed; or

(B) a surrogate consent committee will be convened;; or

(C) the interdisciplinary team will provide the consent

(d) The results of the assessment and resultant action shall be documented and maintained in the individual's record. The documentation shall, minimally, contain the following information

(1) the content offered and results obtained through the process described in subsection (a)(1)-(5) of this section which must specifically address the indicators;

(A) which reveal a lack of understanding and/or knowledge necessary to provide consent if capacity is not confirmed, and

(B) of the voluntariness of any consent obtained.

(2) a description of the methods utilized and persons interviewed to obtain the information for the assessment as required in subsection (b)(2)-(5) of this section, and

(3) a description of the evidence obtained which supports one of the following choices

(A) consent was given by the individual,

(B) a referral for the appointment of a surrogate decision-maker or an application to the surrogate consent committee was necessary, or

(C) the nature of the decision was such that consent could be given by the IDT.

(e) This process must be completed for each type of consent decision needed and allowed under §405 233(c)(1)-(4) of this subchapter (relating to Application) and, minimally, on an annual basis for decisions needed and allowed under §405 233(c)(5).

§405.239 Interdisciplinary Team Rights and Responsibilities As A Decision-Maker

(a) The IDT may provide consent on behalf of an individual:

(1) when the decision needed pertains to a treatment or service not reserved to the surrogate decision-maker or surrogate consent committee.

(2) following initial consent for the administration of psychoactive medication by a surrogate consent committee. In this instance the ongoing consent by the IDT for the use of the medication is limited to the following situations:

(A) The individual is under the ongoing care of a doctor of medicine or osteopathy for the specific diagnosis for which the medication is prescribed.

(B) The quarterly pharmacist's drug regimen review identifies no apparent irregularities or potential problems (such as those described in Appendix N of the Surveyors Procedures for Pharmaceutical Service Requirements in Long-Term

Care Facilities) which have not been resolved through consultation with an appropriate health care professional.

(C) Proposed changes in medication regimen, such as type of drug or dosage, which pose no significant increase in risk to the individual, based on the judgment of the prescribing physician and other health care professionals involved in the individual's care.

(D) The consent is reviewed until its expiration date, on a quarterly basis following the quarterly pharmacist's review, with documentation of the review noted in the individual's folder.

(b) All consent decisions made by the IDT on behalf of the individual shall take into consideration the individual's likes/dislikes, preferences, values, and beliefs as indicated through the assessment process.

(c) Should the IDT determine at any time that the consent process needs to be referred to the surrogate consent committee, an application shall be initiated as described in §405.242 of this subchapter (relating to Review of an Application for a Treatment Decision).

(d) Deliberations of the IDT during the consent and decision-making processes are documented and maintained in the individual's folder.

§405.240. Appointment and Qualifications of a Surrogate Consent Committee.

(a) A surrogate consent committee may provide consent for:

(1) treatment with psychoactive medication(s);

(2) implementation of a highly restrictive procedure;

(3) major medical or dental treatment in the event there is no surrogate decision-maker as described in §405.237 of this subchapter (relating to Appointment and Qualifications of a Surrogate Decision-Maker);

(4) release of records or other information relevant to the individual's treatment or condition necessary to facilitate the process of obtaining consent for treatment or determining the individual's best interest; and/or

(5) other treatment or programmatic decisions which involve possible risk to individual protection and rights as requested by the IDT.

(b) If the results of the assessment of capacity indicate that the individual needs assistance in providing consent and there is no surrogate decision-maker to provide the consent or the consent is reserved to the surrogate consent committee, the provider shall request the appointment of a surrogate consent committee to act on behalf of the individual

(c) A surrogate consent committee shall:

(1) be appointed by the department;

(2) be composed of at least three but not more than five individuals who:

(A) are not employees of the provider,

(B) do not provide contractual services to the provider,

(C) do not manage or exercise supervisory control over:

(i) the provider or the employees of the provider, or

(ii) any company, corporation, or other legal entity that manages or exercises control over the provider or the employees of the provider,

(D) do not have a financial interest in the provider or in any company, corporation, or other legal entity that has a financial interest in the provider; and

(E) are not related to the individual for whom consent is being sought, and

(3) include at least one member who is a health care professional or who has demonstrated expertise or interest in the care and treatment of individuals with mental disabilities

(d) Other eligibility criteria for consent committee membership include the following:

(1) Each member shall participate in education and training programs sponsored by the department as follows:

(A) initial education and training shall be completed within three months of the first appointment to a surrogate consent committee; and

(B) review course shall be completed during each consecutive term of service as a member of a surrogate consent committee.

(2) The list of qualified individuals from which consent committee members are drawn shall include:

(A) health care professionals;

(B) individuals with mental retardation or parents, siblings, spouses, or children of an individual with mental retardation but not the individual for whom consent is being sought,

(C) attorneys licensed in Texas who have knowledge of legal issues of concern to individuals with mental retardation or to the families of individuals with mental retardation,

(D) members of private organizations that advocate on behalf of individuals with mental retardation, and

(E) persons with demonstrated expertise or interest in the care and treatment of individuals with mental disabilities

(e) Verification of qualifications and eligibility to serve on a surrogate consent committee must be conducted by the department

§405.241 Surrogate Consent Committee Responsibilities and Operating Guidelines

(a) The department shall develop Operating Guidelines for the surrogate consent committees

(b) A surrogate consent committee is not subject to the

(1) Administrative Procedure Act, Government Code, Chapter 2001;

(2) Texas Civil Statutes, Article 6252-17 (Open Meetings Law); or

(3) Texas Civil Statutes, Article 6252-17a (Open Records Law).

(c) Individuals serving on a consent committee who consent or refuse to consent on behalf of a individual and who act in good faith, reasonably, and without malice are not criminally liable or civilly liable for that action.

(d) Surrogate consent committee members shall be appointed for a period of one year but may serve consecutive terms upon department approval

(e) Each committee must designate a committee chair as described in the Operating Guidelines

(f) The department's Operating Guidelines shall include

(1) policy and procedures concerning the investigation of complaints filed against a member of a surrogate consent committee; and

(2) policy and procedures for the evaluation of the quality and effectiveness of the surrogate consent committees

(g) The department may terminate the participation of a member of a surrogate

consent committee at will

§405 246 Surrogate Consent Committee Meeting Proceedings

(a) The surrogate consent committee must review the application for a treatment decision at the time, date, and place specified in the notice

(b) Formal rules of evidence do not apply to consent committee proceedings, although committee members shall adhere to department Operating Guidelines

(c) Committee member(s) shall meet and, if practicable, interview the individual before making a determination of the individual's best interest

(1) Impressions and recommendations of the committee member(s) based on the interview and/or observation shall be documented and maintained in the committee record

(2) In cases where the individual is not interviewed, the reason shall be documented in the individual's folder and the committee record

(d) During the review of the application for a treatment decision, the committee may take testimony or review evidence from any

(1) person who might assist the committee in determining an individual's best interest,

(2) person notified of and present at the meeting,

(3) representative of a person notified of the meeting, and

(4) expert or consultant from whom additional information has been obtained

(e) Notwithstanding any other state law, a person licensed or certified by this state to provide services related to health care or to the treatment or care of a person with mental retardation, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the individual's need for proposed treatment

(f) If, during receipt of testimony or prior to the consent committee's final determination, the committee is notified that a person has applied for appointment as the individual's guardian of the person, in accordance with the Texas Probate Code Chapter XIII, proceedings shall be suspended by the chair

(1) If the person has not been appointed guardian by the end of the fifth working day following suspension of deliberations, the committee shall resume deliberations

(2) The consent committee may make a determination about the proposed treatment during the period in which guardianship is being pursued if there is clear and convincing evidence of a medical necessity to do so.

(3) All documentation concerning the committee proceedings and the evidence supporting the actions taken shall be maintained in the consent committee record

(g) Testimony taken during the committee proceedings shall be given under oath as administered by the committee's chair

(1) Representatives of persons notified shall state, under oath, the identity and relationship of the person they represent

(2) Testimony shall be obtained, documented, and maintained as described in department Operating Guidelines

(h) Following receipt of testimony, the consent committee may enter into closed deliberations for determining the best interest of the individual and making the treatment decision

(1) In its deliberations and determination of the best interest of the individual, the committee must consider the preference of the individual

(2) Decisions made shall be based on consensus of the consent committee members and on clear and convincing evidence that the proposed treatment promotes the individual's best interest

(3) The committee shall consent or refuse the treatment on the individual's behalf

(4) The committee shall determine the date on which the consent becomes effective and the duration of the consent

§405 248 References. Reference is made in this subchapter to the following statutes, department rules, rules of other agencies, and other documents.

(1) Code of Federal Regulations (relating to participation in ICF/MR programs),

(2) Appendix N of the Surveyors Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities;

(3) the Texas Health and Safety Code, Chapter 597;

(4) the Texas Probate Code, Chapter XIII,

(5) the Administrative Procedure Act, the Government Code, Chapter 2001,

(6) Texas Civil Statutes, Article 6252-17 (Open Meetings Law),

(7) Texas Civil Statutes, Article 6252-17a (Open Records Law, and

(8) Operating Guidelines

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 19, 1993

TRD-9332431 Ann K Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date December 10, 1993

Proposal publication date August 20, 1993

For further information, please call (512) 465-4670

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Subchapter AA. Practice and Procedure with Respect to Administrative Hearings of the Department Arising under the Mentally Retarded Persons Act of 1977

• 25 TAC §§405.661-405.678

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§405 661-405.678 of Chapter 405, Subchapter AA, concerning practice and procedure with respect to administrative hearings of the department arising under the Mentally Retarded Persons Act of 1977 The sections are replaced by new §§403 401-403 419 of Chapter 403, Subchapter N, concerning administrative hearings arising under the Persons with Mental Retardation Act, which are contemporaneously adopted in this issue of *Texas Register*

The purpose of the repeal is to permit the adoption of new sections that comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

The 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 powers

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 19, 1993

TRD-9332421 Ann K Utley
Chairman
Texas Department of Mental Health and Mental Retardation

Effective date: December 10, 1993

Proposal publication date August 10, 1993

For further information, please call: (512) 465-4670

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Chapter 409. Medicaid Programs

Subchapter H. Diagnostic Services for Persons with Potential of Mental Retardation

• 25 TAC §§409.301-409.306

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§409.301-409.306, concerning diagnostic services for persons with potential of mental retardation, without changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6287).

No public comments were received regarding adoption of the section.

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Texas 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 19, 1993.

TRD-9332420 Ann K. Utley
Chairman
Texas Department of Mental Health and Mental Retardation

Effective date: December 10, 1993.

Proposal publication date: September 17, 1993.

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

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Part XI. Texas Cancer Council

Chapter 701. Policies and Procedures

• 25 TAC §§701.3, 701.4, 701.6

The Texas Cancer Council adopts amendments to §§701.3, 701.4, 701.6. Section 701.6 is adopted with changes to the proposed text as published in the August 27, 1993, issue of the *Texas Register* (18 TexReg 5719). §701.3 and §701.4 are adopted without changes and will not be republished.

The rules provide for the appointment of committees and officers. The new language simplifies administrative procedures and clarifies intent and current practices. Changes occur in §701.6(g).

The adopted rules will provide for more efficient and appropriate Council practices.

The Attorney General's Office notified the Council that the proposed changes to §701.6, regarding a definition change for quorums, is invalid.

The Council agrees with the Attorney General's Office's interpretation of state law regarding quorums.

The amendments are adopted under the Health and Safety Code, Chapters 102.002 and 102.009, which provides the Texas Cancer Council with the authority to develop and implement the Texas Cancer Plan, and Texas Civil Statutes, Article 6252-13a, §4, which provide the Texas Cancer Council with the authority to adopt rules governing Council practice and procedures.

§701.6. Meetings.

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

(g) Quorum. Nine members shall constitute a quorum.

(h)-(m) (No change.)

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332550 Emily F. Untermeyer
Executive Director
Texas Cancer Council

Effective date: December 14, 1993.

Proposal publication date: August 27, 1993.

For further information, please call: (512) 463-3190

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Chapter 703. Project Contracts and Grants

• 25 TAC §§703.4-703.8, 703.10

The Texas Cancer Council adopts amendments to §§703.4-703.8, and 703.10. Section 703.10 is adopted with changes to the proposed text as published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5476). Sections 703.4-703.8 are adopted without changes and will not be republished.

The rules address requirements for the submission, review, and approval of project applications, set forth acknowledgement requirements for publications and materials, and delineate definitions and requirements regarding project income. Changes occur in §703.10(d)(1)-(4).

The adopted rules will provide for more efficient and appropriate Council practices.

Comments submitted by Council contractors suggested wording changes to clarify the proposed rules' intent.

The Physician Oncology Education Program and Nurse Oncology Education Program commented on the proposed amendments. The wording of §703.10 was clarified based upon issues raised by the two groups that submitted comments.

The amendments are adopted under the Health and Safety Code, Chapters 102.002 and 102.009, which provides the Texas Cancer Council with the authority to develop and implement the Texas Cancer Plan, and Texas Civil Statutes, Article 6252-13a, §4, which provide the Texas Cancer Council with the authority to adopt rules governing Council practice and procedures.

§703.10. Funding Restrictions.

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

(d) Project Income. Any revenues received from projects funded by the council must be reported quarterly on forms provided by the council.

(1) Project income shall be used for any purpose which furthers the objectives of the program, implementation of the *Texas Cancer Plan*, and scope of work of the council contract. Project income generally includes all fees, royalties, registrations, et cetera, that are generated by services, activities, or products provided through the funded project.

(2) Project income must be deducted from total project costs to determine the net costs on which the council's reimbursement will be based. Any remaining revenue may be retained by the contractor as long as it is used for activities which further implementation of the *Texas Cancer Plan*.

(3) If income is generated through the activities or materials developed with council funding, the council may require a Memorandum of Agreement with the contracting agency that specifies the conditions under which the income will be used.

(4) For this subsection, "project" refers to activities financed by the council through a contract and "program" refers to a cancer prevention or control effort of which the council-funded project is a component.

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 23, 1993.

TRD-9332551 Emily F. Untermeyer
Executive Director
Texas Cancer Council

Effective date: December 15, 1993.

Proposal publication date: August 17, 1993.

For further information, please call: (512) 463-3190

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter E. Texas Catastrophe Property Insurance Association

Texas Standard Policy-Windstorm and Hail

- **28 TAC §5.4101**

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to 28 TAC §5.4101, concerning the adoption by reference of an amended Texas Catastrophe Property Insurance Policy for Windstorm and Hail, with changes to the proposed policy form and text as published in the October 8, 1993, issue of the Texas Register (18 TexReg 6913).

The amendments to the application portion of the policy form are necessary to incorporate recent legislative changes to the Insurance Code, Article 21 49, relating to indirect loss coverages to be provided by the Texas Catastrophe Property Insurance Association (TCPIA) The newly adopted amendments do not change any currently approved policy provisions Recent amendments to the Insurance Code, Article 21 49, enacted in House Bill 1461 by the 73rd Texas Legislature, mandate that the TCPIA provide coverages for indirect losses caused by windstorm and hail when those coverages are excluded in the companion policy being issued in the voluntary market. The adopted amendments are necessary to provide the TCPIA with specific information regarding the type of companion policy issued in the voluntary market in order for the proper indirect loss coverage endorsement to be attached to the TCPIA policy, to provide zip code information for the analysis of location of risks, to remove obsolete provisions, and to reduce claim reporting paperwork

The proposed amendment to §5 4101 as published, which provided for an effective date of December 1, 1993, for the new policy form, is amended to provide for an effective date of January 1, 1994. This change is necessary to comply with the Administrative Procedure Act requirement that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state (the Government Code, §2001.036(a)) and to allow time for printing the revised policy form. Also, the application portion of the policy form as proposed is amended in the adopted policy form to provide for the inclusion of designations for the HO-CON-B and HO-CON-C policies as companion policies written in the voluntary market when indirect loss coverages are to be provided by the TCPIA policy

The newly adopted amendments change the application portion of the policy to provide proper references to the type of companion policy being issued in the voluntary market that excludes windstorm and hail coverages. The revised application form provides a space for a zip code for purposes of analysis of location of risks, deletes part 2 of Question III on the application regarding the property being behind the seawall because the existence of a seawall no longer has a bearing on risks insured through the TCPIA, and adds an additional carbon copy of the application to be used as a claim reporting form to eliminate the need for an agent to issue a separate notice of loss with policy information to be submitted to the company The memorandum copy of the policy is updated by replacing obsolete policy provisions on the back of the memorandum copy of the policy declaration page

During the comment period, the Texas Department of Insurance received written comments on the proposal from the Texas Association of Insurance Agents

Comment The commenter stated that the exclusion of primary residential townhouses and condominium units from the indirect loss coverage provisions was not in keeping with the intent of Article 21 49 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, which was to encourage insurance companies to increase their writings in coastal areas by eliminating coverage for certain wind-related exposures from residential property policies and providing coverage for these same exposures in the TCPIA policy The commenter pointed out that because of this exclusion condominium unit owners will continue to experience a lack of availability in the voluntary market

Response The Department agrees with the commenter's reasoning in the explanation of the legislative intent of the amendments to Article 21 49 as added in Section 8D The Department disagrees that primary residential townhouses have been excluded from the proposal because any individually owned townhouse unit insured by the owner is defined as a dwelling in the TCPIA manual and is eligible to be covered under a TCPIA policy for indirect loss coverage based on the exclusion of such coverage from the companion homeowners or dwelling policy issued in the voluntary market to insure the individually owned townhouse unit. The Department agrees that condominium owners insured by the TCPIA should be provided with indirect loss coverages. The Department did not include such coverage in the proposal because while the newly enacted statute provides this coverage for condo renters, it does not address condo owners. However, it is the Department's position that the legislative intent is clear that certain indirect loss coverages for all residential risks were to be provided by the TCPIA policy when such coverages were excluded from a residential property policy written in the voluntary market. The State Board of Insurance pursuant to the authority granted in the Insurance Code, Article 21 49, §§5A, 7, and 8 may provide for such coverages, and the revised application portion of the policy form as adopted provides for the inclusion of designations for the HO-CON-B and HO-CON-C policies as companion policies written in the voluntary market when indirect loss coverages are to be provided by the TCPIA policy

The amendments are adopted pursuant to the Insurance Code, Article 21.49, §1.23 of House Bill 1461 and the Government Code, §2001.004 et seq. Article 21.49, §5A, authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7, requires the State Board of Insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPIA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8, authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA Article 21.49, §8B, requires the TCPIA to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 (Act of May 27, 1993, 73rd Legislative, Regular Session, Chapter 685, 1993 Texas Session Law Service 2575 (Vernon)) provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. The Government Code, §2001 004 et seq 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 administrative agency.

§5.4101. Texas Catastrophe Property Insurance Policy for Windstorm and Hail. The State Board of Insurance adopts by reference the Texas catastrophe property insurance policy for windstorm and hail as amended January 1, 1994. This document is published by and available from the Texas Catastrophe Property Insurance Association, P.O Box 2930, Austin, Texas 78769. It may also be obtained by contacting the Property and Casualty Division, Mail Code 103-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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 24, 1993.

TRD-9332716

Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1994

Proposal publication date: October 8, 1993

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

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• 28 TAC §5.4201

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to 28 TAC §5.4201, concerning the adoption by reference of eleven new endorsements for windstorm and hail insurance written by the Texas Catastrophe Property Insurance Association (TCPIA) and a revised TCPIA replacement cost endorsement for household goods, with changes to the proposed endorsements and text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6914)

The new TCPIA policy endorsements to extend coverage of windstorm and hail insurance are necessary to provide coverage for certain indirect losses caused by windstorm or hail. Recent amendments to Article 21 49 of the Insurance Code, enacted under House Bill 1461 by the 73rd Texas Legislature, mandate that the TCPIA provide coverages for indirect losses caused by windstorm or hail when those coverages are excluded in the companion policy being issued in the voluntary market. Companion policies issued in the voluntary market provide a variety of coverages for indirect losses, depending on the type of policy. As a result, specific endorsements must be adopted to provide the proper coverages for indirect losses that corresponds to the coverages excluded in the companion policy. In addition, the revisions to Article 21.49 make certain exceptions regarding coverages for indirect losses that must be taken into consideration when issuing the coverage under the TCPIA policy. Rather than having eleven different TCPIA policies to incorporate the various coverages for indirect losses, eleven endorsements are adopted to extend the proper coverage for indirect losses under the TCPIA policy. The adoption of these endorsements for windstorm and hail insurance written by the TCPIA will result in greater availability of residential insurance in the voluntary market for Texas coastal residents since most windstorm and hail coverage can be excluded from the residential policy written in the voluntary market, and the coverage for both direct and indirect losses caused by windstorm and hail will be provided under the TCPIA policy. The revised replacement cost endorsement for household goods is necessary to ensure that TCPIA policyholders are provided replacement cost coverage equivalent to that available on the standard residential property policy issued in the voluntary market covering other perils.

The proposed amendment to §5.4201 as published, which provided for an effective date of December 1, 1993, for the new endorsements, is amended to provide for an effective date of January 1, 1994. This change is necessary to comply with the Administrative Procedure Act requirement that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state (the Government Code, §2001.036(a)) and to allow time for the printing of the new endorsement forms.

Two TCPIA endorsement forms, which were not included in the proposal, are adopted to provide indirect loss coverage for condominiums. The Board adopts TCPIA Form 326 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-B companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement and TCPIA Form 328 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-C companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement

Any TCPIA policy issued on and after January 1, 1994, must have one of the following new endorsements attached·

1 TCPIA Form-310 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages and additional living expense coverage when the companion homeowners policy (Form HO-A) has been issued excluding coverages provided by this endorsement.

2 TCPIA Form-315 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion homeowners policy (Form HO-B) has been issued excluding coverages provided by this endorsement

3 TCPIA Form-320 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages, additional living expense coverage, and wind-driven rain coverage to insured property when the companion homeowners policy (Form HO-C) has been issued excluding coverages provided by this endorsement.

4. TCPIA Form-325 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages and additional living expense coverage when the companion homeowners policy (Forms HO-BT or HO-CT) has been issued excluding coverages provided by this endorsement

5. TCPIA Form 326 (HO-CONDO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages and additional living expense coverage to insured property when the companion homeowners policy (Form HO-CON-B) has been issued excluding coverages provided by this endorsement

6. TCPIA Form 328 (HO-CONDO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages, additional living expense coverage, and wind-driven rain coverage when the companion homeowners policy (Form HO-CON-C) has been issued excluding coverages provided by this endorsement.

7. TCPIA Form-330 (TDP and TFR), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage when the companion dwelling policy (Forms TDP-1 or TDP-2) or the companion farm and ranch policy (Forms TFR-1 or TFR-2) has been issued excluding coverage provided by this endorsement.

8. TCPIA Form-335 (TDP and TFR), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion dwelling policy (Form TDP-3) or the companion farm and ranch policy (Form TFR-3) has been issued excluding coverages provided by this endorsement.

9 TCPIA Form-340 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage and additional living expense coverage when the companion farm and ranch owners policy (Form FRO-A) has been issued excluding coverages provided by this endorsement

10 TCPIA Form-345 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion farm and ranch owners policy (Form FRO-B) has been issued excluding coverages provided by this endorsement.

11 TCPIA Form-350 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to insured property when the companion farm and ranch owners policy (Form FRO-B with Form FRO-480 attached) has been issued excluding coverages provided by this endorsement.

In addition, TCPIA Form-365, Replacement Cost Endorsement-Household Goods, will provide the same replacement cost coverage on the TCPIA policy providing windstorm and hail coverage as is available on the standard residential property policy issued in the voluntary market covering other perils.

During the comment period, the Texas Department of Insurance received written comments on the proposal from the Texas Association of Insurance Agents, Zapp Insurance Agency, and one legislator. The Texas Association of Insurance Agents also provided oral comments at the hearing on November 17, 1993

Comment. One commenter stated that the exclusion of primary residential townhouses and condominium units from the indirect loss coverage provisions was not in keeping with the intent of the Insurance Code, Article 21.49, as amended by the 73rd Texas Legislature in House Bill 1461, which was to encourage insurance companies to increase their writings in coastal areas by eliminating coverage for certain wind-related exposures from residential property policies and providing coverage for these same exposures in the TCPIA policy. The commenter pointed out that because of this exclusion condominium unit owners will continue to experience a lack of availability in the voluntary market. The commenter proposed amending the preamble on TCPIA Form 315 to provide that this endorsement must be attached to a TCPIA Windstorm and Hail policy if a HO-CON-B companion homeowners policy, as well as the HO-B companion homeowners policy, has been issued which excludes the coverages provided by this endorsement and that the preamble on TCPIA Form 320 be

amended to provide that this endorsement must be attached to a TCPIA Windstorm and Hail policy if a HO-CON-C companion homeowners policy, as well as the HO-C companion homeowners policy, has been issued which excludes the coverages provided by this endorsement.

Response: The Department agrees with the commenter's reasoning in the explanation of the legislative intent of the amendments to Article 21.49 as added in Section 8D. The Department disagrees that primary residential townhouses have been excluded from the proposal because any individually owned townhouse unit insured by the owner is defined as a dwelling in the TCPIA manual and is eligible to be covered under a TCPIA policy for indirect loss coverage based on the exclusion of such coverage from the companion homeowners or dwelling policy issued in the voluntary market to insure the individually owned townhouse unit. The Department agrees that condominium owners insured by the TCPIA should be provided with indirect loss coverages. The Department did not include such coverage in the proposal because while the newly enacted statute provides this coverage for condo renters, it does not address condo owners. However, it is the Department's position that the legislative intent is clear that certain indirect loss coverages for all residential risks were to be provided by the TCPIA policy when such coverages were excluded from a residential property policy written in the voluntary market. The State Board of Insurance pursuant to the authority granted in the Insurance Code, Article 21.49, §§5A, 7, and 8 may provide for such coverages, and the rule as adopted provides for two additional endorsements that were not included in the proposal to provide condo owners with certain indirect loss coverages. The Department, however, does not agree with the commenter that TCPIA Endorsement Forms 315 and 320 can be used for this purpose because these endorsements cannot be revised to properly correspond to the indirect loss coverages that must be provided for insuring condominium owners. As a result, the Board adopts TCPIA Form 326 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-B companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement and TCPIA Form 328 (HO-CONDO) to be attached to a TCPIA Windstorm and Hail policy if a HO-CON-C companion homeowners policy has been issued which excludes the coverages provided by the attached endorsement.

Comment: One commenter raised the question of whether there was not a more efficient way to implement the new provisions than by requiring the utilization of 18 different endorsement forms (seven endorsements to exclude indirect loss coverages from residential property policies in the voluntary market adopted on the same date as this rule under Docket Number 2066 and eleven endorsements to add the indirect loss coverage to the TCPIA policy). Another commenter suggested that a single TCPIA endorsement be used which would track the statutory language and indicate that the three potential coverage changes would apply according to the type of companion policy. The commenter also suggested that, in lieu of the seven endorsements to exclude indirect loss coverages from residential property policies in the voluntary market adopted on the same date as this rule under Docket Number 2066, a single endorsement be used for the various companion policies with the three types of indirect loss coverage to be provided and "check off" boxes for each of the types of companion policies, with language indicating which of the three coverages is being excluded from the particular policy.

Response: The Department balanced both the need for consumers to understand their coverages and the need for agents to have the most reasonable method of providing that coverage and believes that the individual endorsements are in the best interest of the consumer and therefore, are the better approach. It is the agency's opinion that the types of information that would have to be provided is too complex and lengthy for the suggested "check off" approach, and that this approach would be too confusing to the policyholder. The number of policy forms available in the voluntary market and the differences in the indirect loss coverages to be provided by the TCPIA require separate endorsements to allow consumers a clear understanding of which coverages are being excluded from the voluntary market policy and which are being added by the TCPIA policy. Separate endorsements should also eliminate or reduce disputes over coverage when a loss occurs.

Comment: At the November 17, 1993, hearing on the adoption of the proposed endorsements, one commenter expressed support for the multiple-endorsement approach, indicating that though this approach is more difficult for agents, it is the least confusing approach for consumers.

Response: The Department agrees.

Comment: One commenter proposed the development of a simplified rating worksheet, perhaps by the TCPIA, showing the progression of steps: type policy; primary/secondary residence; percentage modifier, etc.

Response: The Department has no objections to the TCPIA providing such a worksheet to agents if the TCPIA believes it is necessary. The Department will either assist in its development or provide review after development by the TCPIA, whichever approach is preferable to the TCPIA. However, the Department believes that this worksheet can be developed separate and apart from this rule.

The amendment is adopted pursuant to the Insurance Code, Article 21.49, §1.23 of House Bill 1461 and the Government Code, §2001.004 et seq. Article 21.49, §5A, authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7, requires the State Board of insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPIA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8, authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA. Article 21.49, §8B, requires the TCPIA to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 (Act of May 27, 1993, 73rd Legislative, Regular Session, Chapter 685, 1993 Texas Session Law Service 2575 (Vernon)) provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. The Government Code, §2001.004 et seq. 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 administrative agency.

§5.4201. Standard Texas Catastrophe Property Insurance Association Forms for Windstorm and Hail. The State Board of Insurance adopts by reference the standard Texas Catastrophe Property Insurance Association forms-Windstorm and Hail. Specimen copies of these forms are available from the Texas Catastrophe Property Insurance Association, P.O. Box 2930, Austin, Texas, 78767. They are also available from the Property and Casualty Program, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. The forms are more specifically identified as follows:

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

(3) TCPIA Form 365-replacement cost endorsement-household goods. Effective January 1, 1994.

(4)-(12) (No change).

(13) TCPIA Form 310 (HO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(14) TCPIA Form 315 (HO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(15) TCPIA Form 320 (HO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(16) TCPIA Form 325 (HO-Tenant)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(17) TCPIA Form 326 (HO-CONDO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(18) TCPIA Form 328 (HO-

CONDO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(19) TCPIA Form 330 (TDP and TFR)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(20) TCPIA Form 335 (TDP and TFR)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(21) TCPIA Form 340 (FRO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(22) TCPIA Form 345 (FRO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

(23) TCPIA Form 350 (FRO)-extensions of coverage, windstorm and hail. Effective January 1, 1994.

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

Issued in Austin, Texas, on November 24, 1993.

TRD-9332715 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1994

Proposal publication date: October 8, 1993

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §117.105 and §117.205, the repeal of §117.540 and §117. 550, and new §§117.540, 117.550, and 117.580, concerning Control of Air Pollution From Nitrogen Compounds. Sections 117.105, 117.205, and new §§117.540, 117.550, and 117.580 are adopted with changes to the proposed text as published in the June 15, 1993, issue of the Texas Register (18 TexReg 3745). The repeal of §117.540 and §117.550 are adopted without changes and will not be republished.

The proposed changes are part of a series of proposed revisions to Chapter 117 being developed in response to requirements by the U.S. Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments to apply reasonably available control technology (RACT) emission limits to major sources of nitrogen oxides (NO_x) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller.

The proposed changes to §117.105 and §117.205, concerning Emissions Specifications, were designed to make the alternative compliance options of system-wide averaging and plant-wide averaging more consistent with EPA policy. The proposed new §117.540, concerning Phased RACT, was intended to avoid the need for case-by-case EPA approval of compliance extensions. The section as adopted falls short of this goal, but is expected to provide more detail of the type of information that EPA would consider in evaluating a request for an extended RACT implementation schedule. The proposed new §117.550, concerning Standard Construction Permits for NO_x RACT Projects, was designed to provide a standard permit procedure for the installation of NO_x control equipment to facilitate the timely implementation of emission reductions. Existing §117.540 and §117.550 were proposed for concurrent repeal. Proposed new §117.580, concerning Source Caps, was designed to add more compliance flexibility with a source cap option.

A public hearing was held in Houston on June 30, 1993, to consider the proposed revisions to Chapter 117. No oral testimony was presented during the public hearing. Written comments were accepted through July 15, 1993. Twenty commenters submitted written testimony. All comments have been reviewed and seriously considered. The following discussion addresses the general comments and comments specific to each of the proposed sections. Throughout the preamble, the TNRCC will be referenced, rather than the Texas Air Control Board (TACB). The TACB was consolidated into the TNRCC along with the Texas Water Commission on September 1, 1993.

General Comments.

An individual commented that the proposed rules were technical in nature and too difficult for the average person to understand. The staff agrees that the concepts embodied in the rules under consideration are sometimes quite complex technically. There is probably no easy remedy to make this type of subject matter less complicated. However, the staff welcomes input suggesting specific ways of clarifying the intent and wording of agency regulations. The staff is always available to assist any person with interpretation and explanation of the regulations.

Browning-Ferris Industries, Inc. (BFI) commented that NO_x emissions resulting from volatile organic compound (VOC) control devices (for example, flares) installed to meet New Source Performance Standards, reasonable further progress regulations, or other federally mandated VOC control requirements should be exempt from NO_x RACT. BFI added that only those emission sources found to be substantial contributors to regional ozone nonattainment should be considered candidates for NO_x RACT control requirements, after the relative benefits of VOC versus NO_x controls regarding ozone formation had been evaluated. The FCAA stipulates that VOC reductions achieved under reasonable further progress requirements cannot be substituted for NO_x reductions required under the FCAA. This chapter applies to existing major NO_x sources placed into service before November 15, 1992. Major NO_x sources which begin operation after that date must undergo new source review (NSR), regardless of any VOC reductions the source may have achieved under state or federal requirements. Attempting to limit NO_x RACT requirements to "substantial contributors" would imply that only certain sources are responsible for the ozone problem. In fact, extensive research into the phenomena of ozone formation and transport point to the conclusion that photochemical smog is a regional problem to which all sources contribute. Therefore, exemption of major NO_x sources for the reasons suggested by the commenter is inappropriate. It should be noted that flares are exempt from the control requirements of this chapter because cost-effective NO_x controls are not generally available for flares.

Amoco Chemical Company (Amoco Chem) commented that the competitive position of Texas industry is continually being undermined by environmental regulations which do not consider cost/benefit analysis in their development. The staff has worked extensively with the community of regulated sources to produce NO_x RACT regulations which attempt to balance cost/benefit issues with air quality mandates. Some control requirements initially considered by the staff have been postponed to future rulemaking so that industry can start making reasonable reductions in a cost-effective manner. Several of the rules proposed in the current round of rulemaking provide industry more flexibility in applying emission averages and specifying final compliance schedules.

Section 117.105(m) and §117.205(h)-Use of the lower of RACT or BACT Emission Specifications.

The revisions to §117.105 and §117.205, concerning Emission Specifications, add the requirement to use the lower of either the best available control technology (BACT) NO_x emission limit of a 30 TAC Chapter 116 permit or the appropriate RACT emission limit of §117.105(a)-(i) or §117.205(a)(3)-(c). This change will primarily affect the calculation of the system-wide or plant-wide emission limits of §117.107 and §117.207. The staff proposed this revision in response to EPA concerns made orally in April prior to Board adoption of the basic NO_x RACT rule, that the emissions averaging elements of the rule would not be federally approvable unless this change were made. EPA's document, "Reasonably Available Control Technology for Nitrogen Oxides Trading Guidance" (draft, June 10, 1993), supports the change. EPA uses the term "trading" to include emissions averaging and source cap methods of compliance limited to a single source. EPA cannot allow an emission reduction already achieved on an emission unit as a result of the NSR program to be included in a RACT rule with emission trading to eliminate or reduce a reduction requirement on some other unit which otherwise could have reasonably reduced emissions under a RACT rule with unit-by-unit compliance.

The change also eliminates a staff concern about the possible use of unreasonably high

permit limits for RACT limits. In many cases, the permit NO_x limit is the result of a codification procedure based on very poor emission factors rather than a detailed BACT review. The original rule proposal had used the terms "detailed BACT review" to distinguish among BACT limits which specifically considered available NO_x reduction technology and those permits which did not. Subsequent discussions with industry work group members regarding their intended use of permit limits for RACT averaging confirmed, on a practical level, the TACB General Counsel's concern that the use of the term "detailed" creates a subjective standard and should be avoided in a final rule.

The change will only rarely require lower emission limits (disregarding the permit codifications and renewals which were never intended to be considered equivalent to a "detailed BACT review") for units subject to BACT since March 3, 1982. The staff's revision allows boilers and heaters that were permitted at the 1982 BACT guideline of 0.12 pound (lb) NO_x per million (MM) Btu to retain that limit for RACT, since it is very close to the lowest RACT emission limit of 0.10 lb NO_x/MMBtu. The BACT guideline moved to 0.06 lb NO_x/MMBtu around 1988, so few, if any, units since then would be expected to be higher than the RACT limits.

The staff has added a clarification to the proposed policy of requiring the lower of the BACT and the RACT limits. Since BACT permit review is an ongoing program, it is necessary to establish a fixed time frame for including BACT limits. As proposed, the rule is not clear on this point. The adopted rule sets the effective date of the rules, June 9, 1993, as the date at which any BACT limits in effect on that date would apply to the universe of affected sources. The TNRCC notes that the rule defines "unit" as boilers, heaters, turbines, or engines placed into service prior to November 15, 1992, so no new units would be regulated by this change. The recommended change is consistent with EPA's draft trading policy.

Amoco Chem, Exxon Company, U.S.A. (Exxon); Texas Chemical Council (TCC, et al.) (Chevron U.S.A. Products Company, Texas Mid-Continent Oil & Gas Association, DuPont, and Exxon Chemical Americas) recommended language that would allow units which have had modifications permitted since November 15, 1990, to use the higher of the RACT or the BACT limit in the plant-wide average or source cap calculation. TCC et al. stated that to do otherwise would unfairly penalize operators who have made early reductions in NO_x emissions. The staff only partially agrees with the commenters. Most new or modified facilities permitted after November 15, 1990, were not constructed for the purposes of obtaining early NO_x RACT reductions. It would not be appropriate to use these project's emission limits to reduce or eliminate RACT requirements for other sources which otherwise could reasonably have made RACT reductions. However, the staff understands that one project was implemented in 1992 purely for making early RACT reductions. After consultation with EPA, Region 6, the staff is allowing units which have had NO_x reduction projects permitted since November 15, 1990, and prior to June 9, 1993, that were implemented solely for the purpose of making early NO_x reductions, to use the appropriate RACT emission limit of §117.205(a)(3)-(c) to allow credit for those reductions in the plant-wide average allowed in §117.207 or the facility cap calculation allowed in §117.580. Wording changes have been made to §117.205(h) to allow this credit.

Amoco Chem commented that it may not be feasible for a unit permitted after March 3, 1982, with a BACT limit higher than 0.12 lb NO_x/MMBtu to set aside its permitted limit to meet a more stringent RACT limit. Amoco Chem stated that this appears fundamentally incorrect since BACT is a case-by-case determination. The commenter suggested as an option to the TCC et al. recommendation, that the wording in §117.205(h) be changed to specify that any units issued a permit after March 3, 1982, with an emission limit equivalent to a NO_x limit of 0.12 lb NO_x/MMBtu natural gas combustion be limited to that rate for the purposes of this subchapter. Amoco Chem stated that this increases the universe of sources that will continue to meet their permitted limits to include those that may not be firing gas. The staff does not agree with the suggested change to allow higher RACT limits than 0.12 lb NO_x/MMBtu based on previous case-by-case BACT determinations. If limits higher than 0.12 lb NO_x/MMBtu were allowed during this period, they would have been based on such factors as furnace temperature, fuel type, furnace volume, or degree of air preheat. Since all of these factors are accounted for in the NO_x RACT limits, these sources will not likely be adversely affected by being required to use the lower of the permit and the RACT limit. If a unit is found to have been permitted at a rate higher than the applicable RACT limit during this period, the imposition of a more stringent RACT limit can be addressed through plant-wide averaging, source caps, or alternative case-specific specifications.

The EPA has previously provided guidance on the relationship between new RACT limits and older new source review limits. In a memorandum from John Calcagni, Director of the Air Quality Management Division of EPA, to EPA Regional Directors dated February 20, 1990, Mr. Calcagni states, "Even though such sources were subjected to the lowest achievable emission rate (LAER) as new sources when constructed, they are now existing sources and are thus subject to RACT regulations. The intent is not to 'reopen' a prior LAER permit (even one that was improperly made); RACT, however, is intended to apply in addition to old permit requirements. In these cases, a source subject to several requirements simultaneously must meet the most stringent requirement; in some cases, it is conceivable that the RACT requirements would override a requirement of the permit (which would be left intact)." Mr. Calcagni then requests the Regional Offices of EPA to, "ask states to correct existing regulations to require a RACT level of control where such control is more stringent than the previous LAER level of control."

Amoco Chem and TCC stated that the TNRCC permit renewal process has been used to update emission limits and control requirements on existing combustion units. They also stated that some recent permits have been issued for modified units at levels above the RACT limits and that it is inappropriate to impose additional controls on such units which have undergone review recently by the TNRCC.

The staff has reviewed the concerns of industry that recent BACT determinations have been made above the RACT limits. Although the current BACT guideline of 0.06 lb NO_x/MMBtu for boilers and heaters rated more than 40 MMBtu per hour heat input is made case-by-case, the staff found no instances of recent BACT determinations above the RACT limits of this Chapter. The TNRCC permit renewal requirements do not include applying current BACT standards to this older equipment. Most combustion units permitted prior to March 3, 1982, were not specifically evaluated for the feasibility of reducing NO_x emissions since NO_x controls were not well developed at that time. BACT for NO_x for most of these older permitted facilities was generally no control requirement. The renewal process is not primarily an emission reduction program and is not appropriate to establish RACT limits.

Exxon commented that §117.205(h) should be deleted entirely because it is "unnecessary and potentially confusing." Exxon believes that the existing rule language already requires the more stringent of the BACT and RACT limitations. The staff disagrees with the commenter. For clarification purposes, the rewording of §117.205(h) and §117.105(m) is beneficial in explicitly stating that the more stringent of the applicable BACT permit and Chapter 117 RACT limits apply.

EPA commented that there may be the opportunity for permitted units to provide "windfall credits" to other units if the permitted units' actual emission rates are significantly below their allowable limits. EPA has questioned if the state has considered the extent to which such "windfall credits" might occur by allowing sources to use the lowest allowable emission rate rather than the lowest of actual or allowable emission rates in calculating the system-wide/plant-wide average. EPA then questioned if the state has any industry specific data to substantiate that such "windfall credits" would be minimal. The current adoption is based on the concerns made orally to TNRCC staff two weeks prior to the Board's adoption of the basic RACT rule in May 1993. Since EPA's emerging policy reflected a slightly more stringent emission specification than the proposed rule, the TNRCC proposed new rulemaking regarding a revision to the emission specifications. EPA's current concern surfaced in the June 1993 draft trading guidance. EPA's draft policy guidance regarding using actual emissions from permitted units is applicable only to Prevention of Significant Deterioration (PSD) permits. (This is true on a practical level, since Texas has not issued NO_x nonattainment permits prior to the effective date of the NO_x rule.) These permits cover a relatively small portion of the RACT units covered by the rules. The staff will be able to provide specific data in April 1994, after initial control plans are submitted, which is expected to demonstrate that the "windfall"

credits of concern will be minimal. These credits are anticipated to be very small in regard to the overall reduction requirements adopted by the TNRCC, which are higher than the reductions which would be achieved under the limited EPA NO_x RACT emission limit guidance received.

EPA commented that for the TNRCC to retain the 0.12 lb NO_x/MMBtu limit in the rule for certain boilers and heaters (those permitted after March 3, 1982), it should demonstrate why requiring these sources to reduce the difference between 0.12 lb NO_x/MMBtu and 0.10 lb NO_x/MMBtu, or 0.02 lb NO_x/MMBtu would not be considered RACT. The proposed rules allow boilers and heaters that were permitted at the 1982 BACT guideline of 0.12 lb NO_x/MMBtu to retain that limit, since it is very close to the lowest RACT emission limit of 0.10 lb NO_x/MMBtu. The limits are particularly close because many of the permit limits were established on fuel lower heating value (LHV). A 0.12 lb NO_x/MMBtu limit, LHV, is equivalent to approximately 0.11 lb NO_x/MMBtu, based on higher heating value, which is the RACT rule basis. The justification for retaining this exemption is that, for units complying with the emission specifications on a unit-by-unit basis, replacement of burners could be required to achieve this small emission reduction, which would not be cost-effective. The staff notes that this adjustment has only a very small effect on the potential rule-wide reductions, since the 0.12 pound NO_x/MMBtu limit is lower than almost all the RACT limits.

Section 117.540–Phased RACT.

EPA commented that since the proposal concerning phased RACT does not meet the EPA's requirements for replicable procedures, any phased RACT petition will require EPA approval. EPA further commented that the state may want to work with the EPA to develop a process that allows for an expedited review and approval process to facilitate federal approval of phased RACT determinations prior to the May 31, 1995, compliance date.

EPA's proposed Economic Incentive Program rules which appeared in the February 23, 1993, issue of the Federal Register (58 FR 11110) define "replicable" procedures as "methods which are sufficiently unambiguous such that the same or equivalent results would be obtained by the application of the methods by different users." Use of replicable procedures in documenting justification for a phased RACT petition would result in standardized petitions which could be evaluated consistently on a more or less objective basis. EPA's original intent in requesting replicable procedures in the phased RACT rule was to avoid EPA case-by-case review of every phased RACT petition. The phased RACT rule was reopened for rulemaking immediately after adoption in order to specify replicable procedures acceptable to EPA, and was modeled after EPA's proposed rules for utility boilers implemented under Title IV (acid rain) rulemaking published in the November 25, 1992, issue of the Federal Register (57 FR 55632). However, EPA guidance on the use of replicable procedures for evaluation of compliance extensions is not sufficiently developed to incorporate such procedures into the adopted rule at this time. The staff believes that the phased RACT rule, as proposed and revised in response to hearing testimony, adheres to the general concepts endorsed by the EPA. The staff agrees that an expedited process for EPA review and approval is desirable, and will continue to work with EPA to implement such a process.

TCC et al., Dow Chemicals (Dow), and Houston Lighting and Power (HL&P) commented that in §117.540(a), the word "believes" should be replaced by "determines," which is a less subjective term. The staff agrees with the commenters and has changed the rule language as suggested. Final determination on whether compliance by May 31, 1995, is practicable rests with the TNRCC and EPA.

TCC et al., Dow, and HL&P suggested that companies be required, by April 1, 1994, to provide only initial notification of the need for phased RACT, and that companies be allowed until January 1, 1995 or as soon as possible thereafter to submit petitions for phased RACT. EPA commented that the state must have sufficient time to make a determination on a source's phased RACT petition prior to the May 31, 1995, compliance date. EPA stated that the petitions should be submitted no later than the deadline for initial control plans (April 1, 1994). EPA suggested that the clause in §117.540(a)(1), "or as soon as possible after determination by the owner or operator that compliance by May 31, 1995, is not practicable," be deleted. In order to meet the rule requirement to submit initial control plans by April 1, 1994, affected companies must perform considerable advance planning and weigh many factors, including control options, emissions reductions, and economics. This process should identify most, but possibly not all, sources for which a phased RACT extension needs to be requested. If phased RACT petitions must be submitted by April 1, 1994, they will probably include "borderline" sources for which firm compliance schedules have not yet been developed. The staff does not want the petition process used to obtain automatic extensions, but also wishes to avoid excessive numbers of petitions submitted solely as a precaution against possible failure to meet the May 31, 1995, compliance date. The staff believes that the schedule for submitting phased RACT petitions needs to be expeditious to allow adequate time for state and EPA review, yet allow for circumstances yet unforeseen when the initial control plan was submitted (such as slippage in equipment delivery schedules). Therefore, the staff is requiring the submission of petitions for phased RACT by October 1, 1994.

Any petition submitted after this date must document the reasons why the October 1 deadline could not be met, giving specific reasons for the unforeseen events which caused schedule delays.

Galveston-Houston Association for Smog Prevention (GHASP) commented that a petition for phased RACT should be subject to a 30day review period by local pollution control agencies and the public with advertisements in local newspapers and the possibility for a public meeting or hearing in order to include the public in the agency's decision-making process. The staff does not believe that a pollution abatement project, even one that is implemented over an extended schedule, should necessarily entail the same degree of public notification and input as required for a NSR permit for a source which is increasing emissions of air contaminants. The staff is retaining the proposed procedure for submission and evaluation of phased RACT petitions.

EPA commented that if the state is to review economic factors and approve a phased RACT petition on this basis, then the state should specify in §117. 540(a)(2)(E) what information will be required from the source to make the determination. Gulf States Utilities (GSU) commented that economic factors should be considered as valid criteria in the approval of phased RACT and requested that the rule state what type of economic information must be submitted and how it will be evaluated. TCC, Dow, and HL&P recommended adding "economic considerations" to the criteria for evaluating a petition for phased RACT. They suggested that costs of actual historical and planned outages, as well as costs incurred by complying by May 31, 1995, be documented in the petition. The staff believes that economic considerations are valid criteria in support of the phased RACT petition. As proposed, the rule allows the consideration of "other technological and economic factors ... as the TNRCC determines is appropriate." The staff has added more specific rule language requiring the documentation of certain economic information to be submitted as an option in the phased RACT petition. Petitions would be required to document either: the costs of additional outages, if applicable, necessitated by compliance with the emission specifications of this chapter by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages; comparisons of the cost of obtaining the NO_x abatement equipment, engineering services, or construction labor necessary to comply by May 31, 1995, and the cost of obtaining the equipment, services, or labor by the final compliance date specified in the petition; or other economic factors to be documented as the Executive Director establishes is appropriate. Forthcoming EPA guidance on compliance extensions is expected by late 1993. In the meantime, the staff believes that the adopted language addresses the need expressed by the commenters for the rule to clarify economic criteria for phased RACT petitions.

TCC et al., Dow, HL&P, Texas Utilities (TU), and Exxon commented that companies submitting phased RACT petitions should be required to document only those criteria relevant to their petition. The staff has revised the rules so that every criterion specified in the rules need not be addressed in each phased RACT petition. As discussed elsewhere in this preamble, the staff is listing in the rules the following technical criteria which may be selected by companies to justify compliance extensions: equipment unavailability, system unreliability, manufacturing unreliability, and equipment unreliability. Other technical factors not fitting into these categories may also be addressed in the peti-

tion for phased RACT. Economic considerations may be relevant and may even be the main criteria in some petitions for phased RACT. For this reason, the staff is including an additional, optional criterion providing for documentation of economic data.

GHASP objected to the use of economic factors such as outages in evaluating whether phased RACT petitions can be approved. GHASP commented that utility companies can reduce customer electric usage through energy conservation programs or buy excess power from other power grids to compensate for their outages. The staff believes that economic factors are valid criteria to use in evaluating petitions for phased RACT. Without data on historical and planned outage schedules, it would be much more difficult for staff to determine whether the petitioner actually could achieve compliance by May 31, 1995. Economic justifications will include the specific reasons why an outage, for the purpose of installing NO_x abatement equipment, could not be scheduled by May 31, 1995. The TNRCC has no authority to require utilities to implement energy conservation programs in order to lessen consumer demand, and any resulting change in plant outages is doubtful.

TCC et al., Dow, HL&P, and Exxon commented that the maximum compliance extension of 15 months past May 31, 1995, as proposed in §117.540(a)(2)(D), is arbitrary and may not provide enough time for some sources to install NO_x controls. They suggested deleting all references to a maximum extension period or adding wording to give the Executive Director discretion to approve later compliance dates. GHASP commented that the maximum compliance extension under the rule should be only one year. The proposed maximum compliance extension of 15 months (to August 31, 1996) was modeled after the proposed EPA Title IV regulation.

The staff believes that the rule should provide guidance as to the maximum amount of time for which compliance extensions can be made and that 15 months is a reasonable period for these extensions. The staff agrees with the concern regarding later compliance dates and is giving the Executive Director discretion to approve longer schedules. The staff believes that referencing a date in the rule for compliance extensions will help companies in planning realistic compliance schedules and submitting approvable phased RACT petitions.

TCC et al., Dow, and HL&P stated that the requirements in §117.540(a)(2) (E)(ii)-(v) to document vendor contacts and provide certification of equipment unavailability from all qualified vendors are not reasonable for general industrial sources, since these requirements were modeled after proposed Title IV federal rules for utility boilers with fewer control options and vendor choices. The commenters suggested requiring only certification of equipment unavailability by an authorized company representative. TU commented that utilities cannot require a vendor to provide information without a completed contract. TU further commented that obtaining a legally binding contract with a vendor before a compliance extension was approved by the agency would be impractical for a source. TU stated that vendor responses and data could be provided if necessary to document unavailability of equipment, services, or labor, and requested that the vendor certification requirements be deleted from the rule.

The staff modeled the phased RACT rule after EPA's proposed Title IV rules for utility boilers. These federal rules were used, in the absence of more definitive EPA guidance, to provide a basis for compliance extensions acceptable to EPA. The staff agrees with the commenters that general industrial sources typically have a greater variety of control options, with correspondingly more vendors and suppliers, than the utility sources which the federal rules were designed to regulate. However, the staff believes that the May 31, 1995 final compliance date is attainable for the majority of affected sources; and therefore, any petitions for compliance extensions should contain considerable documentation of good-faith efforts to comply by that date.

It is important to note that the rule, as well as the proposed federal rules after which it was patterned, does not require companies seeking a phased RACT petition to contact all qualified vendors. The rule merely requires listing those qualified vendors who were contacted. The staff has revised the requirement for vendors to certify that they cannot provide services and equipment by allowing companies to furnish a copy of the vendor's response to the company's request for bids. The staff has added the requirement for submitting copies of contracts with primary project vendors in new §117.540(a)(4) and deleting the duplicative requirement for submitting copies of vendor contracts in §117.540(a)(2)(E)(iv). If work on the compliance project is to be provided by the owner or operator, however, the petition cannot rely on the inability to provide the labor or engineering services in-house in justifying a compliance extension. Rather, a company would need to demonstrate that it could not obtain the services in a timely manner from either in-house or external sources. The staff has added new §117.540(a)(2)(A)(iii), requiring such documentation in the petition. The staff has deleted §117.540(a)(2)(E)(v)(I), pertaining to submission of material and energy balance data, because these data are not particularly relevant to the petition. The staff also has deleted §117.540(a)(2)(E)(v)(II) and (III), pertaining to cost and scheduling information, respectively, because these requirements are duplicated elsewhere in the rule. The staff believes that these rule provisions do not represent insurmountable hurdles in preparing phased RACT petitions, but that they do reflect the level of detail necessary to demonstrate a good-faith effort to meet the May 31, 1995, compliance date.

TU, located in the Dallas/Fort Worth ozone nonattainment area, is not directly affected by the current adoption. The state has made a commitment to EPA to adopt NO_x RACT rules for the Dallas/ Fort Worth area after results of the Urban Airshed Model (UAM) are available to provide directional guidance and help determine whether NO_x reductions will be beneficial in reducing ozone in that area. Any NO_x RACT requirements for the Dallas/Fort Worth area, as well as schedules for extensions of compliance, will need to be evaluated in light of the UAM results and the resulting ozone control strategy developed for the area.

EPA commented that if it is the state's intent that sources contact all qualified vendors before making the assertion that the equipment is unavailable, then the wording in §117.540(a)(2)(E)(ii), "and who have been contacted to obtain the required services and equipment," should be deleted. The staff intends this portion of the rule to require documentation of vendor contacts which were made to obtain necessary equipment and services to meet the May 31, 1995, compliance date. The intent is not to require companies to contact all qualified vendors.

TCC et al., Dow, and HL&P recommended the deletion of all industrial references from §117.540(a)(2)(E)(vi), concerning system unreliability, since the term "utility grid system unreliability" as used in the proposed Title IV federal rule applies specifically to utility sources and has no meaning for general industrial sources. The commenters suggested adding "manufacturing unreliability" to the criteria for evaluating a petition for phased RACT in cases where complying by May 31, 1995, would interfere with a company's manufacturing obligations. The commenters provided a list of suggested criteria for documenting manufacturing unreliability. EPA's "NO_x Supplement to the General Preamble," which appeared in the November 25, 1992, issue of the Federal Register (57 FR 55620) recognizes "system unreliability" as a justifiable reason for extending compliance schedules past May 31, 1995. The proposed Title IV rulemaking for utility boilers outlines criteria for documenting utility grid system reliability problems due to installation or availability of NO_x control equipment. The staff agrees that the use of this terminology specific to the utility industry may be inappropriate when applied to general industrial sources. General industrial references have been deleted from §117.540(a)(2) (E)(vi) and the concept of system unreliability for utility sources only has been retained.

The concept of system unreliability may be applied to industrial sources, however, with some revisions. Just as utilities have obligations to provide a product (electric power) to customers, industries also have similar obligations to provide manufactured products to their customers. The commenters have suggested "manufacturing unreliability" as a separate criterion which parallels "system unreliability." The staff has added manufacturing unreliability, defined as the inability or threatened inability of a source to fulfill contractual obligations to supply a product or products, to the rule as a separate criterion for a phased RACT petition.

TCC et al., Dow, and HL&P suggested adding "equipment unreliability" to the criteria for evaluating a petition for phased RACT in cases where new control equipment with inadequate actual operating data could reduce a unit's reliability. The commenters provided a list of suggested criteria for documenting equipment unreliability. The staff believes that the concept of "equipment unreliability," while not specifically addressed in EPA's NO_x RACT Supplement, is a valid criterion in the

consideration of a phased RACT petition. "Equipment unreliability" is defined as the reduced availability and operating reliability of a unit resulting from the operation of NO_x control equipment on that unit. Instead of committing to a given control technology for several units at once, a company may want to gather real-world data on the performance of a single unit and petition for compliance extensions for the remaining units. In order to obtain approval under such a criterion, the petitioner would need to demonstrate unreliability problems as documented by actual operating data furnished by the equipment vendor. Information on historical availability and forced outages and differences in each expected with the new control equipment, would also be required in the petition. The staff has added equipment unreliability to the rule as a separate criterion for a phased RACT petition.

TCC et al., Dow, and HL&P suggested that companies submitting phased RACT petitions be required to include copies of legally binding contracts with only the primary vendors for each project in order to simplify the petitioning process. This documentation would include a detailed design or installation schedule for the required equipment or services to be provided by that vendor. They further commented that in cases where work is performed inhouse rather than contracted, the company should be allowed to submit certification of the services or equipment to be provided. The staff believes that the suggested requirement to include copies of contracts with only the primary vendor, with appropriate documentation, is sound and consistent with the basic intent of the rule. The staff has added this requirement in a new subsection, and deleted the requirement for submitting vendor contracts from §117.540(a)(2) (E)(iv).

TCC et al., Dow, and HL&P requested provisions for the consideration of "other technical or economic factors" in the phased RACT petition for companies applying for petitions under such criteria. The staff has attempted to include in the rules the most relevant criteria which could be used to justify a phased RACT schedule. Other technical or economic factors not specifically listed, however, could be relevant to some individual petitions. The staff anticipates that these other criteria would be used in addition to, rather than to the exclusion of, the primary criteria already being added. The staff has added language to the rules providing that other technical or economic factors may be documented in the petition for phased RACT.

Dow commented that the requirement in proposed §117.540(a)(6) for holders of approved phased RACT determinations to comply with each compliance milestone in the petition is unrealistic, given the uncertainties involved with equipment delivery and construction schedules. The staff recognizes that unforeseen events may occur during the progress of a phased RACT compliance schedule which may jeopardize meeting the final compliance date specified in the petition. It is important that companies adhere to their specified compliance milestones, since these become the basis for approval of the petition. Proposed §117.540(a)(4) provides that approved petitions for phased RACT may be revised by the Executive Director upon a showing of just cause by the applicant. The staff believes that this procedure is adequate to address the types of unexpected developments addressed by the commenter and recommends retaining the rule language as proposed.

TCC et al., Dow, and HL&P suggested certain time schedules in the TNRCC's and EPA's evaluation of phased RACT petitions: TNRCC notification to the company of completeness or deficiency within 30 days of receipt; TNRCC approval or denial within three months of receiving an administratively complete petition; and 30 days for EPA to respond after TNRCC approval of the petition. The commenters stated that limited EPA review requiring a shorter turnaround than individual SIP revisions should satisfy EPA's concerns about replicable procedures while ensuring timely responses to petitioners. EPA commented that the state might want to set a maximum time limit that the state can take in making a phased RACT determination. The staff is adopting a two-tiered approach in the time schedule for processing and evaluating phased RACT petitions. The first tier involves initial review of the petition for completeness. Due to the sparse staff resources available, 30 days for the staff completeness determination is being adopted. A company notified of any deficiencies in its petition would have 30 days from the date of the staff notification letter to correct the deficiencies and respond. After the petition was deemed administratively complete, the staff would then have 90 days to evaluate and either approve or disapprove the petition. The staff has incorporated these procedures and timetables into the rule language.

The TNRCC has no authority to specify a schedule for EPA's review of phased RACT petitions. The TNRCC and EPA both desire that all petitions be reviewed as expeditiously as possible. The staff will continue discussions with the EPA Regional Office in Dallas to implement procedures for EPA's timely review of phased RACT petitions.

EPA commented that the state needs to avoid automatically allowing for source compliance delays through the use of the phased RACT petition or appeals process. To help accomplish this, EPA suggested the rules state that a petition not received by a certain date, or not approved by the Executive Director by May 31, 1995, would be considered denied. EPA also commented that the source must remain in compliance during any appeals process extending past May 31, 1995.

The staff agrees with EPA that the phased RACT petition or appeals process should not be used by companies to unnecessarily delay compliance. However, the staff is not certain that benefits would be gained from revising the rule language as EPA has suggested. It seems likely that a company would want to expedite rather than delay receiving approval of its phased RACT petition. A company's delays in submitting the petition or requested follow-up information would only reduce the time available to revise its compliance plan to comply by May 31, 1995, in the event the petition is denied. The staff is adopting time schedules for the agency's review of phased RACT petitions which would require staff determination of completeness of the petition within 30 days of receipt, company correction of any deficiencies within 30 days of notification, and final TNRCC approval or disapproval of the petition within 90 days of receiving an administratively complete petition. The staff believes that these time schedules are adequate to ensure timely submittal of all information necessary to evaluate phased RACT petitions.

Regarding the necessity of a source remaining in compliance past May 31, 1995, even if it appealed a denied petition to the Commission, the staff maintains that the appeals process does not protect any company from the consequences of noncompliance after May 31, 1995. A company that lost its appeal to the Commission would be liable in any event for the entire period it was out of compliance past May 31, 1995. Therefore, no additional rule language is needed to clarify or strengthen this position. The staff has added a minor clarification that the decision appealed is the decision made by the Executive Director "to deny a petition for phased RACT or to deny a revision to an approved phased RACT petition."

An individual and GHASP commented that the appeals procedure outlined in §117.540(a)(4) excludes public participation in agency decisions. The staff believes that the proposed appeals procedure does not exclude public participation in the agency decision-making process. The procedure for filing a Commission appeal under proposed §117.540(a)(4) specifically references 30 TAC §103.71, the TNRCC Procedural Rules, which provides for requests for action by the Commission. 30 TAC §103.73 of the Procedural Rules allows the Executive Director to hold a public hearing before presentation to the Commission if this is deemed appropriate. Under 30 TAC §103.74 of the Procedural Rules, a matter which is not a contested case may be brought before the Commission without prior public hearing. The Commission may then hear the matter with appropriate limitations on oral testimony, postpone the matter for further hearing before the Commission, or refer the matter for hearing before a hearing examiner who will report to the Commission at a later time. In all cases described, there is opportunity for public comment before the Commission, whether or not a public hearing is held.

Section 117.550-Standard Construction Permits for NO_x RACT Projects.

Regarding §117.550, the staff has changed the title from "General" to "Standard" Construction Permits for NO_x RACT Projects to reflect recent legislative changes and to add specificity to the title.

Amoco Oil Company (Amoco Oil), Exxon, Pennzoil, and TU expressed support for the Standard Construction Permits for NO_x RACT Projects provision, §117.550. Pennzoil also stated, "as the proposal recognizes, the installation of NO_x equipment is environmentally beneficial and legislatively mandated. Such installations should not be subject to the scrutiny accorded for a new source." GHASP and an individual commented that they are against a general permit program. GHASP

stated, "We believe that a case-by-case permitting strategy is much better since it focuses intense scrutiny on each permit." The standard construction permit for NO_x RACT projects will facilitate emission reductions by reducing the time necessary to obtain authorization to install NO_x controls. In general, the May 31, 1995, NO_x RACT implementation deadline in the 1990 FCAA creates a challenging schedule for some of the large pieces of equipment subject to the regulation. The available information suggests that collateral emission increases resulting from NO_x reduction projects will occur infrequently. The proposed requirements of the standard permit will minimize these increases and will allow the TNRCC to review information sufficient to demonstrate that the conditions of the standard permit are met. Standard permits are authorized by the Texas Clean Air Act (TCAA); and the TNRCC presently has Standard Exemptions instituted as part of Chapter 116, which are, in essence, standard permits.

GSU commented that the proposed revision regarding Standard Construction Permits for NO_x RACT Projects, "may hinder compliance with this rule by the appropriate date." GSU also remarked, "The TACB should not require a general permit because it is impractical and will delay construction schedules for sources to be in compliance by May 31, 1995." The standard permit for NO_x reduction projects creates an alternative to existing permit procedures, so it should not increase the time currently needed to implement NO_x reduction projects. Since the conditions for the standard permit are standardized, ascertaining compliance should be straightforward. The staff notes that current TNRCC Air Permits practice does not require permit review for installation of emission controls on grandfathered equipment and only permit revision for permitted equipment for which emissions were quantified and no emission controls were originally required; in both cases, there must be no increases in emissions or capacity.

Dow commented that it does not understand why the TNRCC is insistent about a maximum capacity increase for gas turbines in §117.550(a)(1)(C). Dow suggested that this subparagraph be eliminated altogether or to raise the maximum power increase to a level that will not inhibit reduction of NO_x emissions, i.e., 20 to 25%. GHASP commented that it is against the allowance of any increase in capacity for grandfathered units in §117. 550(a)(1)(C). Combining process improvement and emissions abatement in a single capital project may be cost-effective. This creates an issue as to where BACT and RACT should apply. The TCAA requires the application of BACT for facility modifications which may increase air contaminants, although certain modifications with insignificant emission increases could be exempted. The staff believes that the negotiated standard permit procedure for NO_x RACT projects, which is limited to capacity increases occurring as a direct result of installing controls, is sound. The standard permit cannot be used to avoid BACT in cases where fulfilling a RACT requirement would be of minor consequence. The procedure requires case-by-case BACT review under Chapter 116 in order to utilize a resulting capacity increase. This is appropriate, because for most modifications, the staff cannot generically assess BACT or insignificance of emissions.

The staff proposed a turbine power increase limit based on information from Dow. The information shows a maximum 14% power output from a Westinghouse gas turbine at the maximum steam injection rate to control NO_x. This level of steam injection will reduce NO_x below the 42 parts per million (ppm) RACT emission limit for gas turbines.

Eliminating the output increase restriction for gas turbines in the standard permit could provide a useful incentive to meet the NO_x RACT requirements with more beneficial, lower emitting technology than steam injection. Dry low-NO_x burner retrofits are applicable to some of the older General Electric gas turbines, but only if the turbine is first upgraded to a newer configuration with a higher output rating. These power output increases may exceed 14%. The TNRCC permitted such a project at 25 ppm NO_x in 1992. Permitted emissions included 25 ppm carbon monoxide (CO) and less than one ppm VOC, which suggests that collateral emission increases are not likely to be a problem. Much the same resulting emissions could have been expected with a standard permit. In addition, EPA's trading policy clarifies that for developing NO_x trading plans, an applicable BACT limit is the limit in effect on the effective date of the rule. This means that future BACT limits on RACT sources will not require a downward readjustment of the plant-wide or plant cap limit. Keeping these projects out of BACT review will not increase the credit allowed under plant-wide or emission cap averaging. The staff has deleted the limitation on increases to existing output capacity for gas turbines.

The standard permit allows for the possibility that an incidental and essentially unavoidable effect of installing control equipment or implementing a control technique in that capacity may increase. "Debottlenecking" or redesigning an emissions unit to increase capacity is not allowed under the standard permit. Further, except as previously discussed for gas turbines, in order to utilize any increase in capacity which is a direct result of implementing NO_x controls, a person must first obtain authorization through case-by-case permit review of Chapter 116.

Exxon, TU, Dow, HL&P, Baker & Botts (B&B), and TCC et al. commented that §117.550 should use the definitions for "actual grandfather rate" and "presumptive grandfather rate" that are proposed in 30 TAC Chapter 122 concerning Federal Operating Permits. HL&P and B&B commented that a reference to presumptive grandfather rate is also needed in §117.550 since the proposed Chapter 122 provides criteria for calculating presumptive rates when actual data are unavailable. TU and HL&P stated that it is important to use the adopted definitions for these two terms in Chapter 122 which, for electric utilities, are likely to be different than those of other industrial source types. This reference is to avoid inconsistencies with the adopted version of Chapter 122. EPA commented that it is concerned that §117.550(a)(1)(C) allows grandfathered equipment to emit up to the rate at which the emission unit actually operated and emitted prior to September 1, 1971, may interfere with the state's ability to achieve real NO_x reductions by allowing units to restore their capacity without going through the permitting process. EPA suggests changing the definition of "actual grandfather rate" to be the maximum annual emission rate or data that are related to emissions which are reflected in the most recent emissions inventory (i.e., the 1990 emissions inventory).

The intent of the rule distinction between permitted and grandfathered facilities is to emphasize that permitted facilities may well have specific capacity limitations which are not to be considered violated if a capacity increase results directly from application of NO_x RACT, unless the increase is relied on prior to amending the permit. The staff has reconsidered the proposed references to grandfathered emission rates in §117.550(a)(1)(C). The staff does not believe grandfathered emission rates need to be evaluated in order to determine whether NO_x control equipment or techniques will result in a capacity increase. The staff has deleted the references to grandfathered emission rates in §117.550(a)(1)(C).

GSU stated that §117.550(a)(3)(B) should make clear that PSD modeling is not required unless there is a significant increase in emissions of a PSD pollutant. As written, §117.550(a)(3) requires in the case that there will be a significant increase in a regulated pollutant, that a demonstration is required to show that any emissions increase will not cause a violation of a National Ambient Air Quality Standard (NAAQS), a PSD increment (e.g., particulate matter (PM)), or a visibility limitation. For any of the requirements of subparagraphs (A)-(C) to apply, there must be a significant net emissions increase. EPA commented that the state should clarify the term "emissions" in §117.550(a)(3) by revising the paragraph to read, "If installation of NO_x abatement equipment or implementation of a NO_x control technique will result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area, a person claiming a general permit shall submit information sufficient to demonstrate that the following conditions will be met ...."

Emissions increases must be quantified in the initial compliance plan, but are not clearly enforceable emission limits since the initial plan may be modified without penalty until the final compliance date. In some cases, test results may show the initial quantification to be inaccurate. Rather than compare new allowables to old actuals, as required under the adoption, EPA's proposed language allows new "representative actual annual emissions" to be compared to the most recent inventory emissions. This is a more practical standard and is consistent with EPA's Wisconsin Electric Power Company (WEPCO) control project PSD exclusion.

Dow, HL&P, B&B, TCC, et al. commented that the phrase "and incidental to" in §117.550(a)(2) regarding collateral emission increases associated with installing NO_x abatement equipment or implementing a NO_x

control technique is confusing and unclear. The commenters suggested deleting the phrase from the rule. The commenters also suggested using "the requirement to install" NO_x abatement equipment instead of "installing" NO_x abatement equipment, for clarity. The staff believes the phrase "and incidental to" is redundant with the terms, "a direct result of" and has deleted the phrase "and incidental to." The staff has added the words "the requirement to install" for clarity.

Exxon, Dow, HL&P, B&B, and TCC et al. commented that §117.550 should also refer to §117.580 concerning Source Cap, where appropriate. The staff agrees with the commenters and has made changes to include references to §117.580, where appropriate.

GHASP commented that it is against any allowed increases in emissions that are a result of NO_x control technology add-ons in §117.550(a)(2). GHASP also commented that it is not in favor of §117.550(a)(3), which may allow significant net increases in emissions from a criteria pollutant. The staff and industry agree that emission increases resulting from NO_x emission reductions will be uncommon. In a letter from the TCC industry NO_x RACT work group dated August 13, 1993, the conclusion of the industry work group is that recent advances in low-NO_x burner technology should minimize the number of facilities which would exceed the 100 tons per year major modification trigger.

Dow commented that the modeling requirements seem to have little benefit relative to the goals of these regulations, and that the TNRCC and industry should put their limited resources to work on reducing NO_x emissions. GSU commented that NAAQS modeling for CO would be a waste of resources in areas where CO is known not to be a problem. GSU also questioned the purpose of submitting modeling information under §117.550(a)(3). GSU stated, "If the NOI (notice of intent) grants authorization to emit under the NO_x abatement plans presented, what is the purpose of reviewing modeling data?" Dow and GSU suggested that the TNRCC revisit this rule and remove all of the modeling requirements in §117.550(a)(3). Modeling is only needed for sources which will have significant net emission increases of any criteria pollutant as a result of installing NO_x controls. These sources would otherwise be subject to federal PSD permit review. The basis for providing the exemption from PSD review is EPA's July 21, 1992 WEPCO policy regarding pollution control projects at electric utility power plants. The WEPCO policy requires safeguards, for example, showing that the NAAQS will be protected. Air dispersion modeling is the standard technique for evaluating the ambient impact of significant emission increases of CO. The NOI only grants authorization to emit under the NO_x abatement plans if the required submissions have been made. The NOI serves to notify the TNRCC and allows it to confirm that the requirements for Standard Construction Permits for NO_x RACT Projects have been met. The purpose of submitting and the staff reviewing modeling is to ensure that the NAAQS will not be violated by the emission increases, as required by EPA. As far as the NAAQS for CO, the staff does not know if the additional impacts associated with the CO increases will cause a problem with the CO NAAQS. It is incumbent upon industry to demonstrate that there will not be a NAAQS violation.

GSU commented that if the purpose of reviewing modeling data is to determine a detrimental impact to the environment, GSU wants to know how this impact would be defined and compared to the positive benefit of reducing NO_x. The modeling is used to demonstrate that the CO increase will not be predicted to cause an exceedance of the CO NAAQS.

GSU asked that, if the TNRCC reviews the data and finds fault with the control plan, will a source be required to remove the NO_x abatement equipment and then be considered out of compliance if it cannot meet the May 31, 1995, compliance date? With regard to the modeling submission, the staff suggests that industry work closely with the TNRCC staff and adhere to standard modeling protocol, hold an initial consultation with the permit modeling staff, and submit the modeling results by April 1, 1994, to ensure that industry's risk is minimized in its implementation of the rules.

B&B commented that §117.550(a)(3)(C) should have the sentence that begins with the wording, "For the purposes of this title,..." moved out of subparagraph (C) and placed at the left hand margin as a stand-alone sentence. The staff has added a parenthetical insertion of this sentence after the phrase "significant net increase" where it appears in §117.550(a)(3). This change will be consistent with the *Texas Register* format for publication purposes.

B&B commented that §117.550(a)(3)(C) needs revision to the reference "the amount specified in the MAJOR MODIFICATION column of Table I of §101.1" because it is unclear. B&B suggested that language be added to the rule to clarify that for areas that are in attainment for a criteria pollutant, the largest number for that criteria pollutant in the major modification table should be used to determine if there will be a significant net increase of the pollutant. If an area is not in attainment, B&B suggested that the number used to determine a significant net increase should be the amount greater than or equal to the amount specified in the column that corresponds to the nonattainment area's classification for that criteria pollutant. The staff agrees with the commenter concerning the need for revision of this subparagraph for clarification of the term "significant." For nonattainment pollutants, the MAJOR MODIFICATION column of Table I in §101.1 will be used as the reference; for attainment pollutants, the definition in 40 Code of Federal Regulations 52.21(b)(23) will be used.

EPA commented that §117.550(a)(5) should require similar minimization plans for other criteria pollutants, as well as for CO. EPA suggested that the paragraph be revised to read, "Notice of the intent to be covered by the general permit must be accompanied by a minimization plan for collateral emission increases, describing efforts to be taken to minimize increases in emissions that will result from installing NO_x abatement equipment or implementing a NO_x control technique." The standard permit requires a person to quantify any emission increases resulting from a NO_x RACT reduction. These collateral emission increases could include CO, VOC, and particulate matter (PM). Submission of a CO minimization plan is sufficient to show that the lesser products of incomplete combustion, VOC and PM, will be minimized as well.

GHASP and an individual requested that there be a 30-day public comment period for each proposed general permit because §117.550 does not allow the public an opportunity to comment on the issuance of a general construction permit. GHASP commented that 14 days is not sufficient time for the public and the local air pollution control agencies to discover, review, and provide comments as proposed in §117.550(a)(6). The standard permit for NO_x RACT projects is designed to expedite emission reductions. A 30-day public comment period would reduce or eliminate any benefit of obtaining expeditious emission reductions. In addition, the types of requirements in the standard permit do not entail case-by-case approval, and comments would be limited to whether the objective requirements of the standard permit have been satisfied.

An individual commented that the TNRCC needs to grant approval of the general construction permit as a requirement before construction or implementation begins. The standard permit saves time by acting as a preapproved set of conditions which, if met, allow for construction without need for TNRCC approval. However, the TNRCC will review the registrations to assure that the requirements of the standard permit have been satisfied. When modeling is needed (for significant emission increases) the TNRCC will evaluate the modeling presented by the company to assure that it conforms to existing agency modeling guidelines. The TNRCC has the ability to halt construction if there is going to be a detrimental impact as a result of the construction project. The suggestion that the TNRCC must first approve the standard permit before construction or implementation begins could result in untimely delays and noncompliance with the rule's requirements.

EPA commented that the proposed revisions to §117.550 do not require sources to offset significant collateral emission increases. EPA stated, "The treatment of these emission increases must be consistent with the state's attainment demonstration plan. Therefore, any increases that are not required to be offset should be accounted for as growth for the state's planning purposes." Collateral emission increases resulting from reducing combustion unit NO_x emissions are not generally expected, but could include CO, VOC, and PM. Any growth of collateral air emissions as a result of implementing NO_x reductions must be identified and quantified in the initial compliance plans and will be accounted for in the state's attainment planning process.

Section 117.580–Source Cap.

The issue of how to calculate the source cap allowable emission rate was discussed at length at the August 30, 1993, Board meeting. It was noted that if a two-year actual average production level is used to compute

the allowable emission rate and compliance is determined on a shorter, 30-day average period, an additional stringency is created that may go beyond equivalence with the other compliance options. After consideration of the issue, the Board adopted the source cap rule with the source cap allowable emission rate calculated on equipment operating days, as recommended by the industry workgroup, rather than the actual two-year average of operating levels, as recommended by the TACB staff in this evaluation of testimony, and EPA. EPA subsequently indicated that the source cap based on the operating day calculation will not be approvable. The TNRC and industry workgroup continue to work with EPA to find a satisfactory alternative to this calculation. If a compromise is reached in the near future, the TNRCC may propose a revision to these rules to ensure their federal approvability.

EPA commented that the proposed source cap rule (§117.580) appears to be consistent with recent EPA draft guidance (NO_x RACT Trading Guidance, July 2, 1993), but noted that any changes made in the final guidance could necessitate further EPA review for consistency with federal policy. The staff has reviewed EPA's NO_x RACT Trading Guidance and considers it to be sound and logical policy. The staff will continue to work with EPA to ensure that the adopted rule is consistent with EPA's draft and final guidance.

Shell Oil/Chemical (Shell) provided a detailed analysis of NO_x reduction scenarios at its plant comparing individual emission limits, plant-wide averaging, and source cap, as well as combinations of these scenarios. According to Shell, these data show that forcing the source cap to include all units may cause additional expenditures for continuous emissions monitoring systems (CEMS) with little or no NO_x reduction benefit. Pennzoil expressed support for the source cap rule because it provides a flexible and efficient means of controlling emissions. Shell presented data showing that under the unit-by-unit RACT alternative, 18 NO_x units would need to be controlled; under the plantwide averaging option, seven units; and under the source cap, four units. The key feature of the source cap which makes it attractive from a cost-effectiveness standpoint is that it allows companies to shift capacity utilization to the more efficient equipment controlled under the cap. As long as NO_x emissions reductions are equivalent to unit-by-unit RACT, this approach has the potential to meet NO_x reduction requirements with considerable savings to industry.

GHASP registered its opposition to the principle of source caps, which, like "bubbles," do not require maximum controls on every single emission source. The source cap, which is conceptually similar to the bubble, is an example of the innovative, flexible approaches being considered nationwide to achieve emissions reductions required under the 1990 FCAA Amendments. While it is true that every emission unit in a source cap may not be controlled, there is a fundamental requirement that total emissions from the cap may not exceed the level of emissions that would have resulted had each individual unit been controlled to RACT levels. Since RACT takes technical feasibility and economic reasonableness into account, the level of RACT control is typically less stringent than LAER, and for this reason would not be characterized as "maximum controls."

TCC et al. and Dow recommended that inclusion in the source cap of all units otherwise subject to NO_x emission limits of §117.205 (relating to Emission Specifications) or §117.207(f) (relating to Alternative Plant-Wide Emission Specifications) should be optional rather than mandatory. They cited the need to minimize additional costs for monitoring and communications systems as justification of more flexibility, and suggested that sources not included in the source cap would have to comply with the emission limits of §117.205 or §117.207(f). Exxon suggested replacing the word "must" with "may" in §117.580(a), thus allowing a source cap for a smaller group of units to achieve equivalent NO_x reductions in a cost-effective manner. EPA's draft document titled "Reasonably Available Control Technology for Oxides of Nitrogen Trading Guidance" (NO_x RACT Trading Guidance) outlines the requirements for state emissions trading programs for NO_x RACT, including source caps. EPA addresses the issue raised by the commenters by stating that if any particular category of emission units is included in an emissions trading group, then all emission units of that type should also be included. For source caps, this restriction is necessary to avoid emission increases resulting from shifting production to units not included in the source cap. Each equipment category whose individual emission units would otherwise be subject to the §117.205 emission limitations may be included in the source cap, and any equipment category included in the source cap must include all emission units belonging to that category. All emission units not included in the source cap shall comply with the requirements of §117.205, concerning individual unit emission limits, or §117.207, concerning plant-wide emissions averaging.

TCC et al. and Dow requested a source cap based on a 30-day rolling average. This approach would take advantage of operating fluctuations which lower actual daily emissions for some units, thus allowing other units to exceed the 30-day average limit individually and still comply with the overall 30-day rolling average. In addition, the commenters stated that a maximum daily source cap would also be necessary to account for the daily fluctuations of emissions from units in the 30-day rolling average source cap. Their suggested definition of maximum daily source cap used the maximum rated heat capacity of each boiler and heater in determining the source cap allowable. EPA guidance contained in the "Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (NO_x RACT Supplement) of November 25, 1992, allows the use of 30-day rolling averages in determining allowable emission rates. If the 30-day rolling average is used, the NO_x RACT Trading Guidance requires the additional constraint of a daily source cap. This stipulation prevents any day's emissions under a cap with a long-term averaging plan from exceeding what would have been allowed under individual unit or plant-wide averaging plans, thus recognizing that ozone is a daily phenomenon. The NO_x RACT Trading Guidance requires using the "maximum possible activity level" (defined as the maximum level of activity allowed or possible, whichever is lower, in a 24-hour period). The staff agrees with the commenters and has changed the rule to require use of both 30-day rolling average and daily source caps in conformance with EPA guidance.

TCC et al. and Dow requested that actual historical operating rates be based on actual operating days rather than calendar days, since the latter method would include maintenance turnarounds and unplanned outages into the average and would penalize operators who have had recent extended outages. The staff has sought to require emission reductions with the source cap compliance option to be roughly equivalent to individual compliance, §117.205, and plant-wide averaging, §117.207. The plant-wide averaging option sets an equality between the RACT emission rate limits and the company-assigned allowable emission limits; both calculated at maximum rated capacity (MRC). There is parity in the method of calculating and complying with the limits.

There is usually a differential or "surplus" between what a unit is allowed to emit and what it actually emits. If many units are considered, the sum of this differential can become large. The actual activity level is a factor which relates actual emissions to allowable emissions. The source cap option sets an equality between the RACT emission rate limits and the plant's total allowable emission rate. Since there are no individual emission limits, there need be no surplus between what the plant is allowed to emit and what it actually emits. The elimination of this surplus is what makes the source cap option less stringent than plant-wide averaging, unless the activity level is used as an adjustment. The suggestion to use an activity level which excludes periods of nonactivity (e.g., maintenance downtime or other shutdown) seems to lack balance, since while operating under the source cap, these shutdown periods will assist the entire plant to remain in compliance.

The staff notes the existence of two aspects of the source cap compliance option which already tend to result in fewer reductions than the plant-wide option. Shutdown equipment is allowed to be included in the calculation of allowable emissions in the source cap, but not in the plant-wide average. Also, the source cap pound per hour (lb/hr) limit is less restrictive than the lb/MMBtu limit in the plant-wide average. Shell's (hypothetical) example in the rule testimony shows that 18 of 32 units would need to be controlled under the individual emission limits, seven under plant-wide averaging, and four units under source caps. Adjustments to increase apparent activity levels could reduce required reductions.

TCC et al. and Dow requested that in cases where the two-year period preceding November 15, 1992, is not representative of normal unit operations in calculating the monthly average heat input, a five-year period prior to November 15, 1992, be allowed. The

commenters stated that companies which were operating below capacity because of low product demand would be penalized by the restriction to the two previous years. EPA commented that §117.580(b) in the proposed source cap rule does not define how "actual historical average heat input" should be determined, and referred to recent EPA draft guidance for assistance in defining the term. The staff has specified the two-year period prior to June 9, 1993 (the effective date of the rule) in determining the actual annual heat input for emission units included in the source cap. For the reasons cited by the commenters, it may be advantageous for some companies to consider a different two-year period. Therefore, the staff has allowed the use of a different consecutive 24-month period, upon approval of the Executive Director, that is more representative of normal unit operation. This type of flexibility in establishing the actual historical average heat input is discussed in EPA's NO_x RACT Trading Guidance.

TCC et al. and Dow's recommended definition of R_i (the emission limit for each individual unit in the source cap) specified only the emission limits of §117.205(a)-(c) or (f). The definition of R_i offered by the commenters eliminates BACT limits from consideration. For sources which have a BACT limit lower than the RACT limit, the difference between these two limits would result in a "windfall credit" which presumably could be applied to offset emissions from other units in the source cap. The staff has a fundamental disagreement with this concept, since it fails to recognize that BACT reductions required under NSR would have occurred anyway without the opportunity to trade in a source cap. EPA cannot allow an emission reduction already achieved on a unit as a result of the NSR program to be used in a RACT rule with emissions trading to eliminate or lessen a reduction requirement on some other unit which otherwise could have reasonably reduced emissions under a RACT rule with unit-byunit compliance. In its NO_x RACT Trading Guidance, EPA holds that the use of such windfall credits to exempt existing sources from RACT levels of control could circumvent the RACT requirements of the FCAA.

A two-part definition for R_i in §117.508(b) has been adopted. The first part in subparagraph (A) applies to emission units subject to the federal NSR requirements of 40 Code of Federal Regulations (CFR) §51.165(a), 40 CFR §51.166, or 40 CFR §52.21, or to the requirements of the TNRCC Permits Program which implements these federal requirements, or emission units that have been subject to an New Source Performance Standards (NSPS) requirement of 40 CFR 60 prior to June 9, 1993. For these units, R_i is defined as the lowest of the actual emission rate or all applicable federally enforceable emission limitations as of June 9, 1993, that apply to emission unit *i* in the absence of trading. In order to prevent credit being claimed for the difference in emission rates before and after control, all calculations of emission rates must presume that emission controls in effect on June 9, 1993 are in effect for the two-year period used in calculating the actual annual heat input. The second part in subparagraph (B) of the definition applies to all other emission units, and defines R_i as the lowest of the RACT limits of this Chapter or any BACT limit pursuant to the TNRCC Air Permits Program that applies to emission unit i in the absence of trading.

TCC et al. and Dow commented that §117.207(f) (concerning Alternative Plant-Wide Emission Specifications) should be listed along with §117.205 in certain places where applicable emission limits are referenced in §117.580. TCC et al. and Dow commented that one or more exempted units should be allowed to be included in a source cap, provided that their average actual emission rate for the period November 15, 1990, to November 15, 1992 is greater than the emission limit set by §117.207(f). The staff is allowing exempted sources in an equipment category to be included in the source cap, as long as all units belonging to that category are included. This concept is endorsed in EPA's NO_x RACT Trading Guidance. The commenters have suggested that to allow portions of an exempted class into the source cap, such units be required to demonstrate that their average actual emission rate is greater than the emission specification of §117.207(f) for the period November 15, 1990, to November 15, 1992. This approach seeks to preclude possible "gaming" of the rule which would result from including exempted units that were already operating below the emission specification. However, it does not account for the possibility that exempted units operating marginally above the emission limit could be selectively included in the source cap, while production was shifted to other exempted units not included in the cap which could then emit at higher levels than before with impunity. RACT equivalency could not be assured under such a scheme.

TCC et al. and Dow objected to the proposed requirement in §117.580(g) for exempted units included in the source cap to obtain additional emission reductions based on offset ratios. EPA policy in the NO_x RACT Trading Guidance requires non-RACT emission units (which includes exempted units) participating in a source cap to reduce potentially tradeable emissions by an amount equal to the offset ratio that applies in the area. The Economic Incentive Program proposed rules (58 FR 11115, February 23, 1993) refer to this trading ratio as "exceptional environmental benefit." In the Houston/Galveston area, for example, emissions available for trading would be 1/1.3, or 0.77 times the original emissions; in the Beaumont/Port Arthur area, emissions available for trading would be 1/1.2, or 0.83 times the original emissions. TCC et al. and Dow suggested that the equations for calculating 30-day rolling average and maximum daily caps provide separate terms for boiler and heater emission limits and for gas turbine emission limits. Amoco Chemical commented that clarifying language concerning calculation of allowable mass emission rates contained in §117.207(g), relating to Alternative Plant-Wide Emission Specifications, should be included in the source cap rule. Amoco Chemical specifically suggested wording patterned after §117.207(g)(3), which describes procedures to calculate allowable mass emission rates for gas turbines. In order to clarify the equations for calculating source cap allowable mass emission rates, the staff has referenced the calculation procedures of §117.207(g)(2), concerning stationary internal combustion engines, in new §117.508(5), and the calculation procedures of §117.207(g)(3), concerning stationary gas turbines, in new §117.508(6). With these clarifying additions to the rule, the staff believes that the equations as proposed are acceptable without further revision.

TCC et al. and Dow suggested that sources be allowed to demonstrate through testing that the actual heat input of a unit is equivalent to its MRC, provided that this designation is made enforceable. The term "MRC" is defined in §117.10, concerning Definitions, a rule not currently open for rulemaking. The definition allows the possibility for a permit condition to limit MRC. Enforceable permit conditions which limit a unit's production capacity should include physical restrictions on the equipment of sufficient scope to require a unit shutdown to remove the restrictions. Keeping records of actual maximum hourly fuel inputs has also been required. The staff anticipates that boilers and heaters rated less than 100 MMBtu/hr will need to be regulated under NO_x RACT. The staff's concern is that the recommendation could postpone certainty on control requirements for this equipment without increasing the time allowed by statute to implement the emission controls.

TCC et al. and Dow commented that maintaining daily records of fuel usage, as required by §117.580(d), is burdensome and not essential to determine daily emission levels. They suggested that fuel usage records be maintained on a monthly basis. Since the source cap allows emissions averaging on a 30-day rolling basis, the additional constraint of a maximum daily cap must be imposed to avoid having any day's emissions higher than what would have been allowed under a traditional emissions averaging program. Compliance with the daily emissions limit cannot be verified unless daily records of fuel usage are maintained. TCC et al. and Dow suggested replacing the term "15 working days" in §117.580(e), relating to reporting of source cap exceedances, with "21 days" to avoid confusion. GHASP commented that written reports of exceedances should be submitted to the TNRCC within five, rather than 15 days of the occurrence as proposed in §117.580(e). In specifying a time frame for reporting of source cap exceedances, the staff attempted to balance the need for prompt notification to the agency with a realistic assessment of the time required for companies to identify and report problems resulting in exceedances. The staff believes that the proposed time frame reasonably meets both these criteria, and has changed the wording from "15 working days" to "21 days."

TCC et al. and Dow stated that units not subject to the emission limits of §117.205, but which have been modified and have achieved emission reductions since November 15, 1990, should be allowed credit under the source cap in the same manner as allowed for shutdown equipment. The commenters

also stated that such units should be allowed to apply reduction credits in the cap as long as these credits have not been used for NSR offset or PSD netting determinations.

The staff disagrees with the first comment, since it is basically the same argument made elsewhere in the commenters' testimony that the difference between a lower NSR, PSD, or NSPS emission limit and a higher RACT limit can be credited in a source cap. Credit can only come from additional actual reductions from the source which result in an emission rate lower than the pre-trade allowable emission rate. EPA's NO_x RACT Trading Guidance allows the use of non-RACT emission units to provide credit for RACT emission units, as long as any applicable LAER, BACT, or NSPS requirements are met, and the trade results in exceptional environmental benefit applying appropriate offset ratios. It would be most appropriate to address this issue in future rulemaking which will establish emission limits in §117.205 for currently exempt sources. This would extend applicability of §117.205(h), one of the subjects of the current rulemaking, to these sources. Section 117.205(h) provides that NO_x reduction projects permitted between November 15, 1990, and June 9, 1993, that were solely for the purpose of making early NO_x reductions shall be subject to the applicable RACT emission limitation of this Chapter.

With regard to the second comment, concerning use of excess emission credits which were not relied upon for NSR offset or PSD netting determinations, the staff agrees that such credits may be applied to the source cap, following the conditions set out elsewhere in the rule. All units in an equipment category (either RACT or non-RACT sources) from which the credits are obtained would have to be included in the cap. As discussed previously, the exceptional environmental benefit requirements, including appropriate offset ratios, would have to be met by non-RACT sources. The staff has added language to the rule clarifying that emission reductions from shutdowns or curtailments which have not been used for netting or offset purposes under the TNRCC Air Permits Program or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

TCC et al. and Dow suggested that for purposes of calculating the source cap emission limit in §117.580(h)(2) for retired units, the actual monthly average heat input and the maximum daily heat input be used along with the applicable emission limit of §117.205(a)-(c). The staff agrees that the calculation procedures contained in §117.580(h)(2) and §117.580(b) should be consistent. The staff has revised the language in §117.580(b), so no change in wording is necessary for §117.580(h)(2) since it already refers to subsection (b). However, the requirements for establishing the allowable emission limit R_i in §117.580(b) are more comprehensive than the commenters' suggestion to use only the applicable emission limit of §117. 205(a)-(c). This distinction is discussed in detail in the portion of the testimony evaluation concerning the definition of the allowable emission limit R_i for non-retired units.

TCC et al. and Dow recommended the deletion of §117.580(h)(3), dealing with proration of actual heat input and maximum capacity of retired units. GHASP objected to including units in the source cap which had been shutdown more than 120 days prior to submitting a permit for NO_x RACT. The staff does not agree with TCC et al. and Dow's suggestion to delete §117. 580(h)(3). In response to GHASP's comment, the staff notes that since permits are not required for inclusion of shutdown units in the source cap, it is assumed that the commenter is referring to submission of the initial control plan. The rule prohibits use of credits for any shutdown occurring before November 15, 1990, and requires a proration of the actual heat input and maximum capacity based on the actual number of days of operation from January 1, 1991, to December 31, 1992. Allowing credit for shutdown of equipment which occurred prior to the effective date of the rule is an innovative approach to establishing RACT requirements. Prorating in such a manner strikes an equitable balance between shutdowns which occurred for purely economic reasons and shutdowns undertaken with air quality considerations in mind. The staff believes that this is a reasonable requirement and has retained the rule language as proposed.

TCC et al. and Dow recommended the deletion of §117.580(h)(4), which requires that retired units be shutdown and rendered inoperable prior to the final compliance date of May 31, 1995. The staff agrees with the commenters that the proposed §117.580(h)(4) should be deleted. Shutdown units are treated in two different ways, depending on whether the shutdown occurs before or after the effective date of the rule, not the final compliance date. A unit subject to emission limits under §117.205 and in operation on the effective date of the rule is not treated specially under the plant cap if it subsequently shuts down. The unit's contribution to the cap limit is calculated in accordance with §117.580(b). The owner or operator would be able to start the unit if it fully meets the monitoring requirements of §117. 580(c), so that continuous compliance with the cap is demonstrated. The proposed §117.580(h)(4) has been deleted.

TCC et al., Dow, and Amoco Oil commented that in §117.580(h)(6), shutdown units rendered inoperable, but not permanently retired, should be identified in the initial control plan. They stated that such units should not have to obtain a permit amendment before resuming operation, since this would force facilities to retrofit to a stricter BACT, rather than a RACT, standard. Instead, the commenters stated that shutdown units resuming operation need only file a revised control plan and apply for the general construction permit under §117.550. GHASP commented that only shutdown units which have been permanently retired should be allowed in the source cap The staff agrees with the commenters that shutdown units should be identified in the initial control plan. The staff also agrees that a permit or permit amendment is not needed for a nonoperating unit to resume operation under the cap. The staff disagrees with GHASP's comment. As discussed in the previous comment, the owner or operator would be able to start the unit if it fully meets the monitoring requirements of §117.580(c), and continuous compliance with the cap is demonstrated. The staff discussed the possible need to develop procedures specific to revising a source cap compliance plan. There will not be a potential need to modify the final source cap control plan until after May 31, 1995. The staff and industry have not had very much time to consider the source cap and issues relating to the need to modify the cap are more likely to develop at a later date. Such language could be developed for possible inclusion in §117.217, concerning Revision of Final Control Plan. The staff has deleted the second sentence of proposed §117.580(h)(6) and deferred the issue of revised final control plans to future rulemaking.

TCC et al., Dow, and Amoco Oil stated that allowing state or federally enforceable shutdown credits in §117.580(h)(7) only after the effective date of the rule would favor companies which postponed NO_x reductions until required. They recommended that November 15, 1990, be set as the baseline date for allowing shutdown credits. They further commented that any excess credits from previous PSD netting or NSR offsets be available for inclusion in the source cap baseline. EPA's NO_x RACT Trading Guidance allows some shutdown credits which occur prior to the effective date of the rule to be applied to reduce the reductions required of a source. This element of the source cap rule reduces the effectiveness of the rule. EPA's policy limits the extent of this loss of effectiveness. It is noted that shutdowns which occurred after November 15, 1990, and prior to the effective date of the rule, which have not been made federally enforceable, are creditable.

TCC et al. and Dow commented that emissions contributions from start-ups, shutdowns, and upset/maintenance episodes in §117.580(j) should be based on the maximum emission rate for the affected unit, unless data can be provided to demonstrate that actual emissions were lower. GHASP commented that upset emissions and other spill, leak, and emergency emissions did not appear to be counted in the source cap, but should be. Excluding emissions occurring from units during periods of start-up, shutdown, or upset/maintenance could create an incentive to overreport the duration of these periods. The staff has revised the language to allow the option for the owner or operator to provide data which demonstrates that actual emissions were less than maximum emission rates during the period. Regarding GHASP's comment, the paragraph requires upset or "emergency" emissions to be counted in the source cap, but the types of sources and the nature of NO_x emissions is such that the concepts of spills or leaks are not really applicable.

TCC et al. and Dow disagreed that in §117.580(k), an exceedance of the source cap emission limit shall constitute an exceedance for each unit included in the cap. They stated that this issue would be better addressed by a separate enforcement policy rather than through rulemaking. GHASP supported this portion of the rule. The source cap approach to compliance is new. There are many areas in which details will need to be

worked out. Enforcement policy is one of these areas. The policy will not need to be in effect until May 31, 1995. The goal of an enforcement policy toward source caps is to ensure that the level of deterrence to noncompliance is maintained at the level which would have otherwise applied in the absence of source caps. Since the staff has not had time to explore enforcement policies and these policies do not necessarily require rulemaking, the proposed paragraph has been deleted.

Use of Predictive Emissions Monitors (PEMS).

TCC et al. and Dow requested more options under §117.580(c), which proposes CEMS for each unit included in the source cap. They commented that parametric monitoring should be allowed for boilers and heaters rated greater than 100 MMBtu/hr or for gas turbines rated greater than 10 MW. The other suggested option besides CEMS and PEMS was to use the unit's maximum emission rate as measured by initial testing or the unit's controlled or uncontrolled potential to emit. TCC et al., Dow, Amoco Oil, and Amoco Chemical cited the following advantages for PEMS: cost savings, greater reliability, real emissions reductions, and ease of model verification. Dow stated that PEMS offer the possibility of better quality data with less down time than CEMS and listed two units in other states with permits or pending permits to use PEMS. Amoco Oil and Amoco Chemical expressed support for use of PEMS not only in the source cap rule, but also in other parts of this Chapter presently requiring CEMS. Amoco Oil suggested that §117.570, concerning Alternate Means of Compliance, be reopened for public comment to allow the use of PEMS upon approval of the Executive Director. The Council of Industrial Boiler Owners (CIBO) commented that PEMS are in many cases more accurate than CEMS and noted that EPA has recognized the validity of alternative monitoring methods in its own rulemaking in 40 CFR 75, Subpart E Alternative Monitoring Systems.

The industry NO_x RACT work group brought new information to the TNRCC staff regarding advanced technology using regression analysis to predict emissions in July 1993. The staff recognizes that less costly methods of determining actual emission rates are vitally needed in the field of air pollution control. The new technology appears to be very promising. The staff worked with industry to modify Subpart E in an effort to make it a costeffective and reliable standard for demonstrating the equivalency of PEMS to CEMS for industrial sources. Subpart E, promulgated in January 1993, is currently specifically applicable to electric utility units required to monitor emissions under Title IV of the FCAA.

The Subpart E requirement to compare 30 days of paired CEMS/PEMS data sets in one of the statistical tests has been identified as being cost-ineffective. The EPA's apparent intent in requiring a minimum of 30 days of data is to demonstrate that the PEMS is capable of predicting actual emissions at a wide variety of operating conditions. Alternatively, the staff believes that equivalency of PEMS to CEMS can be demonstrated by requiring 24 hours of continuous testing rather than 30 days. These tests, however, must be conducted for every fuel supply at three different load levels (low, high, and normal operating levels). In addition to testing at different load levels, equivalency of PEMS to CEMS will be verified for seasonal variability by further requiring testing to be conducted quarterly for at least one unit in a category of units. Data collection of 24 successive emission data points which are either 20-minute averages or hourly averages were found to be adequate for performing reliable statistical analyses at every load level and for every fuel supply. The increased variability inherent in the shorter, 20-minute averages makes for a more stringent equivalence test than the comparison of one-hour average data required by Subpart E.

The Chapter 117 continuous emissions monitoring requirements in §117.213 are not a subject of current rulemaking. In the future, it will be necessary to review §117.213 to consider the implementation of EPA's enhanced monitoring rules required by FCAA Title VII. It would be appropriate to consider alternative monitoring procedures applicable to all affected units at that time. The staff believes this is the more appropriate section to consider opening than §117.570, which addresses intersource trading.

TCC et al. and Dow requested that in cases where PEMS is used instead of CEMS to show compliance with the source cap, the results of initial demonstration of compliance be submitted no later than 180 days past May 31, 1995. Dow commented that since some boiler and gas turbine retrofit projects might not be complete until late May, 1995, an extension of 60 to 180 days should be allowed for submitting test results using PEMS. during PEMS development, Dow recommended use of an alternate monitoring system and use of a portable CEMS or maximum emission rate value to calculate the emission cap.

Pennzoil requested clarification as to whether the source cap rule requires installation of CEMS on internal combustion engines. The staff has followed TCC et al.'s suggestion to allow the use of the maximum emission rate in lieu of installing a CEMS to monitor NO_x, CO, and O2 or CO2 for any equipment not required to install CEMS under §117.213(b), which would include internal combustion engines.

Subchapter B. Combustion at Existing Major Sources

Utility Electric Generation

• 30 TAC §117.105

The amendment is adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.105. Emission Specifications.

(a)-(l) (No change.)

(m) For purposes of this subchapter, the more stringent of any permit NO_x emission limit in effect on June 9, 1993, under a permit issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the NO_x emission limits of subsections (a)-(i) of this section shall apply, except that gas-fired boilers and heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million Btu heat input, shall be limited to that rate for the purposes of this subchapter.

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 19, 1993

TRD-9332645 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Effective date: December 15, 1993

Proposal publication date. June 15, 1993

For further information, please call: (512) 908-6087

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Commercial, Institutional, and Industrial Sources

• 30 TAC §117.205

The amendment is adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air At (TCAA), §382 017, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.205. Emission Specifications

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

(h) For purposes of this subchapter, the more stringent of any permit NO_x emission limit in effect on June 9, 1993, under a permit issued pursuant to Chapter 116 of this title and the emission limits of subsections (a)(3)(b), and (c) of this section shall apply, except that:

(1) gas-fired boilers and heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million Btu heat input, shall be limited to that rate for the purposes of this subchapter, and

(2) gas-fired boilers and process heaters which have had NO_x reduction projects permitted since November 15, 1990, and prior to June 9, 1993, that were solely for the purpose of making early NO_x reductions, shall be subject to the appropriate emission limit of subsections (a)(3)(b), and

(c) of this section. The affected person must document that the NO_x reduction project was solely for the purpose of obtaining early reductions, and include this documentation in the initial control plan required in §117.209 of this title (relating to Initial Control Plan Procedures).

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 19, 1993.

TRD-9332646 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

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Proposal publication date: June 15, 1993

For further information, please call: (512) 908-6087

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Subchapter D. Administrative Provisions

• 30 TAC §117.540, §117.550

The repeals are adopted under the Texas Health and Safety Code (Vernon 1990), 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 legal authority.

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For further information, please call: (512) 908-6087

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• 30 TAC §§117.540, 117.550, 117.580

The new sections are adopted under the Texas Health and Safety Code (Vernon 1990), 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.

§117.540. Phased Reasonably Available Control Technology (RACT).

(a) The owner or operator affected by the provisions of this chapter (relating to Control of Air Pollution from Nitrogen Compounds) who determines that compliance by May 31, 1995, is not practicable may submit a petition for phased RACT. The process for submitting a petition and receiving approval shall be based on the following.

(1) The petition shall be submitted by October 1, 1994, or as soon as possible after such date upon a demonstration by the owner or operator that the petition was not submitted by October 1, 1994, due to unforeseen circumstances.

(2) The owner or operator of the affected unit or units shall submit information in the petition to the Texas Natural Resource Conservation Commission (TNRCC) and a copy to the United States Environmental Protection Agency (EPA) Regional Office in Dallas which will demonstrate all of the following:

(A) compliance by May 31, 1995, is impracticable due to the unavailability of nitrogen oxides (NO_x) abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as TNRCC determines are appropriate;

(B) there is a proposed stage-by-stage program for compliance and clearly specified compliance milestones for each unit;

(C) there is a commitment to implement the portion of the phased RACT petition that can be implemented by May 31, 1995; and

(D) the final compliance date specified in the petition shall be as soon as practicable, but in no case later than August 31, 1996, except as approved by the Executive Director.

(3) Each petition for phased RACT shall contain the information required by at least one of the following criteria.

(A) If compliance by May 31, 1995 is impracticable due to the unavailability of NO_x abatement equipment, engineering services, or construction labor, the following information shall be included in the petition for phased RACT:

(i) a list of the company names, addresses, and telephone numbers of vendors who are qualified to provide the services and equipment capable of meeting the applicable emission limitation under this chapter and who have been contacted to obtain the required services and equipment. A copy of the request for bids along with the dates of contact shall also be provided to show a good-faith effort to obtain the required services and equipment necessary to meet the requirements of this chapter by May 31, 1995; and

(ii) copies of responses from each of the vendors listed in clause (i) of this subparagraph showing that they cannot provide the necessary services and install the appropriate equipment in time for the unit to comply by May 31, 1995. Such responses shall include the reasons why the services cannot be provided and why the equipment cannot be installed in a timely manner.

(iii) if work on the project will be provided by the owner or operator, the petition for phased RACT shall include documentation that the necessary NO_x abatement equipment, engineering services, or construction labor could not be obtained in a timely manner from either in-house or external sources, as well as a detailed design or installation schedule for the required services or equipment to be provided by the owner or operator.

(B) If compliance by May 31, 1995, is impracticable due to system unreliability for sources in the utility industry, defined as the inability or threatened inability of a utility grid system to fulfill obligations to supply electric power, the following information shall be included in the petition for phased RACT:

(i) standard load forecasts, based on standard forecasting models available throughout the utility industry, applied to the period May 31, 1993- May 30, 1995;

(ii) outage schedule for all units in the utility grid to which the subject unit belongs; and

(iii) specific reasons why an outage for the purpose of installing NO_x emission control equipment cannot be scheduled by May 31, 1995.

(C) If compliance by May 31, 1995, is impracticable due to manufacturing unreliability, defined as the inability or threatened inability of a source to fulfill contractual obligations to supply a product or products, the following information shall be included in the petition for phased RACT:

(i) certification by an authorized official of the company showing manufacturing obligations for which the company is contractually obligated. Manufacturing obligation information shall include copies of contracts signed by an authorized official of the company or similar documentation and shall exclude com-

mercially sensitive information;

(ii) historical and planned outage schedules for all units whose manufacturing capacity would be affected by the outage of the affected unit; and

(iii) specific reasons why an outage for the purpose of installing NO_x emission control equipment cannot be scheduled by May 31, 1995.

(D) If compliance by May 31, 1995, is impracticable due to equipment unreliability, defined as the reduced availability and operating reliability of a unit resulting from the operation of NO_x control equipment on that unit, the following information shall be included in the petition for phased RACT:

(i) specific reasons why the new NO_x control equipment will reduce the current reliability of the operating unit;

(ii) historical availability and forced outage data expressed as annual percentages and the differences in each expected with the new NO_x control equipment. Availability is defined as the sum of hours the equipment is in service plus the hours the equipment is not in service, but available for service, divided by the number of hours in the reporting period. A forced outage is defined as down time which occurs as a result of a trip, emergency shutdown, or unplanned maintenance;

(iii) most recent operating history available from the vendor for the new NO_x control equipment, including actual test operating hours, actual load during testing, and specific problems that resulted in lost availability; and

(iv) reasons why the No_x Control technology is not considered proven including vendor test and commercial operating data, if available from the vendorl.

(E) If compliance by May 31, 1995, is impracticable due to other technical factors, the petition for phased RACT shall contain such documentation as the Executive Director establishes is appropriate for such technical factors.

(F) If compliance by May 31, 1995, is unreasonable due to economic considerations, excluding the time value of money, the petition for phased RACT shall contain the following information showing comparisons of the cost of compliance by May 31, 1995, and the cost of compliance by the final compliance date specified in the petition:

(i) the costs of additional outages, if applicable, necessitated by compliance with the emission specifications of this chapter by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages;

(ii) comparisons of the cost of obtaining the NO_x abatement equipment, engineering services, or construction labor necessary to comply by May 31, 1995, and the cost of obtaining the NO_x abatement equipment, engineering services, or construction labor by the final compliance date specified in the petition. Copies of legally binding contracts, signed by an authorized official of the company, shall be submitted to document these costs. If the required NO_x abatement equipment, engineering services, or construction labor will be provided by the owner or operator, as provided for in paragraph (4) of this subsection, certification by an authorized official of the company may be submitted in lieu of contracts to document these costs; or

(iii) other economic factors, documented as the Executive Director establishes is appropriate for such economic factors.

(4) All petitions for phased RACT shall include copies of legally binding contracts with the primary vendors for each project, signed by an authorized official of the company, showing a detailed design or installation schedule for the required services or equipment to be provided by that vendor, with a completion date no later than August 31, 1996, except as approved by the Executive Director. Any commercially sensitive financial information or trade secrets should be excised from the contracts.

(5) Within 30 days of receiving a petition for phased RACT, the Executive Director shall inform the applicant in writing that the petition is complete or that additional information is required. If the petition is deficient, the notification shall state any additional information required. The requested information correcting the deficiency must be received by the Executive Director within 30 days of the date of the letter notifying the applicant of the deficiency.

(6) The Executive Director shall approve or deny the petition within 90 days of receiving an administratively complete phased RACT petition. The Executive Director shall approve a petition for phased RACT if the Executive Director determines that compliance is not practicable by May 31, 1995, because of either the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as TNRCC determines are appropriate.

(7) Any person affected by the Executive Director's decision to deny a petition for phased RACT or to deny a revision to an approved phased RACT petition may appeal the decision to the Board within 30 days after the date of the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted for the method of requesting Commission action on the appeal. Approved petitions for phased RACT may be revised by the Executive Director upon a showing of just cause by the applicant.

(8) Approval of a phased RACT schedule by TNRCC does not waive any applicable federal requirements or eliminate the need for approval by EPA.

(9) The holder of an approved phased RACT determination shall comply with each specified compliance milestone and each date for compliance provided in the approved petition, as well as any other condition established in the approval.

(b) The Executive Director shall initiate a reevaluation of the final compliance dates specified in this undesignated head (relating to Administrative Provisions) one year after the adoption of this chapter. The Executive Director shall evaluate the practicability of all sources complying with §§117.105, 117.107, 117.205, 117.207, 117.305, and 117.405 of this title (relating to Emission Specifications; Alternative System-Wide Emission Specifications; Emission Specifications; Alternative Plant-Wide Emission Specifications; Emission Specifications; and Emission Specifications) by May 31, 1995. The Executive Director shall base the evaluation on the information contained in the control plans required by §§117.109, 117.209, 117.309, and 117.409 of this title. In evaluating the practicability of compliance by May 31, 1995, the Executive Director shall take into consideration the availability of NO_x abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the TNRCC determines are appropriate. Within 15 months after adoption of this chapter, the Executive Director shall publish notice in the *Texas Register* of the intent to either retain or extend by rulemaking the final compliance dates of this undesignated head.

§117.550. Standard Construction Permits for NO_x RACT Projects.

(a) In lieu of complying with the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), any person who installs ni-

trogen oxides (NO_x) abatement equipment or implements a NO_x control technique in order to comply with the requirements of this chapter shall be entitled to a standard permit under the following conditions.

(1) The change must not result in an increase of the unit's or the facility's production capacity, as documented in accordance with §§117.119, 117.219, 117.319, and 117.419 of this title (relating to Notification, Recordkeeping, and Reporting Requirements), as applicable, except in the following cases.

(A) For gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units required to meet emission limitations required by §117.105 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.205 of this title (relating to Emission Specifications), §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), and §117.580 of this title (relating to Source Cap).

(B) For permitted equipment other than gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units previously permitted in accordance with the requirements of Chapter 116 of this title that are required to meet emission limitations required by §§117.105, 117.107, 117.205, 117.207, 117.305, 117. 405, or 117.580 of this title. Such units must remain in compliance with all terms and limitations of their permits and cannot utilize the increase in production capacity without satisfying the permitting requirements of Chapter 116 of this title.

(C) For grandfathered equipment other than gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units that are required to meet emission limitations required by §§117.105, 117.107, 117.205, 117.207, 117.305, 117. 405, or 117.580 of this title. Such grandfathered units cannot utilize the increase in production capacity without satisfying the permitting requirements of Chapter 116 of this title.

(2) Any emission increase of an air contaminant other than NO_x must be a direct result of the requirement to install NO_x abatement equipment or implement a NO_x control technique and shall comply with the emission specifications of §§117.105, 117.107, 117.205, 117.207, 117.305, 117.405 of this title; §§117.121, 117.221, 117.321, 117.421 of this title (relating to Alternative Case Specific Specifications); or §117.580 of this title, as applicable.

(3) If installation of NO_x abatement equipment or implementation of a NO_x control technique will result in a significant net increase (for purposes of this chapter, "significant net increase" for nonattainment pollutants means an increase of emissions equal to or greater than the amount specified in the MAJOR MODIFICATION column of Table I in §101.1 of this title (relating to Definitions), and for attainment pollutants, the definition in 40 Code of Federal Regulations 52.21(b)(23)) in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area, a person claiming a standard permit shall submit information sufficient to demonstrate that the following conditions will be met:

(A) considering the NO_x reductions that will result from implementation of the requirements of this part, the emissions increase shall not cause or contribute to a violation of any national ambient air quality standard;

(B) the emissions increase shall not cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) of air quality regulation increment; and

(C) the emissions increase shall not cause or contribute to a violation of a visibility limitation.

(4) Emission increases eligible for a standard permit shall:

(A) be quantified in the initial compliance plan, and

(B) be tested as required by §§117.111, 117.211, 117.311, and 117.411 of this title (relating to Initial Demonstration of Compliance), as applicable.

(5) Notice of the intent to be covered by the standard permit must be accompanied by a carbon monoxide (CO) minimization plan, describing efforts to be taken to minimize increases in CO emissions that will result from installing NO_x abatement equipment or implementing a NO_x control technique.

(6) Notice of the intent to be covered by a standard permit shall be filed with the agency before a standard permit can be claimed Such notice should be filed on or before the date for filing an initial control plan as required by §§117.109, 117.209, 117.309, and 117.409 of this title (relating to Control Plan Procedures), as applicable. Information required under paragraph (3) of this subsection shall be submitted no later than 14 days prior to the commencement of construction for the installation of NO_x abatement equipment or implementation of a NO_x control technique.

(b) Unless notified by the Executive Director to the contrary, any person who submits notice of the intent to be covered by the standard permit is authorized to emit the increase in the quantity of pollutants emitted or change in the type of pollutants emitted under the terms and conditions of this permit 14 days after the date that the notice of intent is postmarked, if all required submissions have been made. The Executive Director may deny coverage under this permit at any time upon a determination that the terms and conditions of this permit are not being met and may require submittal of a permit or permit amendment application for a permit under Chapter 116 of this title. Emissions covered by a standard permit must comply with all rules and regulations of the Texas Natural Resource Conservation Commission.

(c) For purposes of compliance with the PSD and nonattainment new source review provisions of Chapter 116 of this title, an increase that satisfies the requirements for a standard permit shall not constitute a physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) 60.14, an increase that satisfies the requirements for a standard permit shall satisfy the requirements of 40 CFR 60.14(e)(5).

(d) All representations made in association with a notice of intent to claim a standard permit become conditions upon which the NO_x abatement equipment covered by the standard permit shall be constructed and operated or the NO_x control technique implemented. It shall be unlawful for any person to vary from such representations if the change in conditions will affect that person's right to claim a standard permit under this section. Any change in conditions such that a person is no longer eligible to claim a standard permit under this section requires submission of a permit or permit amendment application for a permit under Chapter 116 of this title.

§117.580. Source Cap.

(a) An owner or operator may achieve compliance with the emission limits of §117.205 of this title (relating to Emission Specifications) by achieving equivalent nitrogen oxides (NO_x) emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject

to the NO_x emission limits of §117.205 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap shall comply with the requirements of §117.205 or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications).

(b) The source cap allowable mass emission rate shall be calculated as follows.

(1) A rolling 30-day average emission cap shall be calculated for all emission units included in the source cap using the following equation:

$$\text{NO}_x \text{ 30-day rolling average emission cap (lb/day)} = \sum_{i=1}^{N} \left(R_i \times \frac{\textit{Actual annual heat input}}{\textit{Operating days}} \right)$$

where: i = each emission unit in the emission cap

N = the total number of emission units in the emission cap

R_i = (A) For emission units subject to the federal New Source Review (NSR) requirements of 40 Code of Federal Regulations (CFR) 51.165(a), 40 CFR 51.166, or 40 CFR 52.21, or to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) which implements these federal requirements, or emission units that have been subject to a New Source Performance Standard requirement of 40 CFR 60 prior to

June 9, 1993, R_i is the lowest of the actual emission rate or all applicable federally enforceable emission limitations as of June 9, 1993 that apply to emission unit *i* in the absence of trading. All calculations of emission rates must presume that emission controls in effect on June 9, 1993 are in effect for the two-year period used in calculating the actual annual heat input.

(B) For all other emission units, R_i is the lowest of the reasonably available control technology (RACT) limit of §117.205(a)(3)-(c) or §117.207(f) of this title or the best available control technology (BACT) limit for any unit subject to a permit issued pursuant to Chapter 116 of this title that applies to emission unit *i* in the absence of trading.

Actual annual heat input = Actual historical average annual heat input, as certified to the TNRCC, for the two-year period prior to June 9, 1993. The Executive Director may allow the use of a different

consecutive 24-month period that is more representative of normal unit operation.

Operating days = The average number of days per year during the 24-month period that fuel was fed to the unit.

(2) A maximum daily cap shall be calculated for all emission units included in the source cap using the following equation:

$$\text{NO}_x \text{ maximum daily cap (lb/day)} = \sum_{i=1}^{N} (R_i \times \textit{Maximum daily heat input})$$

where: i, N, and R_i are defined as in paragraph (1) of this subsection.

Maximum daily heat input = The maximum heat input, as certified to the TNRCC, allowed or possible (whichever is lower) in a 24-hour period.

(3) Each emission unit included in the source cap shall be subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) The owner or operator at its option may include any of the entire classes of exempted units listed in §117.207(f) of this title in a source cap. Such units shall be required to reduce emissions available for use in the cap by an additional amount calculated in accordance with the United States Environmental Protection Agency's proposed Economic Incentive Program rules for offset ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, issue of the *Federal Register* (58 FR 11110).

(5) For stationary internal combustion engines, the source cap allowable emission rate shall be calculated in pounds per hour using the procedures specified in §117.207(g)(2) of this title.

(6) For stationary gas turbines, the source cap allowable emission rate shall be calculated in pounds per hour using the procedures specified in §117.207(g) (3) of this title.

(c) The owner or operator who elects to comply with this section shall perform the following.

(1) For each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust nitrogen oxides (NO_x) monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter. The required continuous emissions monitoring systems (CEMS) and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and shall

be used to demonstrate continuous compliance with the source cap. Any CEMS shall meet all installation and performance testing requirements of §117.211 of this title (relating to Initial Demonstration of Compliance), all quality assurance requirements of §117.213(b) of this title (relating to Continuous Demonstration of Compliance), and the requirements of §117.219 of this title (relating to Notification, Recordkeeping, and Reporting Requirements); or

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter. The required PEMS and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance with the source cap. As alternatives to using PEMS to monitor O_2 or CO_2, subparagraph (A) of this paragraph or similar alternative method approved by the Executive Director may be used. The PEMS shall be installed, initially certified in accordance with clause (iii) of this subparagraph, and the results submitted to the Texas Natural Resource Conservation Commission (TNRCC) within 60 days after May 31, 1995. Any PEMS shall meet the requirements of §117.219 of this title and all the requirements of 40 Code of Federal Regulations (CFR) 75, Subpart E except:

(i) variations to 40 CFR 75, Subpart E which the owner or operator demonstrates to the satisfaction of TNRCC to be substantially equivalent to the requirements of 40 CFR 75, Subpart E;

(ii) requirements of 40 CFR 75, Subpart E which the owner or operator demonstrates to the satisfaction of TNRCC are not applicable;

(iii) for the initial certification of any unit while firing its primary fuel, the owner or operator shall:

(I) conduct initial relative accuracy test audit (RATA) pursuant to 40 CFR Part 60, Appendix B, Performance Specification 2, subsection 4.3 (pertaining to NO_x); Performance Specification 3, subsection 2.3 (pertaining to O_2 or CO_2); and Performance Specification 4, subsection 2.3 (pertaining to CO) at each load level described in §75.41(a)(4)(i)-(iii) of 40 CFR 75; and

(II) conduct an F-test, a t-test, and a correlation analysis pursuant to 40 CFR 75, Subpart E at each load level described in §75.41(a)(4) (i)-(iii). Calculations must be based on a minimum of 24 successive emission data points at each load range which are either 20-minute averages or hourly averages;

(iv) for each of the three successive quarters following the quarter in which initial certification was conducted, demonstrate accuracy and precision of PEMS for at least one unit of a category of equipment by performing RATA and statistical testing in accordance with clause (iii) of this subparagraph; and

(v) for each alternative fuel fired in a unit, the PEMS shall be certified in accordance with clause (iii) of this subparagraph; or

(C) for units not subject to continuous monitoring requirements, as provided for in §117.213(b)(1) of this title, use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.211(f) of this title. Emission rates for these units must be limited to the maximum emission rates as conducted under §117.211(f) of this title.

(2) For each operating unit equipped with CEMS, the owner or operator shall either use a PEMS pursuant to paragraph (1)(B) of this subsection, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.211(f) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 CFR 75.46 shall be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records shall also be retained in accordance with §117.219 of this title.

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report which includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit quarterly reports for the monitoring systems in accordance with §117.219 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.520 of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources).

(g) A unit which has operated since November 15, 1990, and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993, may be included in the source cap emission limit under the following conditions:

(1) the unit must have actually operated since November 15, 1990;

(2) for purposes of calculating the source cap emission limit, the applicable emission limit for retired units shall be calculated in accordance with subsection (b) of this section;

(3) the actual annual heat input and maximum capacity shall be prorated based upon actual number of days of operation from January 1, 1991, to December 31, 1992;

(4) the owner or operator must certify the unit's operational level and maximum rated capacity;

(5) a unit which has been shutdown and rendered inoperable, but not permanently retired, should be identified in the initial control plan and may be included in the source cap;

(6) emission reductions from shutdowns or curtailments which have not been used for netting or offset purposes under the requirements of Chapter 116 of this title or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

(h) An owner or operator who chooses to use the source cap option must include in the initial control plan required to be filed under §117.209 of this title (relating to Initial Control Plan Procedures) a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. An owner or operator who chooses to use the source cap option must include in the final control plan procedures of §117.215 of this title (relating to Final Control Plan Procedures) the information necessary under this section to demonstrate final compliance with the source cap.

(i) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or upset period shall be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the Executive Director that actual emissions were less than maximum emissions during such 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 19, 1993.

TRD-9332648 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Effective date. December 15, 1993

Proposal publication date: June 15, 1993

For further information, please call: (512) 908-6087

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

• 34 TAC §3.171

The Comptroller of Public Accounts adopts an amendment to §3.171, concerning records required; information required, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6729).

The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, to add a new permit classification called a "jobber. The amendment is necessary to advise jobbers of the records necessary for the purchase, sale, and use of gasoline and diesel fuel.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §153.117 and §153. 219.

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 22, 1993.

TRD-9332528 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date. December 13, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-4028

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• 34 TAC §3.175

The Comptroller of Public Accounts adopts an amendment to §3.175, concerning liquefied gas tax decal, with changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6730). The change occurs in subsection (c)(1) and (2) and was made for clarity and consistency. Letter of exemption is retitled letter of exception.

The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, to except commercial transportation companies providing transportation services to public school districts from prepaying the liquefied gas tax. Commercial transportation companies providing transportation services to public school districts do not have to obtain decals for vehicles used to provide these transportation services

No comments were received regarding adoption of the amendment

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §153 3021

§3.175. Liquefied Gas Tax Decal

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

(c) Exceptions

(1) The liquefied gas tax does not apply to sales to public school districts and counties in this state, or to commercial transportation companies providing transportation services to public school districts in this state and holding valid letters of exception from the comptroller

(2) A public school district, commercial transportation company providing transportation services to a public school district and holding a valid letter of exception from the comptroller, or a county in this state operating a motor vehicle powered by liquefied gas is not required to prepay the liquefied gas tax and obtain a decal for the motor vehicle.

(d) Rate schedule

(1) The following rate schedule (based on mileage driven the previous year) applies.

Registered Gross Weight	Less Than 5,000 Miles	5,000 to 9,999 Miles	10,000 to 14,999 Miles	15,000 Miles and Over
Class A: Less than 4,000 pounds	$ 30	$ 60	$ 90	$120
Class B: 4,000 to 10,000 pounds	42	84	126	168
Class C: 10,001 to 15,000 pounds	48	96	144	192
Class D: 15,001 to 27,500 pounds	84	168	252	336
Class E: 27,501 to 43,500 pounds	126	252	378	504
Class F: 43,501 and over	186	372	558	744

(2) A special use liquefied gas tax decal and tax is required for the following types of vehicles described as follows: Class T: Transit carrier vehicles operated by a transit company, $444.

(e) New or newly converted vehicles. A liquefied gas tax decal for a Class A-F motor vehicle shall be initially issued on the basis of estimated miles that will be driven during the one-year period following the date the decal is issued.

(f) Display of decal.

(1) The decal shall be affixed to the inside, lower right corner of the windshield (passenger side) of the vehicle.

(2) Invalid liquefied gas tax decals shall be removed before installing a new decal or transferring ownership of the motor vehicle.

(g) Special use vehicles. Vehicles required to be licensed for highway use but whose main purpose, design, and use is off the highway, may renew a liquefied gas decal for a rate less than the mileage indicated on the odometer if a record or log indicating the miles traveled on the highway by the vehicle is maintained and attached to the renewal application.

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 22, 1993.

TRD-9332529 Martin E Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: December 13, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-4028

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• 34 TAC §3.178

The Comptroller of Public Accounts adopts an amendment to §3.178, concerning trip permit in lieu of interstate trucker permit, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6731).

The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, to change the trip permit fee to $50. The definition of qualified motor vehicle is changed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code §153.109 and §153.212.

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 22, 1993.

TRD-9332530 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: December 13, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-4028

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• 34 TAC §3.180

The Comptroller of Public Accounts adopts an amendment to §3.180, concerning signed statement for purchasing diesel fuel tax free, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6732).

The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, to increase the amount of diesel fuel that can be purchased tax free in a single delivery with a signed statement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code §153.205.

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 22, 1993.

TRD-9332531 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: December 13, 1993

Proposal publication date: October 1, 1993

For further information, please call: (512) 463-4028

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• 34 TAC §3.197

The Comptroller of Public Accounts adopts the repeal of §3.197, concerning permits for distributors and suppliers, without changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6732).

The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, to provide gasoline jobber and diesel fuel jobber permit classifications. Neither gasoline nor diesel fuel jobbers may deal in tax-free motor fuels.

No comments were received regarding adoption of the repeal.

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

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 22, 1993.

TRD-9332527 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: December 13, 1993

Proposal publication date: October 1, 1993

For further information, please call. (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Rules

Subchapter C. Transfer Facility Admissions

• 37 TAC §§152.21, 152.22, 152.31

The Department of Criminal Justice adopts the repeal of §§152.21, 152. 22, 152.31, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6940).

Under the Texas Government Code, §499.153, the Board of Criminal Justice is required to adopt and enforce an admitting policy and a transfer policy with regard to transfer facilities.

The sections will govern county-specific admissions from county jails into transfer facilities, and subsequent transfers from transfer facilities into the Institutional Division.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §499.153, which provides the Board of Criminal Justice with the authority to develop, adopt, and enforce an admissions policy to accept eligible inmates from county jails for confinement in transfer facilities; and a transfer policy to transfer eligible inmates from transfer facilities to other Institutional Division facilities.

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 22, 1993.

TRD-9332540 Carl Reynolds
General Counsel
Texas Board of Criminal Justice

Effective date: December 13, 1993

Proposal publication date: October 8, 1993

For further information, please call: (512) 475-3250

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§700.328, 700.1801, and 700.1803, and adopts the repeal of and new §700.1802, in its Child Protective Services (CPS) chapter. The amendment to §700.1801 is adopted with a change to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7137). The amendments to §700.328 and §700.1803, and the repeal of and new §700.1802 are adopted without changes to the proposed text and will not be republished.

The justification for the proposal is to publish the cost-finding methodology rules regarding the way cost report data are analyzed and to establish minimum rates that the agency will pay for fiscal year 1994. The enhancements

will help contracted providers understand TDPRS's cost-finding methodology and how reimbursement rates are determined.

The proposal will function by establishing criteria for foster care assistance payments, cost reporting, cost-finding analysis, and definition of allowable and unallowable costs. In addition, the proposal establishes the minimum rates that the agency will pay for fiscal year 1994. The proposal will also establish procedures for determining whether insufficient funds exist to pay the determined rates and how rates will be reduced because of the insufficiency.

No written comments were received on the proposal. On November 9, 1993, TDPRS held a public hearing on the proposal. TDPRS received oral comments from three individuals at the public hearing. The commenters were representatives of the following organizations: Texas Association of Licensed Children's Services, Caring Family Network, and Texas State Foster Parents Association. A summary of the comments and TDPRS's responses follow:

Comment: All three commenters stated that they were opposed to the rules, and that the rules were unacceptable as proposed because the rules did not adequately reflect the cost to serve children.

Response: TDPRS acknowledges these comments, but maintains that the methodology is a fair way to determine the cost a prudent and cost-effective provider seeking to contain costs will incur in providing services to children and meeting applicable standards. The cost-finding methodology is intended to identify those providers that are prudent, cost effective, and representative of the types of care for which TDPRS has contracted. In addition, the agency has announced the formation of a workgroup consisting of providers, advocates, and other stakeholders to assist in the development of a new methodology for foster care reimbursement payments.

Comment: The three commenters requested that TDPRS continue to work with them to review the adequacy of the cost-finding methodology. Two commenters requested the formation of a work group to study the cost-finding methodology.

Response: TDPRS agrees with the commenters. However, the agency does not want to delay the implementation of these rules and elects not to defer the adoption of the rules pending the convening of a work group. The agency will form a workgroup consisting of providers, advocates, and other stakeholders to assist in the development of a new methodology for foster care reimbursement payments. Furthermore, in order to give the agency the discretion to maintain the September 1, 1993, reimbursement rates, a sentence has been added to §700.1801, which provides that the requirements of this subchapter will establish minimum rates for fiscal year 1994.

Comments concerning §700.1802(b): Two commenters objected to this subsection, which uses the lower-income-group statistics from the United States Department of Agriculture (USDA) on the expenditures on a child by families for the determination of the Level 1 rate. One commenter expressed concern that this cost statistic was based on the cost to raise a "normal" child and not one with greater needs. One commenter suggested that TDPRS develop two separate rates based on the middle and lower income groups. A family would be paid one of the rates based on the income level of the family.

Response: TDPRS believes that a single rate, which combines lower and middle income groups into one rate of payment for Level 1, is more appropriate. This blended rate reflects average spending on necessities provided by the majority of foster parent families. TDPRS is adopting this subsection without change.

Comment concerning §700.1802(c)(1) and (3): One commenter stated that the combination of these practices, which exclude from rate calculations providers whose occupancy is 30% or less, inappropriately lowers the costs to be considered in determining rates.

Response: TDPRS chooses to determine rates based on the costs of a prudent and cost-effective provider seeking to contain costs and does not believe that a facility occupied at 30% or less reflects a prudent and cost-effective operation. Therefore, TDPRS is adopting the paragraphs without change.

Comment concerning §700.1802(c)(1) and (11): One commenter stated that the combination of these practices, which adjust a provider's costs if his occupancy is below the median occupancy, to a level consistent with the median occupancy, inappropriately lowers the costs to be considered in determining rates.

Response: Only fixed costs, which cannot be adjusted by the provider due to variation in occupancy, are adjusted by this occupancy adjustment. The adjustment applied to costs is smaller the closer a provider's occupancy is to the median occupancy, and is greater the further the provider's occupancy is from the median occupancy. Therefore, the adjustment is a function of the efficiency of the provider in maintaining occupancy at or below its peers and is consistent with the cost-containment efforts of the provider. TDPRS is adopting the paragraphs without change.

Comment concerning §700.1802(c)(2): One commenter stated that this practice, which includes in the rate determination for Levels 5 and 6 only those providers with 50% or more state placements, inappropriately lowers the costs to be considered in determining rates.

Response: This practice helps ensure that rates for these programs are representative of the services for which TDPRS has contracted and that costs are driven by the provision of care according to the standards set by TDPRS and its placements, and not by private marketplace demands. TDPRS is adopting this paragraph without change.

Comment concerning §700.1802(c)(15). One commenter stated that this practice, which uses for rate-determination purposes those providers with 60% or more of their days of service within one level of care in the cost array for that level of care, inappropriately lowers the costs to be considered in determining rates.

Response: This practice allows TDPRS to determine rates using provider programs that specialize in serving a particular level of care and that are representative of the type of care for which TDPRS has contracted. TDPRS is adopting this paragraph without change.

Comment concerning §700.1802(c)(16): One commenter stated that this practice, which excludes from the cost array for rate determination any provider's total cost that exceeds two standard deviations above or below the mean total cost for that array, inappropriately lowers the costs to be considered in determining rates.

Response: This allows TDPRS to remove extreme outlier costs that are so high or so low as to not represent a prudent and cost-effective provider. TDPRS is adopting this paragraph without change.

Comment: One commenter stated that the Level 1 rate did not take into consideration extraordinary costs, such as the cost to purchase clothing for a child coming into care and frequent trips under 60 miles.

Response: The rate for Level 1 is an average cost to care for a child in a family. Some counties pay for extraordinary costs above the rate paid for Level 1. TDPRS does not believe it is prudent to develop separate rates for each Level 1 placement to take into consideration each extenuating circumstance that may affect costs. TDPRS believes that the rate for Level 1 is adequate to care for a child in the majority of circumstances.

Subchapter C. Eligibility for Child Protective Services

• 40 TAC §700.328

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs; Chapter 31, which provides the department with the authority to provide financial assistance and services to families with dependent children, and Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS. The amendment implements §31.003, which provides the department with the authority to adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

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

Issued in Austin, Texas, on November 29, 1993.

TRD-9332759

Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

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

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Subchapter F. Release Hearings

• 40 TAC §700.605

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.605, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7407).

The justification for the amendment is to eliminate a reference to the previously existing right of alleged perpetrators to appeal to the Office of Youth Care Investigations at the end of administrative reviews of CPS investigation findings. As passed by the 73rd Texas Legislature and signed by the governor, House Bill (HB) 1510 has eliminated the Office of Youth Care Investigations.

The right to appeal to that office was based on a section of the Texas Family Code (TFC, §34.24) that applies to investigations of abuse and neglect in child-care facilities that are operated, licensed, certified, or registered by a state agency. As revised in HB 1510, TFC §34.24 now provides for complaints about investigations in such facilities to be brought to the Board of Directors of the state agency that operates, licenses, certifies, or registers the facility.

The elimination of the Office of Youth Care Investigations as a venue for appeals by alleged perpetrators of child abuse and neglect does not eliminate an alleged perpetrator's right to challenge CPS investigation findings. Alleged perpetrators who have had a right to appeal to the Office of Youth Care Investigations in the past will still have a right to request administrative reviews of investigation findings. And whenever TDPRS decides to release information about an alleged perpetrator to individuals who have control over his access to children, the alleged perpetrator has a right to contest the release at a hearing conducted under the provisions of the Administrative Procedure *Note:* TDPRS does not have the authority to release information about an alleged perpetrator to people outside an investigation unless a preponderance of the evidence from the investigation indicates that the alleged perpetrator poses a substantial risk of harm to children outside the family of the alleged victim.

The amendment will function by giving the public accurate information about the state's procedures for appealing the results of CPS investigations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 41, which authorizes the department to enforce laws for the protection of children. The amendment is also adopted under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect; and under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS. The amendment implements Texas Family Code §34.24.

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 29, 1993.

TRD-9332760 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

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

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Subchapter O. Foster and Adoptive Home Development

• 40 TAC §700.1502

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.1502, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7288).

The justification for the amendment is to implement Human Resources Code (HRC), §47.041. As passed by the 73rd Texas Legislature, HRC §47.041 prohibits TDPRS from denying or delaying placement of a child for adoption, or otherwise discriminating in the course of placing a child for adoption, on the basis of the race or ethnicity of the child or the prospective adoptive parents.

The amendment implements the new law by authorizing staff to consider placing a child with adoptive parents of a different race or ethnicity than the child's if the parents appear able to help the child:

(1) develop a sense of identity consistent with his racial and ethnic background; and

(2) learn to cope with difficulties that may arise from racial or ethnic differences, both within and outside the adoptive family.

The amendment will function by promoting the selection of appropriate adoptive homes for abused and neglected children who need to be placed for adoption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs; and Chapter 47, which authorizes the department to promote the adoption of hard-to-place children. The amendment is also adopted under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect; and under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS. The amendment implements the Human Resources Code §47.041.

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

Issued in Austin, Texas, on November 29, 1993.

TRD-9332761 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

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

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Subchapter R. Cost-finding Methodology for 24-Hour Child-care Facilities

• 40 TAC §§700.1801-700.1803

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs; Chapter 31, which provides the department with the authority to provide financial assistance and services to families with dependent children; and Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS. The amendments and new section implement §31.003, which provides the department with the authority to adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

§700.1801. Cost Reporting. Non-Texas Department of Protective and Regulatory Services (TDPRS) families, facilities, group homes, and child placing agencies that contract with TDPRS to provide 24-hour residential child-care services must submit financial and statistical information according to the requirements specified in this subchapter. Providers of 24-hour residential child care services must report this information on cost-reporting forms approved by TDPRS. The cost report must cover all of the provider's activities during the provider's previous fiscal year unless TDPRS, at its sole discretion, requires a provider to submit a cost report covering selected activities or covering another time period. The requirements specified in this subchapter shall establish minimum rates for fiscal year 1994 only. The word "rate," when used in this subchapter, shall refer to the reimbursements paid either directly or indirectly to a provider with whom TDPRS has a contract or an agreement.

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

(7) Methods of allocation. TDPRS adjusts allocated costs if the department considers the allocation method to be unreasonable.

(A) Direct costing must be used whenever possible, which means that allowable costs incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. If direct costing is not possible, a provider must use reasonable methods of allocation and must be consistent in the use of allocation methods across program areas and business entities to ensure that allowable costs are equitably allocated across business activities or business entities receiving the benefits of those allocated costs. Costs reported for the provider must be representative of the actual circumstances of the provider's operations, whether directly charged or allocated. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by this department. The department reviews each allocation method on a case-by-case basis in order to ensure that the reported costs fairly and accurately represent the operations of the provider. Any change in allocation methods from one year to the next must be fully disclosed by the provider on its cost report and must be accompanied by a written explanation of the reasons for such change.

(B) When practical and the amounts are material, costs must be allocated on a functional basis. Some examples are listed as follows:

(i) Costs of a central payroll operation could be allocated to all business components based on the number of checks issued.

(ii) Costs of a central purchasing function could be allocated based on the dollar amount of purchases made or requisitions handled.

(iii) Costs of utilities or rent could be allocated based upon square footage.

(iv) Payroll costs for an employee working across business components could be allocated based upon that employees' timesheets and/or a documented timestudy.

(v) Transportation equipment costs could be allocated based upon mileage logs.

(C) General management and administrative costs that cannot be allocated on a functional basis should be allocated reasonably and consistently across all business components receiving the benefits of those allowable general management and administrative costs. If all the business components have equivalent units of service, such general management and administrative costs could be allocated based upon each business component's units of service. One recommended method for allocating such costs would be based upon the ratio of each business component's variable costs related to the total variable costs of all the provider's business components. Because only cost data are analyzed in the calculation of reimbursement rates, allocation methods based upon revenue streams are inappropriate and generally unallowable.

(D) Cost allocation methods must be clearly and completely documented in the provider's workpapers, with details as to how specific allocations are made.

(8)-(16) (No change.)

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

Issued in Austin, Texas, on November 29, 1993.

TRD-9332762

Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

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

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• 40 TAC §§700.1802

The repeal is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs; and Chapter 31, which provides the department with the authority to provide financial assistance and services to families with dependent children. The repeal is also adopted under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS.

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 29, 1993.

TRD-9332763

Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Effective date: January 1, 1994

Proposal publication date: October 15, 1993

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

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

(Editor's Note. As required by the Insurance Code, Article 5.96 and 5 97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act

These actions become effective 15 days after the date of publication or on a later specified date

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

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9:00 a.m. on November 17, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted without changes staff proposals of mandatory endorsements to amend the refusal to renew provisions (Insurance Code, Article 21.49-2B, §7(d)) of the homeowners, dwelling, farm and ranch, and farm and ranch owners policies; amendments to Texas Personal Lines Manual rules regulating the insurer's nonrenewal notification; and the withdrawal of the current Board prescribed nonrenewal notification form The endorsements and manual rule amendments are necessary because of amendments to the Insurance Code, Article 21.49-2B, §7(d), enacted under House Bill 1461 by the 73rd Texas Legislature, which became effective on September 1, 1993. Notice of the Staff's proposals (Reference Number P-0993-20-I) was first published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6948). Consideration of the proposal was recessed from the initial meeting date of November 10, 1993, to November 17, 1993.

The endorsements amend the refusal to renew provisions of the homeowners, dwelling, farm and ranch, and farm and ranch owners policies to provide that if an insured files two or more claims in a period of less than three years, the insurer may notify the insured in writing that if a third claim is filed during the three-year period, the insurer may refuse to renew the policy. The endorsements also include notice of the recent legislative amendment of Article 21.49-2B, §7(d) that if the insurer fails to notify the insured of the possible declination to renew after the second claim, the insurer may not refuse to renew the policy because of losses.

The Board adopted amendments to the Texas Personal Lines Manual rules to clarify that the notice to an insured regarding the refusal to renew a policy after the second loss in a period of less than three years must contain statutorily required information, including a list of the policyholder's claims. Concomitantly, the Board approved withdrawal of the current promulgated notice of nonrenewal because of the amendment to Article 21.49-2B §7(d) deleting the requirement that the notice must be in a form approved by the Board.

The State Board of Insurance has jurisdiction of these matters pursuant to the Insurance Code, Articles 21.49-2B and 5.96

The endorsements and manual rule amendments as adopted by the State Board of Insurance are filed with the Chief Clerk under Reference Number P-0993-20-I and are incorporated by reference by Board Order Number 60570.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts Board action taken under Article 5 96 from the requirements of the Administrative Procedure 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Government Code, Title 10, Chapter 2001)).

Consistent with the Insurance Code, Article 5.96(h), prior to January 1, 1994, the effective date of this action, the Board will notify all insurers subject to this action

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 24, 1993.

TRD-9332712 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date. January 1, 1994

Proposal publication date: October 8, 1993

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

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The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 9.00 a.m. on November 17, 1993, under Docket Number 2066, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted staff proposals for new and revised Windstorm, Hurricane, and Hail Exclusion Agreement endorsements to various residential property policies to provide for the exclusion of coverage for certain indirect losses as well as the current exclusion of coverage for direct losses caused by windstorm or hail and new and revised Texas Personal Lines Manual rules to govern the use of these endorsements and determine rate credits. Notice of the staff's proposals (Reference Number P-0993-21-I) was first published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6948) Consideration of the proposal was recessed from the initial hearing date of November 10, 1993, to November 17, 1993.

The new and revised endorsements and new and amended personal lines manual rules are necessary because of recent revisions to the Texas Catastrophe Property Insurance Pool Act (Insurance Code, Article 21.49) enacted under House Bill 1461 by the 73rd Texas Legislature, which require the Texas Catastrophe Property Insurance Association (TCPIA) to provide coverage for indirect losses caused by windstorm or hail when a companion residential property policy issued in the voluntary market specifically excludes coverage for these indirect losses. These legislative changes became effective on September 1, 1993. The TCPIA provides windstorm and hail insurance to residents in 14 coastal counties who are unable to obtain such coverage in the voluntary market.

The Board adopted revisions to four existing endorsements (HO-140, TDP-001, TFR 051, and FRO-440) and three new endorsements (HO-140B, TDP-001A, and TFR-051A) to provide for the exclusion of coverage of certain indirect losses, in addition to the current exclusion of coverage of direct losses, caused by windstorm or hail from certain homeowners, dwelling, farm and ranch, and farm and ranch owners policies. The Board adopted Endorsement HO-140 with revisions to the staff's proposal to provide for the exclusion of coverage of certain indirect losses caused by windstorm or hail from HO-CON-B and HO-CON-C policies, which are companion homeowners policies in the voluntary market for insuring residential condominiums. Concomitantly, proposed new Endorsement HO-140A, Windstorm, Hurricane, and Hail Exclusion Agreement applicable to Forms HO-CON-B and HO-CON-C, was withdrawn

The Board also adopted rule revisions and additions to the Texas Personal Lines Manual to govern the attachment of the adopted endorsements and the appropriate rate credits to be provided to policyholders when indirect loss coverage is excluded from these policies The adopted rule revisions and additions include changes to proposed manual rules to address the attachment of endorsements to HO-CON-B and HO-CON-C policies and determine appropriate rate credits for these endorsements that were not included in the staff's proposal.

The changes to the endorsements and rule revisions as proposed were adopted to fulfill what the Board believes is the legislative intent of Article 21.49 as amended in House Bill 1461, which is to provide in the TCPIA policy certain indirect loss coverages for all residential risks when such coverages are excluded from residential property policies written in the voluntary market, including policies insuring condominiums. The staff proposal did not include endorsement exclusions for voluntary market policies insuring condominiums and pertinent manual rules because while the newly enacted revisions to the Insurance Code, Article 21.49 provide this coverage for condo renters, the statute does not address condo owners. However, the State Board of Insurance pursuant to the authority granted in the Insurance Code, Article 21 49, §§5A, 7,

and 8 may provide for such endorsement exclusions and manual rules for residential property policies insuring condominiums.

In other closely related but separate matters, the Board adopted on the same date but in separate proceedings conducted under the Administrative Procedure Act (Texas Civil Statutes, Article 6252-13a; 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (to be codified at Government Code, Title 10, Chapter 2001)) eleven new endorsements to TCPIA policies to provide for certain indirect loss coverages excluded in the companion voluntary market policy (Docket Number 2063); amendments to the TCPIA policy form (Docket Number 2065); and a revised TCPIA Manual, including incorporation of previous Board adopted changes, the addition of new rating rules based on new House Bill 1461 provisions, and the addition of rules and rates for the new indirect loss coverages (Docket Number 2064).

The State Board of Insurance has jurisdiction of these matters pursuant to the Insurance Code, Articles 21.49, 5.35, 5.101, and 5.96.

The endorsements and manual rule amendments as adopted by the State Board of Insurance are filed with the Chief Clerk under Ref. No. P-0993-21-I and are incorporated by reference by Board Order No. 60569.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts Board action taken under Article 5.96 from the requirements of the Administrative Procedures and Texas Register Act (Administrative Procedure Act, 73rd Leg., R.S., ch. 268, §1, 1993 Tex. Gen. Laws 737, (to be codified at Government Code, Title 10, Ch. 2001)).

Consistent with the Insurance Code, Article 5.96(h), prior to January 1, 1994, the effective date of this action, the Board will notify all insurers subject to this action.

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 24, 1993.

TRD-9332711

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1994

Proposal publication date: October 8, 1993

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

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to 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 named 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. Emergency meeting notices filed by all 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 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 on Aging (TDoA)

Friday, December 3, 1993, 9:30 a.m.

1949 South IH 35, Third Floor, Large Conference Room

Austin

Revised Agenda

According to the complete revised agenda, the Texas Board on Aging will select representatives to CAC from Coastal Bend, Permian Basin, South Plains, and West Central Texas regions.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas, (512) 444-2727.

Filed: November 23, 1993, 10:38 a.m.

TRD-9332555

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Texas Department of Agriculture

Monday, December 6, 1993, 9:30 a.m.

Sheraton Mockingbird Hotel, 1893 West Mockingbird Hotel

Dallas

According to the agenda summary, the Texas Boll Weevil Eradication Foundation, Inc. will call to order; opening remarks and introductions; review and approval of minutes; discussion and action: financial report; TDA report; proposed referendums; foundation/APHIS cooperative agreement; program director's report; liability insurance; and chairman's report.

Executive session: in accordance with Government Code, §551.074(a)(1), to discuss employment and duties of program director.

Adjourn executive session.

Reconvene regular meeting for action on executive session; discussion of other items; and adjourn.

Contact: Woody Anderson, Route 3, Box 393, Colorado City, Texas 79512, (915) 728-8962.

Filed: November 24, 1993, 10:34 a.m.

TRD-9332622

Tuesday, December 7, 1993, 8:00 a.m.

1700 North Congress Avenue, Room 924A

Austin

According to the agenda summary, the Texas Agricultural Finance Authority will call meeting to order; discussion and action on: minutes of previous meeting; adoption of rules for Loan Guaranty Program; appeal process for Loan Guaranty Program rules; revised credit policy for Loan Guaranty Program; Williams' Citrus Grove and Nursery project eligibility for Loan Guaranty program, Guaranty of Texas Hill County Food Processors, Inc.; loan applications; Young Farmer Guaranty Program; Revenue bond program; and consent on grants to be awarded by Texas Agricultural Diversification Program.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: November 24, 1993, 11:17 a.m.

TRD-9332643

Wednesday, December 8, 1993, 12:30 p.m.

Wyndham Greenspoint Hotel, 12400 Greenspoint Drive

Houston

According to the complete agenda, the Texas Rice Producers Board will discuss and act on: minutes of previous meeting; financial report; and crop revenue and expense budget; discussion on other business; and adjourn.

Contact: Curtis Leonhardt, P.O. Box 740250, Houston, Texas 77274, (713) 270-6699.

Filed: November 24, 1993, 10:33 a.m.

TRD-9332619

Friday, December 10, 1993, 11:00 p.m.

Joe Norrine Restaurant

Fabens

According to the agenda summary, the Paso Valley Pest Management Committee will overview of TDA Cotton programs; industry prospective; Texas A&M pest management update; presentation on cotton stalk destruction law; and discussion of area work plan.

Contact: Darrell Williams, P.O. Box 12847, Austin, Texas 78711, (512) 463

Filed: November 24, 1993, 2:14 p.m.

TRD-9332681

Monday, December 13, 1993, 2:00 p.m.

Expressway 83, Two Blocks West of Morningside Road

San Juan

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et seq (Vernon 1982) by El Rey Distributors as petitioned by Interstate Fruit and Vegetable Company, Inc.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512)

463-7583.

Filed: November 24, 1993, 2:01 p.m.

TRD-9332665

Tuesday, December 14, 1993, 9:00 a.m.

Holiday Inn Civic Center, 801 Avenue Q

Lubbock

According to the complete agenda, the Texas Peanut Producers Board will take roll call; discussion and action: minutes; promotion activities; Texas FFA Foundation; Peanut Disease Compendium; health insurance; discussion: NAFTA and GATT; other businesses; and adjourn.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: November 24, 1993, 10:34 a.m.

TRD-9332620

Tuesday, December 14, 1993, 10:00 a.m.

1700 North Congress Avenue, Room 928B

Austin

According to the agenda summary, the Office of the Hearings will hold an administrative hearing to review alleged violation of four Texas Administrative Code §§6.1-6.4 by Jon Rabius, Jr.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 24, 1993, 2:00 p.m.

TRD-9332664

Tuesday, December 21, 1993, 10:00 a.m.

1700 North Congress Avenue, Room 928B

Austin

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violation of four Texas Administrative Code §§6.1-6.4 by Joe Losack.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 24, 1993, 2:00 p.m.

TRD-9332663

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Texas Commission on Alcohol and Drug Abuse

Monday, December 13, 1993, 1:00 p.m.

710 Brazos, Perry Brooks Building

Austin

According to the complete agenda, the Board of Commissioners will call the meeting to order; meet in executive session to discuss employment matter pertaining to the executive director position; reconvene to discuss agency trends and directions; and adjourn.

Contact: Paul Roberts, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8808.

Filed: November 29, 1993, 4:20 p.m.

TRD-9332808

Tuesday, December 14, 1993, 8:30 a.m.

710 Brazos, Perry Brooks Building, Commission Meeting Room, Eighth Floor

Austin

According to the complete agenda, the Board of Commissioners will call the meeting to order; approval of September 21, 1993, minutes; public comments; update on compulsive gambling initiative activities; action on Statewide Advisory Council to include action on Advisory Council nominations and action on Advisory Council bylaws revision; report on Texas Summitt Committee; action on denial of chemical dependency counselor license; congressional update; report on Implementation of Criminal Justice In-Prison Therapeutic Community Program (ITC); report on Criminal Justice Substance Abuse Felony Punishment Facility Program (SAFP); report on Criminal Justice Continuum of Care (TTC); report on Treatment Alternatives to Incarceration Program (TAIP), report on Criminal Justice Committee activities; report on Houston Recovery Campus activities; report on Court Commitment issues; action by consent on approval of proposed amendments to facility licensure rules and DWI Repeat Offender Program rules and adoption of amendments to counselor licensure rules and Drug Offender Education Program rules; report on compliance activities to include report on audit exception information; report on Historically Underutilized Business activities; report on Annual (Forth Quarter) Report on Measures; report on Texas and National Health Care Reform issues; report on Strategic Plan revision; action on adoption of Committee activities; report on Audit Committee activities to include action on acceptance of internal audit on Accounting for Grants and Contracts, Auditing and Accounting for Contractors, and Administrative Budgeting and Planning System; meet in executive session to discuss pending litigation issues and employment matter pertaining to the executive director position; reconvene to hear interim executive director's report; chairman's report; and adjourn.

Contact: David P. Tatum, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8875.

Filed: November 29, 1993, 4:20 p.m.

TRD-9332807

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Texas Animal Health Commission

December 8, 1993, 4:00 p.m.

210 Barton Springs Road

Austin

According to the agenda summary, the Subcommittee That Reviews the Duties of the Internal Auditor will discuss the EIA report and audit plan for Fiscal Year 1994; and USAS update.

Contact: JoAnne Conner, P.O. Box 12966, Austin, Texas 78711, (512) 479-6697.

Filed: November 29, 1993, 9:48 a.m.

TRD-9332753

December 9, 1993, 8:30 a.m.

210 Barton Springs Road

Austin

According to the agenda summary, the commission will discuss approval of previous meetings; approve actions of executive director; presentation of awards; recommendations of committees concerning ratites regulations; update on brucellosis program; review of self-evaluation document to the Sunset Commission; committee report concerning internal auditor; status report on fever tick incident; consideration for adopting amendments to TB and swine regulations; consideration for proposing amendments to Brucellosis (Bovine and Swine), equine and interstate shows and fairs regulations; review proposal for decision; set date for next meeting; and consideration for interagency contract with Office of the Attorney General.

Contact: JoAnne Conner, P.O. Box 12966, Austin, Texas 78711, (512) 479-6697.

Filed: November 29, 1993, 9:47 a.m.

TRD-9332752

December 9, 1993, 8:30 a.m.

210 Barton Springs Road

Austin

Revised Agenda

According to the agenda summary, the commission will discuss recommendations of committees on regulations governing ratites: Exotic Wildlife Association; Texas Emu Association; American Ostrich Association; and National Rhea Association.

Contact: JoAnne Conner, P.O. Box 12966, Austin, Texas 78711, (512) 479-6697.

Filed: November 29, 1993, 3:41 p.m.

TRD-9332804

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Texas Commission for the Blind

Friday, December 10, 1993, 8:30 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard

Austin

According to the agenda summary, the Board will discuss approval/ratification: minutes ; approval: executive director's report; committee reports; approval: capital outlay; discussion/approval: FY 1994 operating budget; discussion/approval: revisions to internal audit charter and 1994 audit plan; presentation: proposed new reimbursement rate for Medicaid case management; discuss/approval: new reimbursement rate for Medicaid case management; discussion/approval of employer of the year awards; executive session; action: executive director's employment and compensation; discussion: proposed organizational structure; discussion; board work session; date and location for next meeting; election of vice-chairman.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: November 23, 1993, 3:38 p.m.

TRD-9332569

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Credit Union Department

Monday, December 6, 1993, 1:00 p.m.

Westin Hotel Galleria, Preston Ballroom, Third Level, 13340 Dallas Parkway

Dallas

According to the complete agenda, the Credit Union Commission will invite public input for future consideration; receive: minutes of October 18, 1993 meeting; communications; and committee report from the Texas Share Guaranty Credit Union Oversight Committee; review: Task Force Advisory Committee report; consider: proposed amendment to Rules 91.801 (CUSOs) and 91.001 (Definitions); and adjustment to Texas Share Guaranty Credit Union Indemnity Reserves; conduct: an executive session to discuss credit unions and problem cases; and consultation with legal counsel regarding contemplated legal action, existing litigation and administrative actions.

Contact: Penny A. Black, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: November 23, 1993, 4:09 p.m.

TRD-9332583

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Texas Commission for the Deaf and Hearing Impaired

Saturday, December 4, 1993, 9:00 a.m.

TSD, 1102 South Congress Avenue, Building T-2

Austin

According to the complete agenda, the Board for Evaluation of Interpreters (BEI) will call to order; approval of October 15, 1993 minutes; public comments; chairpersons report; calendar update; executive session: review of applicant test materials; certification, revocation, recertification; old business; new business; and adjournment.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: November 24, 1993 11:17 a.m.

TRD-9332642

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Texas Diabetes Council

Friday, December 3, 1993, 8:30 a.m.

Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

Emergency Meeting

According to the complete agenda, the council will discuss approval of the minutes of the September 24, 1993, meeting; and discuss and possibly act on: recommendations for Texas Diabetes Institutes; progress report on community-based diabetes programs; and progress report on staff hiring and office space.

Reason for Emergency: Unforeseeable circumstances.

Contact: Richard Kropp, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, call Richard Butler at (512) 458-7596 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: November 29, 1993, 2:54 p.m.

TRD-9332798

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Interagency Council on Early Childhood Intervention

Monday-Tuesday, December 6-7, 1993, 10:00 a.m. and 8:30 a.m., respectively.

Spicewood Business Center, 4412 Spicewood Springs Road, Suite 600

Austin

According to the complete agenda, the Advisory Committee on Monday morning: committee will approve the minutes from the previous meeting and hear public comments; and will discuss and possibly act on: ongoing business (status of budget; council membership; and federal application); update on membership (decision on ex-officio members-Texas Department of Protective and Regulatory Services and Texas Commission Alcohol and Drug Abuse; governor's appointments; and introduce Cindy Morris); per diem for child/attendant care; update on two-day rules notification; chair report; the following subcommittees will meet: Program Services, Interagency Coordination, Early Identification, and Personnel Preparation. Tuesday: committee will hear morning announcements and will overview manual; and will discuss and possibly act on the director's forum update; executive director's report; subcommittee meeting will continue; discuss and possibly act on subcommittee reports and will discuss new business not requiring action. The subcommittees may meet after adjournment to discuss items for the next meeting.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 502-4900. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: November 24, 1993, 10:55 a.m.

TRD-9332623

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Texas Education Agency

Thursday-Friday, December 9-10, 1993, 9:00 a.m.

W.B. Travis Building, Room #1-110, 1701 North Congress Avenue

Austin

According to the agenda summary, the Commission on Standards for the Teaching Profession on Thursday, the commission will conduct a roll call; adopt the agenda; approve the minutes from the November 4 meeting; introduce speakers; and hear reports on the following: a vision statement; State Board of Education and Texas Education Agency activities; the alternative certification program (ACP); the centers for professional development and technology; and the institute for performance-based program approval. On Friday, the commission will develop an action plan for the institute; hear a summary of the meeting; and set the agenda for a meeting in February.

Contact: Delia Quintanilla, Director of the Commission on Standards for the Teaching Profession, (512) 463-9327.

Filed: November 24, 1993, 11:09 a.m.

TRD-9332624

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Advisory Commission on State Emergency Communications

Friday, December 10, 1993, 9:00 a.m.

15th Street and North Congress Avenue, John H. Reagan Building, Room 106

Austin

Rescheduled From: November 19, 1993, 9:00 a.m.

According to the agenda summary, the Call Box Task Force will call the order and recognize guests; hear public comment; motorist aid assessment background; motorist aid system briefings; current call box technology; cellular carrier coverage and system issues; ADA compliance; night visibility; rural versus urban systems; response agency operations and system design; system funding options and statewide legislative initiatives; IVHS applications; motorist aid system assessment objectives; motorist aid system implementation issues in Texas; review and consider future action; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: November 24, 1993, 9:00 a.m.

TRD-9332704

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Texas State Board of Registration of Professional Engineers

Tuesday, December 7, 1993, 9:30 a.m.

1917 IH-35 South, Board Room

Austin

According to the complete agenda, the Executive Director Search Committee meeting will be convened by Chairman Gloyna; roll call; recess into executive session in accordance with §551.074, Texas Government Code, to consider applicants for the executive director position; reconvene in open session to take any necessary actions; and adjourn.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: November 29, 1993, 11:38 a.m.

TRD-9332765

Tuesday, December 7, 1993, 10:00 a.m.

1917 IH-35 South, Board Room

Austin

According to the complete agenda, the Board meeting will be convened by Chairman Wilhelm; roll call; recess into executive session in accordance with §551.074, Texas Government Code, to consider applicants for the executive director position; reconvene in open session to take any necessary actions; and adjourn.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: November 29, 1993, 11:38 a.m.

TRD-9332766

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Fire Fighters' Pension Commission

Thursday-Friday, December 9-10, 1993, 1:00 p.m. and 8:30 a.m., respectively.

The Wyndham Hotel, IH-35 at Ben White Boulevard

Austin

According to the agenda summary, the Administrative Division the Senate Bill 411 Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees will meet for the purpose of presentations by value investment managers; review and discussion of reports by the consultant, accountant and actuary as well as staff reports; and discussion and possible action on final decision on value manager, custodian/wrap fee request for information, and revocation of monthly pension for government disability.

Contact: Helen L. Campbell, 3910 South IH-35, Suite 235, Austin, Texas, (512) 462-0222

Filed: November 24, 1993, 9:05 a.m.

TRD-9332603

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Texas Funeral Service Commission

Wednesday-Thursday, December 8-9, 1993, 8:30 a.m.

Sheraton Hotel, 500 North IH-35

Austin

Revised Agenda

According to the complete revised agenda to correct typographical error: request by Raymond Shotwell and John Cathey to discuss and propose changes to Rule 203.13 (minimum standards for embalming). (original agenda said "Rule 203. 12".)

Contact: Debbie Smith, 8100 Cameron Road, Suite 500, Austin, Texas 78754, (512) 834-9992.

Filed: November 29, 1993, 2:53 p.m.

TRD-9332796

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Texas General Land Office

Wednesday, December 8, 1993, 3:00 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 831

Austin

According to the complete agenda, the Veteran Land Board will discuss approval of the November 1, 1993, minutes of the Veterans Land Board meeting; consideration of all steps necessary for the issuance of Veterans Land Board Housing Assistance Bonds, Series 1994; and consideration of the selection of underwriter(s).

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171.

Filed: November 24, 1993, 11:11 a.m.

TRD-9332635

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Texas Crime Stoppers Advisory Council Criminal Justice Division, Office of the Governor

Wednesday, December 8, 1993, 6:00 p.m.

Hyatt Hotel, 208 Barton Springs Road, Texas Five and Six Room

Austin

According to the complete agenda, the council will call to order; approval of minutes; State Conference update; adoption of policy concerning retention of crime stoppers records; program manager's report; input from board members and coordinators attending school; and adjourn.

Contact: Paula Crampton, P.O. Box 12428, Austin, Texas 78701, (512) 463-1784.

Filed: November 29, 1993, 4:36 p.m.

TRD-9332810

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Texas Growth Fund

Tuesday, December 7, 1993, 10:30 a.m.

Teacher Retirement System Building, Fifth Floor, 1000 Red River

Austin

According to the agenda summary, the Board of Directors will review and approve minutes of the Special Meeting of the Board of Trustees held on November 16, 1993; review and approve Treasurer's report; receive nominations for and elect a Treasurer;

review and approve resolution designating signatories on Federal Reserve Bank joint safekeeping account; review and approve reimbursement expense reports from the current and former trustees of the Texas Growth Fund and authorize Transfer Notice for same; discuss acquisition or renewal of directors and officers, errors and omissions and mutual fund liability insurance policy and authorize Transfer Notice for same; review and approve proposed investment(s); and such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

Filed: November 29, 1993, 1:01 p.m.

TRD-9332767

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Texas Department of Health

Tuesday, December 14, 1993, 1:30 p.m.

Room T-607, 1100 West 49th Street

Austin

According to the complete agenda, the HIV Services Advisory Committee will approve the minutes of June 30, 1993; and discuss and possibly act on: Title II reapplication; public comments; and an update on the HIV Services Conference.

Contact: Betty Cooper, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7207. 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 29, 1993, 2:54 p.m.

TRD-9332799

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Texas Higher Education Coordinating Board

Thursday and Friday, December 9-10, 1993, 10:00 a.m.

602 East Commerce, San Antonio Chamber of Commerce

San Antonio

According to the complete agenda, the Coordinating Board this is a general planning session of the board. Members will review the year's planning activities, discuss future directions and share ideas.

Contact: Dr. Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: November 24, 1993, 9:05 a.m.

TRD-9332602

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Texas Historical Commission

Monday, December 13, 1993, 1:30 p.m.

Joe C. Thompson Conference Center (Corner of 26th and Red River), Room 1. 126

Austin

According to the complete agenda, the Governor's Interagency Task Force for Los Caminos del Rio Heritage Project will welcome and make opening remarks and introductions; presentation of Heritage Plan for Los Caminos del Rio Project; open discussion on proposed alternatives for project management and designation; presentation by Mexican officials on developments for the project in Mexico; review and consensus; and adjournment.

Contact: Mario L. Sanchez, P.O. Box 12276, Austin, Texas 78735, (512) 463-3575.

Filed: November 30, 1993, 8:23 a.m.

TRD-9332816

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Texas Department of Housing and Community Affairs

Monday, December 6, 1993, 8:30 a.m.

Texas Law Center, State Bar of Texas, 1414 Colorado, Room 104

Austin

According to the agenda summary, the Low Income Housing Tax Committee of the Board will need to consider and possibly act upon the following: update and status of LIHTC program; commitments for Low Income Housing Tax Credit Applications; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3934.

Filed: November 24, 1993, 1:33 p.m.

TRD-9332660

Monday, December 6, 1993, Noon

Texas Law Center, State Bar of Texas, 1414 Colorado

Austin

According to the agenda summary, the Programs Committee of the Board of Directors will meet to consider and possibly act upon the following: Housing Trust Fund-approval of clarification or waiver of rules; approval of change in terms for National Center for Housing Management; approval of single family 1983A refunding issues; multi-family-approval of multi-family restructure of existing MF bond issue, Series 1985A, Folsom IV Phoenix Mutual Life; approval of possible waive or rules regarding National Center for Housing Management Multi-family financings; HOME Program-approval of CHDO applicants and approval of delegation of authority to executive director for funding of HOME applicants; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas, (512) 475-3934.

Filed: November 24, 1993, 1:33 p.m.

TRD-9332659

Monday, December 6, 1993, 2:00 p.m.

Texas Law Center, (State Bar Building), 1414 Colorado, Room 104

Austin

According to the agenda summary, the Audit Committee of the Board will consider and possibly act upon: fiscal year 1994 audit plan; report on peer review; status of audits and special projects; status report on standard operating procedures; status report on fiscal year 1993 statewide audit by State Auditor's Office; status report on fiscal year 1993 audit by KPMG Peat Marwick/Martinez and Mendoza; report from compliance and monitoring; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3934.

Filed: November 24, 1993, 1:33 p.m.

TRD-9332661

Tuesday, December 7, 1993, 9:00 a.m.

Texas Law Center (State Bar Building), 1414 Colorado, Room 104

Austin

According to the agenda summary, the Board will consider and possibly act upon: approval of minutes of September 17, 1991, November 19, 1991, December 16, 1991, January 7, 1992, March 13-14, 1992, and May 29, 1992; approval of audit plan; housing trust fund-approval of clarification or waiver of rules, and approval of change in terms for National Center for Housing Management; approval of single family 1983A refunding issues; multi-family approval of multi-family restructure of existing MF bond issue, series 1985A, Folsom IV, Phoenix Mutual Life, approval of possible waiver of rules regarding National Center for Housing Management MF Financings; approval of Low Income Housing Tax Credit applications; HOME Program-approval of CHDO applicants and delegation of authority to executive director for funding of HOME application; executive directors report; executive session; and adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3934.

Filed: November 29, 1993, 4:20 p.m

TRD-9332809

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Texas Department of Insurance

Wednesday, December 1, 1993, 9:00 a.m.

According to the agenda summary, the State Board of Insurance will hold a meeting to consider the following matters: personnel; litigation; solvency; commissioner's orders; staff reports; approval of authorization for publication and comment of new 28 TAC §7.1012, domestic and foreign Insurance Company exam expenses and assessments, 1994; new 28 TAC §255.718, General Administrative Expense Assessment, Fiscal Year 1994; new 28 TAC §1. 414, assessment of Maintenance Taxes, 1993; new 28 TAC §1.415, maintenance Tax Surcharge for Workers' Compensation Insurance Fund, 1994; amendment to 28 TAC §7.83, creating new §9, confidentiality of exam reports; repeal of 28 TAC §7.63, annual statement blanks and other relevant material 1993 and 1994; repeal of Subchapter V 28 TAC §3.3501 and 3.3502, order of benefit determination, insured dependent children in coordination of benefits provision; granting of hearing/meeting on petition by Continental Insurance Companys of amendment to rules in Farm and Ranch Section and Farm and Ranch Owners Section of Texas Personal Lines Manual; approval of filings by: Old Republic Insurance Company and Old Republic Surety Company of individual and independent fidelity bond forms entitled "Include Designated Agents as Employees Covered for Employee Dishonesty"; Insurance Company of North America, et al, Philadelphia, PA, of commercial general liability endorsements LD-8969 (11/92) and LD-8870 (11/92), Leased Workers; Continental Casualty Company and Transportation Insurance Company of personal umbrella program rate and rule revision; Capital City Insurance Company, Inc. of commercial liability endorsement CL F&O#1 (01/88), fire damage and overcutting of timber liability coverage; Fireman's Fund Insurance Company of personal catastrophe coverage revised manual; Atlantic Lloyd's Insurance Company of Texas, Atlantic Mutual Insurance Company of Texas and Centennial Insurance Company of commercial property forms; and St. Paul Fire and Marine Insurance Company, et al, of commercial general liability endorsement 46190 Ed. 9-93, medical expenses endorsement.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 23, 1993, 4:34 p.m.

TRD-9332586

Monday, December 6, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against National Union Fire Insurance Company of Pittsburgh, Pennsylvania, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332634

Monday, December 6, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against American National Fire Insurance Company, Concord, Maryland, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332633

Tuesday, December 7, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

According to the complete agenda, the State Board of Insurance will hold a public hearing under Docket Number 2072 to consider final adoption of new Chapter 26, 28 TAC §§26.1-26.27, relating to Small Employer Health Insurance Regulations and related policy provisions, implementing Insurance Code, Chapter 26 (HB 2055, 73rd Legislature), and final adoption of new 28 TAC Subchapter F, §§3.501-3.512, relating to group health insurance mandatory conversion privileges.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6332.

Filed: November 24, 1993, 11:54 a.m.

TRD-9332649

Tuesday, December 7, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

Revised Agenda

According to the complete agenda, the Notice was filed under under Docket Number 2072, concerning the public hearing for final adoption. Please note that no testimony or written comments will be accepted at the hearing. The Board and Commissioner of Insurance will consider the final adoption of new Chapter 26, 28 TAC §§26.1-26.27, relating to Small Employer Health Insurance Regulations and related policy provisions, implementing Insurance Code, Chapter 26 (House Bill 2055, 73rd Legislature), and final adoption of new 28 TAC Subchapter F, §§3.501-3.512, relating to group health insurance mandatory conversion privileges.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 29, 1993, 4:30 p.m.

TRD-9332813

Tuesday, December 7, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Hill Country Life Insurance Company of Austin, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe, Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332632

Wednesday, December 8, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against William Eugene Howard, Dallas, Mills Life Agency, Incorporated, Dallas, and American General Life Insurance Company of Houston, who holds a license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332631

Wednesday, December 8, 1993, 10:00 a.m.

333 Gaudalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider the application of Timothy P. Hood, Austin, for a Group I, Legal Reserve Life Insurance Agent's License.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 11:10 a.m.

TRD-9332630

Wednesday, December 8, 1993, 1:00 p.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against American Alliance Insurance Company, Cincinnati, Ohio, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332629

Thursday, December 9, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Washington International Insurance Company, Schaumberg, Illinois, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332628

Thursday, December 9, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether an exemption should be granted to Planet Indemnity Company, which holds a certificate of authority issued by the Texas Department of Insurance, from capital and surplus requirements.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:10 a.m.

TRD-9332627

Thursday, December 9, 1993, 1:00 p.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Dan Thomas Ross, Austin, who holds a Group I, Legal Reserve Life Insurance Agent's License, Local Recording Agent's License, Variable contract Agent's License and Property and Casualty Risk Manager's License issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:09 a.m.

TRD-9332626

Friday, December 10, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Texas Department of Insurance will consider whether disciplinary action should be taken against Great American Insurance Company, Cincinnati, Ohio, which holds a certificate of authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-21, Austin, Texas 78701, (512) 463-6527.

Filed: November 24, 1993, 11:09 a.m.

TRD-9332625

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General Land Office

December 7, 1993, 10:00 a.m.

Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Room 831

Austin

According to the complete agenda, the School Land Board will discuss approval of previous board meeting minutes; pooling applications, Huff (2,920' Sand) Field, Refugio County; Wildcat Field, Duval County, Conn Brown Harbor, Aransas and Nueces County; Wildcat Field, Aransas and Nueces County; Gregg Wood Field, Starr County; GG (Strawn 5,400) Field, King County; Ellie C. Field, Duval Cunty; proposed amendment for publicaiton to §9.7(b)(3), Chapter 9, and §10.8, Chapter 10, Title 31, Texas ADministrative Code; Coastal public lands, commercial lease application, Galveston Bay, Galveston County; commercial lease assignment, Clear Lake, Harris and Galveston County; easement applicaiton, Galveston Bay, Chambers County; lease applicaiton, clear Madre, Willacy County, Laguna Madre, Kleberg County; Espiritu Santo, Calhoun County; executive session-pending and proposed litigation; executive session-direct land sale, Hidalgo County; Open Session-direct land sale, Hidalgo County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, (512) 463-5016.

Filed: November 24, 1993, 3:45 p.m.

TRD-9332705

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Texas Commission on Law Enforcement Officer Standards and Education

Friday, December 10, 1993, 10:00 a.m.

TCLEOSE Headquarters, 1033 LaPosada

Austin

Revised Agenda

According to the agenda revised summary (to add a new agenda item), the Texas Peace Officers' Memorial Advisory Committee will consider and take action on the request of the Fleetwood Memorial Foundation that their recent contribution of $5,000 be recognized as sponsoring the ground breaking ceremonies for the Memorial.

Contact: Edward T. Laine, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: November 29, 1993, 1:11 p.m.

TRD-9332770

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Texas Department of Licensing and Regulation

Monday, December 13, 1993, 10:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the agenda summary, the Air Conditioning and Refrigeration Contractors Advisory Board will discuss staff report; Article 5.43-2, Insurance Code and Fire Alarm rules; new rule proposed by the Boiler Board; proposed new rule on insurance; proposed rules for board regarding SB 383; process cooling and hearing equipment under Article 8861; and enforcement matters.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: November 30, 1993, 8:58 a.m.

TRD-9332819

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Texas Lottery Commission

Thursday, December 2, 1993, 10:00 a.m.

6937 North IH-35, American Founders Building, Fifth Floor, Room 523

Austin

According to the complete agenda, the Texas Lottery Commission called the meeting to order; consideration and designation of the form of the minutes to be used by the Texas Lottery Commission; approval of minutes of the November 22, 1993, meeting; consideration and possible approval and/or execution of an interagency contract between the Texas Lottery Commission and the Comptroller of Public Accounts relating to a transfer of the Lottery functions; consideration and possible delegation of authority relating to the execution of contracts, including the interagency agreement between the Texas Lottery Commission and the Comptroller of Public Accounts, from the Texas Lottery Commission to the Acting Executive Director; report by the Texas Attorney General's Office relating to the authority of the Texas Lottery Commissioners to hire employees to work directly for the Commissioners and relating to the possible designation of a member of the Attorney General's staff to counsel and advise the Commissioners and represent the Commission in legal proceedings; presentation on the laws and rules relating to the ethics requirements of the Texas Lottery Commissioners and/or employees; consideration and possible proposal of rules relating to the administration of the State Lottery Act, including rules relating to practice and procedure before the Texas Lottery Commission and rules relating to licensing of sales agents; future public meetings; may meet in executive session on any items listed above as authorized by the Open Meetings Act; and adjournment. For ADA assistance, call Michelle Guerrero, at (512) 323-3791 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 13528, Austin, Texas 78711-3528.

Filed: November 23, 1993, 3:52 p.m.

TRD-9332579

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Texas Council on Offenders with Mental Impairments

Monday, December 6, 1993, 2:00 p.m.

TDCJ-Pardons and Paroles Building, 8610 Shoal Creek Boulevard

Austin

According to the complete agenda, the Program Committee will call the meeting to order; hear introductions; approve minutes; hear overview of Juvenile Justice Issues; discuss cross-training strategies among criminal justice and human service agencies; agenda and schedule for next meeting; hear council staff report on program related issues; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: November 23, 1993, 3:38 p.m.

TRD-9332568

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Texas Natural Resource Conservation Commission

Wednesday, December 1, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 118

Austin

According to the agenda summary, the commission discussed addendum to uncontested agenda, presentation of agricultural award to Peggy Garner.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: November 23, 1993, 4:49 p.m.

TRD-9332587

Wednesday, December 8, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 188

Austin

According to the agenda summary, the commission will consider approving the following matters on the contested agenda: solid waste permits; hazardous waste permit; temporary variance to waste discharge permit; new waste discharge permit; amendment to waste discharge permit; minor amendment to waste discharge permit; renewal to waste discharge permits; district matters; water utility matters; settled hearings; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: November 24, 1993, 12:01 p.m.

TRD-9332652

Wednesday, December 8, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 118

Austin

According to the agenda summary, the commission will consider approving the following matters on the contested agenda: water quality enforcement; rules; examiner's proposal for decision; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. The Commission will also consider a motion for reconsideration.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: November 24, 1993, 12:01 p.m.

TRD-9332653

Wednesday, December 15, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 118

Austin

According to the agenda summary, the commission will hold an agenda hearing on Weirich Bros., Inc.'s application for a temporary permit to divert and use 432 acre-feet of water for a three-year period from the Pedernales River, tributary of the Colorado River, Colorado River basin, for mining purposes in Gillespie County. Application Number TA-7138.

Contact: Arlette R. Capehart, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2347

Filed: November 23, 1993, 1:48 p.m.

TRD-9332559

Wednesday, December 15, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 118

Austin

According to the agenda summary, the commission will hold an agenda hearing on North Mission Glen Municipal Utility District of Fort Bend County's, application for authority to renew standby fees on undeveloped property located in the District. Any revenues collected from the standby fees will be used to pay debt service on the bonds. The annual amount of standby fees requested is $285 per lot and $2,850 per acre of undeveloped land.

Contact: Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-6161.

Filed: November 23, 1993, 1:48 p.m.

TRD-9332560

Thursday, December 16, 1993, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149A

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Kempner Water Supply Corporation's appeal on wholesale water rates charged by Central Texas Water Supply Corporation (Certificate of Convenience and Necessity Number 11492) in Bell County. Docket Number 30197-M.

Contact: Pat Robards, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: November 23, 1993, 1:48 p.m.

TRD-9332561

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State Pension Review Board

Wednesday, December 8, 1993, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, PRB Conference Room, Fourth Floor, Room 406

Austin

According to the complete agenda, the board will call the meeting to order; roll call; reading and adoption of minutes of previous meeting; executive director's report; discussion and possible action concerning RFP for actuarial contract; discussion and possible action on selection of interim actuarial study; election of officers (chairman and vice-chairman) for calendar year 1994; discussion and possible action on old business; announcements and invitation for audiences participation; adjournment; and announce date of next meeting.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: November 29, 1993, 9:58 a.m.

TRD-9332755

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Texas Department of Public Safety

Monday, December 6, 1993, 1:30 p.m.

DPS Regional Office, 350 West IH-30

Garland

According to the complete agenda, the Public Safety Commission will discuss approval of minutes; budget matters; internal audit report; personnel matters; pending and contemplated litigation; real estate matters; public comment; miscellaneous; and other unfinished business.

Contact: James R. Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: November 24, 1993, 9:49 a.m.

TRD-9332611

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Public Utility Commission of Texas

Wednesday, December 1, 1993, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Commission set the rate of interest on deposits held by utilities for calendar year 1994, pursuant to Texas Civil Statutes, Article 1440a (Vernon Supplement 1993); set the interest rate to be applied in calendar year 1994 to overcharges and certain undercharges by a utility, pursuant to Public Utility Commission Substantive Rule 23.45(g); and considered the following dockets: P-12208, 12121, 12172, and 12370.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 23, 1993, 3:39 p.m.

TRD-9332574

Wednesday, December 1, 1993, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative discussed reports, discussion and action on approval of comments to the Federal Communications Commission regarding the Notice of Proposed Rulemaking on the treatment of affiliate transactions CC Docket Number 93-251; report from the Federal-State-Local Agenda Planning Conference on the National Infrastructure Initiative; approval of new assessment percentages for funding of the intrastate portion of Relay Texas; Gulf States Utilities Company/Entergy Services, Inc. merger at FERC; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvened for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 23, 1993, 3:39 p.m.

TRD-9332572

Thursday, December 9, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Commission will hold a workshop on Project Number 12190, proposed amendments to P.U.C. Substantive Rule 23.23(c) in the Commission's office. This workshop is open to the public.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 24, 1993, 8:05 a.m.

TRD-9332600

Friday, December 17, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a joint prehearing conference in Docket Number 11793-application of Gulf States Utilities Company to sell facilities to Sam Rayburn Municipal Power Agency.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 30, 1993, 9:34 a.m.

TRD-9332822

Friday, December 17, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a joint prehearing conference in Docket Number 12423-petition of general counsel for an inquiry into the reasonableness of the rates and services of Gulf States Utilities Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 30, 1993, 9:35 a.m.

TRD-9332823

Monday, July 11, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12457-application of Border to Border Communications, Inc. for approval of local exchange rates and tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 29, 1993, 1:37 p.m.

TRD-9332773

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Railroad Commission of Texas

Thursday, December 9, 1993, 1:30 p.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will conduct the Sixth Annual State of the Transportation Industry Conference, pursuant to Texas Civil Statutes, Article 6252-17.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: November 24, 1993, 9:42 a.m.

TRD-9332607

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Texas Rehabilitation Commission

Thursday, December 9, 1993, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Public Hearing Room, First Floor

Austin

According to the complete agenda, the Regular Board Meeting of the Board of the Texas Rehabilitation Commission will take roll call; introduction of guests; invocation; approval of minutes of board meeting of August 13, 1993; commissioner's comments; update on social security/Texas Rehabilitation Commission relationship; update of disability determination services; update on rehabilitation services; update on strategic planning meeting; annual independent audit status report, Article V, §32; management audit update; executive session; and adjournment. NOTE: If all agenda items have been completed, the board will adjourn. If all agenda items have not been completed, the board will recess until 9:30 a.m., Friday, December 10, 1993, to reconvene in the Public Hearing Room, Brown-Heatly Building, Austin.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4051 or TDD (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: November 30, 1993, 8:44 a.m.

TRD-9332817

Friday, December 10, 1993, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Public Hearing Room, First Floor

Austin

According to the complete agenda, the Regular Board Meeting of the Board of the Texas Rehabilitation Commission will take roll call; introduction of guests; commissioner's comments; continuation of Board agenda of December 9, 1993; executive session; and adjournment.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4051 or TDD (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: November 30, 1993, 8:45 a.m.

TRD-9332818

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Center for Rural Health Initiatives

Friday, December 3, 1993, 9:30 a.m.

Southwest Tower Building, Seventh Floor Conference Room, 211 East Seventh Street

Austin

Emergency Meeting

According to the complete agenda, the Outstanding Rural Scholar Recognition Program Advisory Committee will discuss and possibly act on: minutes of the previous meeting; program status report to include current students, 1993 graduates, service obligations completed, reappointment of committee member and Fiscal Year 1994 budget estimate; recognition application deadline for 1994; limit on number of loan awards per sponsor; committee recommendations; and schedule next meeting.

Reason for Emergency: Quorum for meeting was confirmed on November 29, 1993.

Contact: William Lydon, 211 East Seventh Street, #915, Austin, Texas 78701, (512) 479-8891.

Filed: November 29, 1993, 4:49 p.m.

TRD-9332811

Wednesday, December 8, 1993, 1:30 p.m.

Texas Employment Commission, Room 304T, 1117 East Trinity

Austin

According to the complete agenda, the Executive Committee will discuss and possibly act on: minutes of the October 6, 1993, meeting; executive director's report including request for proposal for Rural Health Network development and agency activities; Rural Health Clinic Contracts program update; Community Scholarship Program including review and approval of proposed rules and discuss implementation plan; Physician Assistant/Nurse Practitioner Registry update; Relief Services update; Outstanding Rural Scholar Recognition Program update; Texas Small Employer Health Insurance Act; Advisory Committee reports; and schedule next meeting.

Contact: Laura M. Jordan, 211 East Seventh Street, #915, Austin, Texas 78701, (512) 479-8891.

Filed: November 29, 1993, 4:50 p.m.

TRD-9332812

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Board of Tax Professional Examiners

Wednesday, December 8, 1993, 1:00 p.m.

Robertson Room, Doubletree Hotel, 6505 North IH-35

Austin

According to the agenda summary, the board will call the meeting to order; quorum determination; introduction of guests and approval of board's August 30, 1993, meeting; discussion and possible action items include approval of certification and recertification of registrants; an interagency contract with the Attorney General; an interagency contract with the Department of Information Resources; a report from the chair of the Professional Standards Committee; discussion and possible action on the board's examination failure policy and/or classification system and the board's absence for property taxation-inactive status policy and procedure; as well as authorizing the executive director to establish necessary committee(s) to review and/or modify any and all of the board's examinations, and the executive director's report; public comments will be received; and adjournment.

Contact: Peter A. Stone, 4301 Westbank, B, 140, Austin, Texas 78746, (512) 329-7981.

Filed: November 29, 1993, 9:58 a.m.

TRD-9332754

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The Texas State University System

Thursday-Friday, December 2-3, 1993, 1:45 p.m. and 9:00 a.m. respectively.

First Floor Conference Room, Harte Student Center, Angelo State University

San Angelo

According to the agenda summary, the Board of Regents will discuss review of matters of the Board and the four Universities in the System including: all matters reviewed by the Construction and Planning Committee (see Construction and Planning Committee agenda), the Curriculum Committee (see Curriculum Committee agenda) and the Finance Committee (see Finance Committee agenda) as submitted to the full Board for review and approval; personnel actions including new employees, promo-

tions, resignations, terminations, salary-salary supplements and special appointment of any system employee including the Presidents and Chancellor; discussion of litigation; budgetary changes and contract approvals at each university and the system administrative office; acceptance of gifts; admission requirements and fees; room rates; and land leases, purchases, easements and sales. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe Street, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: November 24, 1993, 1:09 p.m.

TRD-9332658

Friday, December 3, 1993, 10:30 a.m.

First Floor Conference Room, Harte Student Center, Angelo State University

San Angelo

According to the complete agenda, the Curriculum Committee will discuss review of matters of the Board and the four Universities in the System including: all matters of curriculum, including Twelfth Class Day and Fourth Class Day reports; and substantive and non-substantive program changes, new degree programs, additions, deletions and retention of courses, additions and deletions of degree courses, admission standards, out-of-state and out-of-country studies. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe Street, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: November 24, 1993, 1:09 p.m.

TRD-9332656

Friday, December 3, 1993, 11:30 a.m.

First Floor Conference Room, Harte Student Center, Angelo State University

San Angelo

According to the complete agenda, the Planning and Construction Committee will discuss review of construction projects and documents for the four Universities in the System including: final acceptance of Women's High Rise Sprinkler System-Phase I, repairs to various university buildings, and preliminary plans for the central plant modifications at Angelo State University; contract award for Career Planning and Placement Center Offices, preliminary plans for the Sam Houston Museum Education Center and the renovation of the Art Department Offices, selection of architect for the renovation of the Texas Regional Institute for Environmental Studies at Sam Houston State University; selection of architect for renovation of the General Classroom Building and the design of the New Student Center, final acceptance of the Energy Conservation Improvements and approval of land acquisition at Southwest Texas State University; and final acceptance of the Ceramics-Sculpture Building, the Fine Arts Building Modification and the Outdoor Theater Expansion at Sul Ross State University. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe Street, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: November 24, 1993, 1:09 p.m.

TRD-9332657

Friday, December 3, 1993, Noon.

First Floor Conference Room, Harte Student Center, Angelo State University

San Angelo

According to the complete agenda, the Finance Committee will discuss review of financial matters of the System Office and the four Universities in the System including approval of revised Investment Guidelines, adjustment of budgets, approval of rates and fees, refunding of Building Use and Combined Fee Revenue Bonds and internal audit reports from Angelo State University, Sam Houston State University, Southwest Texas State University, and Sul Ross State University. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe Street, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: November 24, 1993, 1:09 p.m.

TRD-9332655

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Texas Woman's University

Friday, December 3, 1993, 1:30 p.m.

16th Floor, Administration Conference Tower

Denton

According to the agenda summary, the Board of Regents will meet in executive session; discuss approval of minutes of August 27, 1993, meeting; consider approval of personnel additions and changes, gifts and grants, contracts and agreements, federal funds, insurance, certificates of substantial completion; consider approving authority to set tuition rates for graduate programs at $20 per semester credit hour above rates for undergraduate programs; authorization for M. B. Wardrup, Accounting Manager, and K. A. Loyd and C. R. Trevino, Accountants, to approve vouchers submitted to the State Comptroller of Public Accounts for payment; review of 1992-1993 internal audit annual report, approval of small class report, approval of a resolution designating President Emerita; and reports on the Texas Plan update, reports of the committee chairs, and report from the Interim President.

Contact: Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1993, 2:51 p.m.

TRD-9332795

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Texas Woman's University, Board of Regents

Friday, December 3, 1993, 9:00 a.m.

14th Floor, Administration Conference Tower

Denton

According to the complete agenda, the Finance and Audit Committee will consider approval of the minutes of the Committee meeting of August 27, 1993; consider recommending approval of personnel additions and changes, gifts and grants, contracts and agreements, federal funds, insurance, certificates of substantial completion, authority to set tuition rates for graduate programs at $10 per semester credit hour above the rates for undergraduate programs, authorization for M. B. Wardrup, Accounting Manager, and K. A. Loyd and C. R. Trevino, Accountants, to approve vouchers submitted to the State Comptroller of Public Accounts for payment; hear the 1992-1993 internal audit annual report and the 1993-1994 first quarter internal audit activity report; and report of the Committee Chair.

Contact: Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1993, 2:50 p.m.

TRD-9332791

Friday, December 3, 1993, 9:45 a.m.

14th Floor, Administration Conference Tower

Denton

According to the complete agenda, the Student Affairs Committee will consider approval of the minutes of the Committee meeting of August 27, 1993; report on activities of the Office of Student Life; and report of the Committee Chair.

Contact: Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1993, 2:50 p.m.

TRD-9332792

Friday, December 3, 1993, 10:15 a.m.

14th Floor, Administration Conference Tower

Denton

According to the complete agenda, the Academic Affairs Committee will consider approval of the minutes of the Committee meeting of August 27, 1993; consider recommending approval of the small class report; update on the Texas Plan; and report of the Committee Chair.

Contact: Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1993, 2:50 p.m.

TRD-9332793

Friday, December 3, 1993, 10:45 a.m.

14th Floor, Administration Conference Tower

Denton

According to the complete agenda, the Committee on Institutional Advancement will consider approval of the minutes of the Committee meeting of August 27, 1993; report on alumnae relations, development, and public information activities of the Office of Institutional Advancement; and report of the Committee Chair.

Contact: Patricia A. Sullivan, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1993, 2:50 p.m.

TRD-9332794

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University of Houston System

Thursday, December 2, 1993, 9:00 a.m.

University of Houston System Offices, Conference Room One, 1600 Smith, 34th Floor

Houston

According to the agenda summary, the Finance and Audit Committee discussed and/or approved the following: internal audit report, implementation status-Arthur Andersen and Company-internal control reports-UH System; Amendment Number 1, long range internal audit plan, Fiscal Year 1994-1996-UH System; and executive session.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: November 24, 1993, 11:11 a.m.

TRD-9332638

Thursday, December 2, 1993, 9:00 a.m.

University of Houston System Offices, Conference Room One, 1600 Smith, 34th Floor

Houston

According to the complete agenda, the Facilities Planning and Building Committee discussed and/or approved the following: schematic architectural design and revised project program, music building-University of Houston.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: November 24, 1993, 11:11 a.m.

TRD-9332639

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University Interscholastic League

Thursday, December 2, 1993, 1:00 p.m.

Poteet High School, Little Theatre

Mesquite

Emergency Meeting

According to the agenda summary, the State Executive Committee discussed appeal of ruling of ineligibility of student athlete at South Garland High School by District 12 AAAAA executive committee; case delegated to the State Executive Committee by the Commissioner of the Texas Education Agency; and appeal of the automatic penalty for violation of the Athletic Code, §1208(h), Doug Williams, Winnsboro High School.

Reason for Emergency: Received verification witnesses could appear to testify.

Contact: Bonnie Northcutt, P.O. Box 8028, Austin, Texas 78713, (512) 471-5883.

Filed: November 29, 1993, 3:12 p.m.

TRD-9332800

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University of North Texas/University of North Texas Health Science Center

Thursday, December 2, 1993, 1:30 p.m.

Rare Book Room, Medical Education Building III, University of North Texas Health Science Center

Fort Worth

Emergency Meeting

According to the complete agenda, the Board of Regents, Role and Scope Committee, UNTHSC: discussed appointment of advisory council; personnel transaction; revision to MSRDP bylaws and policy documents; and affiliation with OMCT. UNT: Routine academic reports; Professor Emeritus recommendations: regents' faculty lecture; personnel transactions; mission statement; athletic update. UNTHSC and UNT: Resolution of Appreciation for Billie Parker; Tarrant Medical Education Consortium Strategic Plan.

Reason for Emergency: Due to University being closed for the holidays, notices were not sent in time.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 29, 1993, 2:49 p.m.

TRD-9332789

Thursday, December 2, 1993, 1:30 p.m.

Board Room, Eighth Floor, Medical Education Building I, University of North Texas Health Science Center

Fort Worth

Emergency Meeting

According to the complete agenda, the Advancement Committee, Board of Regents, UNTHSC: discussed gift report; strategic plan update; faculty recruitment; scholarship program. UNT: Resolution of Appreciation for Edward V. Smith III; gift report; goals for 1993-1994; athletic issues; joint planning with UNTHSC; capital campaign-Phase II; and special activities.

Reason for Emergency: Due to University being closed for the holidays, notices were not sent in time.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 29, 1993, 2:49 p.m.

TRD-9332786

Thursday, December 2, 1993, 3:30 p.m.

Room 810, Medical Education Building I, University of North Texas Health Science Center

Fort Worth

According to the complete agenda, the Board of Regents, Budget and Finance Committee, UNTHSC: discussed tuition and fees for graduate students; federal correctional institution contract; gift report; report on interest earnings; internal audit update. UNT: Financial advisor; bond counsel; resolution directing the vice-president for fiscal affairs to proceed with up to $10,000,000 in general tuition revenue bonds as authorized by §55.1717, Texas Education Code; report on interest earnings; and internal audit update.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 29, 1993, 2:49 p.m.

TRD-9332788

Thursday, December 2, 1993, 4:00 p.m.

Board Room, Eighth Floor, Medical Education Building I, University of North Texas Health Science Center

Fort Worth

According to the complete agenda, the Board of Regents, Facilities Committee, UNTHSC: discussed renaming of building; project status report. UNT: Bloomfield School relocation; purchase and adopt library/storage facility; Fouts Field expansion; lease of Missile Base property; project status report; storage status report; and master planning status report.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 29, 1993, 2:49 p.m.

TRD-9332787

Friday, December 3, 1993, 8:00 a.m.

Board Room, Eighth Floor, Medical Education Building I, University of North Texas Health Science Center

Fort Worth

According to the complete agenda, the Board of Regents, UNTHSC: will discuss approval of minutes; executive session (UNTHSC/UNT-legislative update; UNT-affiliation; current lawsuits; UNT-liability insurance; I-A Football; management faculty issue; English faculty issue; search for athletic director; status of provost; chancellor's contract; lease of missile base; fraternity housing leases); advisory council appointment; personnel transaction; MSRDP bylaws and policy documents; gift report; MSRDP update; renaming of building; project status report; health care reform; and Department of Pharmacology. UNT: Academic reports; Professor Emeritus recommendations; regents' faculty lecture; personnel; mission statement; financial advisor; bond counsel; resolution for general tuition revenue bonds; gift report; Bloomfield School relocation; Fouts Field expansion; lease of Missile Base property; project status report; resolution of appreciation for Edward V. Smith III; resolution of appreciation of Billie Parker; Tarrant Medical Education Consortium Strategic Plan; Texas Advanced Research and Technology Program awards.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: November 29, 1993, 2:50 p.m.

TRD-9332790

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Texas Workers' Compensation Commission

Thursday, December 2, 1993, 9:00 a.m.

Rooms 910-911, Southfield Building, 4000 South IH-35

Austin

According to the agenda summary, the Commission called the meeting to order; approval of minutes; action on applications for self-insurance; rules for adoption: Chapter 110; rules for possible proposal and/or amendment: Chapter 129, 130, 124, 126, 141, 133, 165, and 110; rules for repeal: Chapter 133; executive session; action on matters considered in executive session; discussion, consideration, and possible action on any issues regarding rules or policy; general reports and action; future public meetings; and adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: November 23, 1993, 4:50 p.m.

TRD-9332588

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Regional Meetings

Meetings Filed November 23, 1993

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew, (Aqua Office), Bastrop, November 29, 1993, at 7:30 p.m. Information may be obtained from Carol Kadura, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9332575.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, November 29, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9332571.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, December 1, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9332570.

The Gulf Bend MHMR Center Board of Trustees met at 1404 Village Drive, Victoria, December 2, 1993, at noon. Information may be obtained from Sharon Pratka, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9332565.

The Jasper County Appraisal District Appraisal Review Board will meet at 137 North Main, Jasper County Appraisal District Office, Jasper, December 9, 1993, at 9:00 a.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9332562.

The Jasper County Appraisal District Appraisal District Board of Directors will meet at 137 North Main, Jasper County Appraisal District Office, Jasper, December 9, 1993, at 5:00 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9332566.

The Middle Rio Grande Development Council Texas Review and Comment System (Emergency Revised Agenda) met at the Civil Center, Reading Room, 300 East Main, Uvalde, November 24, 1993, at 1:00 p.m. the emergency revised agenda was necessary due to applicant needed to include applications for review in order to meet deadline requirements. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9332573.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at Pecan Valley MHMR Region Clinical Office, 104 Pirate Drive Granbury, December 1, 1993, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9332558.

The San Antonio River Industrial Development Authority Board of Directors will meet 100 East Guenther Street, San Antonio, December 6, 1993, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283, (210) 227-1373. TRD-9332563.

The Trinity River Authority of Texas Board of Directors met at 5300 South Collins, Arlington, December 1, 1993, at 10:30 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9332564.

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Meetings Filed November 24, 1993

The Alamo Area Council of Governments met at 118 Broadway, Suite 420, San Antonio, November 30, 1993, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 226-5201. TRD-9332706.

The Alamo Area Council of Governments Area Judges met at 118 Broadway, Suite 420, San Antonio, November 30, 1993, at 11:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 226-5201. TRD-9332707.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 420, San Antonio, November 30, 1993, at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 226-5201. TRD-9332708.

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew, (Aqua Office), Bastrop, November 29, 1993, at 7:30 p.m. (Revised Agenda) . Information may be obtained from Carol Kadura, P.O. Drawer P. Bastrop, Texas 78602, (512) 303-3943. TRD-9332621.

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, December 2, 1993, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065-0139, (210) 742-3591. TRD-9332703.

The Austin-Travis County MHMR Center Public Relations Committee met in Conference Room #1, 1430 Collier Street, Austin, December 1, 1993, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4141. TRD-9332718.

The Bandera County Appraisal District Board of Directors met at 1116 Main Street, former Bandera Bulletin Building, Bandera, December 2, 1993, at 5:00 p.m. Information may be obtained from P. H. Coates IV, 1116 Main Street, Bandera, Texas 78003, (210) 796-3039. TRD-9332604.

The Bosque County Central Appraisal District Appraisal Review Board met at Highway Six and The Circle, Meridian, November 30, 1993, at 9:00 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9332637.

The Brazos Valley Development Council Regional Review Committee will meet at 1706 East 29th Street, Bryan, December 9, 1993, at 1:30 p.m. Information may be obtained from Jill Hyde, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9332666.

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, December 14, 1993, at 9:00 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78610, (512) 756-8291. TRD-9332654.

The Creedmoor Maha Water Supply Corporation Board of Directors met at 1680 Laws Road, Mustang Ridge, December 1, 1993, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113. TRD-9332605.

The Dallas Central Appraisal District Board of Directors met at 2949 North Stemmons Freeway, Dallas, December 1, 1993, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9332601.

The Lower Colorado River Authority Retirement Benefits Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, November 30, 1993, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9332613.

The Lower Colorado River Authority Planning and Public Policy Committee will meet at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, December 7, 1993, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9332612.

The Middle Rio Grande Development Council Board of Directors will meet at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, December 22, 1993, at 1:00 p.m. Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9332744.

The Shackelford Water Supply Corporation Regular Meeting Director's Meeting met at Fort Griffin Restaurant, Albany, December 1, 1993, at Noon. Information may be obtained from Gaynell Perkins, P.O. Box 1295, Albany, Texas 76430, (817) 345-6868. TRD-9332636.

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Meetings Filed November 29, 1993

The Bell-Milam-Falls Water Supply Corporation Board of Directors met at K-Bob's Restaurant, Temple, December 2, 1993, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9332772.

The Bosque County Central Appraisal District Appraisal Review Board will meet at Highway 6 at the Circle, Meridian, December 3, 1993, at 9: 00 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9332797.

The Capital Area Planning Council General Assembly will meet at the Wyndham Southpark Hotel, IH-35 South at Ben White Boulevard, Austin, December 8, 1993, at 11:30 a.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9332764.

The Garza County Appraisal District Board of Directors will meet at the Appraisal District Office, 124 East Main, Post, December 14, 1993, at 8: 30 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9332751.

The Golden Crescent Regional Planning Commission Board of Directors will meet at Building #102, Victoria Regional Airport, Victoria, December 8, 1993, at 5:00 p.m. Information may be obtained from Wanda Mercer, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9332814.

The Heart of Texas Council of Governments Solid Waste Management Council met at 300 Franklin Avenue, Waco, December 1, 1993, at 9:30 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9332771.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main Street, Hallettsville, December 10, 1993, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9332768.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, December 13, 1993, at 4:00 p m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9332769.

The Millersview-Doole Water Supply Corporation Board of Directors will meet at the Corporation's Business Office, One Block West of FM 765 and FM 2134, Millersview, December 6, 1993, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9332750.

The Panhandle Regional Planning Commission Board of Directors will meet at 415 West Eighth Avenue, PRPC Board Room, Amarillo, December 9, 1993, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9332815.

The Region IX Education Service Center Board of Directors will meet at Region IX Education Service Center, 301 Loop 11, Wichita Falls, December 8, 1993, at 12:30 p.m. Information may be obtained from Dr. Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9332806.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, December 9, 1993, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9332749.

The Texas Regional Planning Commissions Employee Benefit Board of Trustees met at the Omni Austin Hotel, Executive Room, Austin, December 1, 1993, at 1:00 p.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, (806) 762-8721. TRD-9332748.

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Contour Cloth
10-E

Name: Jarod Frannea
Grade: 11
School: Skyline High School, Dallas ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas State Board of Public Accountancy

Notice of Public Hearing

The Public Accountancy Board will hold a public hearing at 10:00 a.m., January 19, 1994, to consider testimony on proposed changes to four of the *Rules of Professional Conduct*.

The hearing will be at the William Hobby State Office Building, 333 Guadalupe, Room 100, Austin.

Oral testimony will be limited to ten minutes, and a transcript of oral comments must be submitted as well. Written testimony must be received by January 5, 1994, and will become part of the record.

The rules to be discussed include §501.2 (Definitions), in which both the definitions of Advertising and Practice of Public Accountancy would be amended. Other proposed amendments are to §§501.40 (Licensing/Registration Requirements); 501 43 (Advertising), and 501.44 (Soliciting). The proposed amendments and new rule are published in the proposed section with bold faced type indicating proposed new language, and with bracketed verbiage indicating language proposed to be deleted.

Issued in Austin, Texas on November 19, 1993.

TRD-9332682 William Treacy
Executive Director
Texas State Board of Public Accountancy

Filed: November 24, 1993

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Texas Bond Review Board

Bi-Weekly Report on the 1993 Allocation of the State Ceilings on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of November 6, 1993-November 19, 1993. Pursuant to Article 5190.9a, §2(d), on September 1, any amounts of volume cap remaining in the separate subceilings are combined under one ceiling. All applications that have not received volume cap are placed on one list in an order determined by a lottery number received in January, or by date of application, regardless of project type. On September 1 reservations for the remaining volume cap are given.

Total amount of the $882,800,000 state ceiling remaining unreserved as of November 19, 1993: $13,748,700.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from November 6, 1993-November 19, 1993: Montgomery County HFC, Eligible Borrowers, Mortgage Credit Certificates, $18, 219,900.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from November 6, 1993-November 19, 1993 San Antonio HFC, Stonegate Apartments, Residential Rental, $4,500,000.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from November 6, 1993-November 19, 1993: Donna HFC, MAGI, Inc., Residential Rental, $10,000,000; Dallas HFC, Parkway Place, Residential Rental, $10,750,000; San Antonio HFC, Atrium Apartments, Residential Rental, $8,500,000.

Following is a comprehensive listing of applications which released a portion of their reservation pursuant to the Act from November 6, 1993-November 19, 1993: None.

Issued in Austin, Texas, on November 22, 1993.

TRD-9332592 Beverly S Bunch
Interim Executive Director
Texas Bond Review Board

Filed. November 23, 1993

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Office of Consumer Credit Commissioner

Request for Interpretation of Article 79

Under provisions of Title 79, Revised Statutes, §(10), Article 2.02A, Texas Civil Statutes, Article 5069 02A, the consumer credit commissioner may issue interpretations of Title 79, Revised Statutes, Texas Civil Statutes, Article 5069-1.01 et seq. The consumer credit commissioner has received the following request for an interpretation.

Request Number 94-1. Request from Sam Kelley inquiring if the dollar amount of a "unit property tax value" referenced in Senate Bill 878 finally passed by the 73rd Legislature and enacted into law should be treated as taxes, and should, therefore be included within the "any taxes" provisions of Articles 5069-6.01(j)(iii) and 7.01(g)(ii).

Issued in Austin, Texas, on November 24, 1993.

TRD-9332662 Al Endsley
Consumer Credit Commissioner

Filed: November 24, 1993

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Texas Department of Criminal Justice

Notice of Contract Award

The award of this consultant contract is filed in accordance with the Texas Government Code, §2254.030. The Texas Department of Criminal Justice published a request for Consultant Services in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7186), to obtain Consultant

Services to assist the Texas Board of Criminal Justice in its search and selection of an Executive Director.

The due dates of reports to the Board will be on an ongoing basis during the term of the contract. The proposal selected was that of Ford Webb Associates, Inc., P.O. Box 645, Carlisle, MA. 01741.

The beginning date of the contract is November 18, 1993. The contract will end upon completion of services. The total value of the contract is $26,000 plus expenses. For further information, please call (512) 463-9988.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332610 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: November 24, 1993

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Employees Retirement System of Texas

Consultant Contract Award

This award for consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c, §2(a)(6). The consultant will perform a readiness study for the Employees Retirement System of Texas (ERS) concerning ERS' use of PORTIA software, will analyze ERS' current situation on site in Austin, and will prepare recommendations relating to current investment operations and the proposed implementation plan for the use of the PORTIA software. The consultant is Thomson Financial Services, 22 Pittsburgh Street, Boston, Massachusetts 02210. The total cost of the contract is an amount not to exceed $20,000 and is effective from November 5, 1993-December 31, 1993.

Issued in Austin, Texas, on November 22, 1993.

TRD-9332556 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Filed: November 23, 1993

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Texas Department of Health

Correction of Error

The Texas Department of Health submitted a Notice of Intent to Revoke Radioactive Material Licenses, which appeared in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8379).

The radioactive material license number for Canam Diagnostics Company, Inc. of Arlington was incorrectly submitted as L04176.

The correct radioactive material license number for Canam Diagnostics Company, Inc. is L04172.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332582 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 23, 1993

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Notice of Emergency Cease and Desist and Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Trinity Industries, Inc. (licensee-L01539) of Houston to cease and desist from operating or using any source of radiation and/or conducting radiographic operations, for which a license is required in Texas. The bureau also ordered the licensee to surrender to the bureau for impoundment all radioactive material in its possession. The order was issued because the licensee no longer had an authorized radiation safety officer, approved users of radioactive materials, and an established radiation safety program.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 24, 1993.

TRD-9332617 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 24, 1993

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Notice of Emergency Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered B&W Sales and Services, Inc. of Odessa to immediately surrender to the bureau for impoundment all radioactive material in their possession in Texas. The order was issued because the company is in possession of radioactive materials for which it does not possess a valid Texas radioactive material license. The order will remain in effect until the company is issued a radioactive material license authorizing such possession and use, or has arranged for the proper disposal or transfer of the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 24, 1993.

TRD-9332616 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 24, 1993

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Houston Inspection, Inc., Houston, R17113; Charter Palms Hospital, McAllen, R12388; First City, Texas-Houston, N.A., Houston, R10368; Jackson T. Devine, D.D.S., Arlington, R07403; Southwest Texas State University, San Marcos, R04030; Oaklawn Partners, Ltd., Dallas, Z00429.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 24, 1993.

TRD-9332614 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 24, 1993

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: El Paso Refinery, L.P., El Paso, L04392; Bridgeport Hospital, Fort Worth, L03232; Gulf Coast Hospital, Baytown, L04548; ENSR Consulting & Engineering, Houston, L03195.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 24, 1993.

TRD-9332615 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: November 24, 1993

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Texas Department of Insurance

Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for admission in Texas for Eastern Atlantic Insurance Company, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

2. Application for Incorporation in Texas for PCA Life Insurance Company of Texas, Inc., a domestic life, accident, and health company. The home office is in Austin.

3. Application for Incorporation in Texas for Texas Medical Insurance Company, a domestic fire and casualty company. The home office is in Austin.

4. Application for admission in Texas for The Travelers Life and Annuity Company, a foreign life, accident, and health company. The home office is in Hartford, Connecticut.

5. Application for name change in Texas for United Republic Reinsurance Company, a domestic fire and casualty company. The proposed new name is United Republic Insurance Company. The home office is in Houston.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332709 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: November 24, 1993

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Board of Law Examiners

Rules Governing Admission to the Bar of Texas

The Board of Law Examiners, a judicial agency under the jurisdiction of the Supreme Court of Texas, has proposed that the Supreme Court adopt amendments to the *Rules Governing Admission to the Bar of Texas*. The Court has directed the Board to publish the proposed rules and an explanation of the proposal in both *The Texas Register* and in the January issue of the *The Texas Bar Journal*, so that interested persons will have the opportunity to submit comments to the Board prior to the Court's final action on the proposed amendments. The Supreme Court's rulemaking authority concerning the Board of Law Examiners is found in the Texas Government Code, §82.022.

The Supreme Court has determined that, prior to its consideration of adopting such amendments, the public should be invited to review and comment on the proposed amendments, through January 14, 1994. Comments concerning these proposed amendments should be submitted in writing, no later than Friday, January 14, 1994, to: Rachael Martin, Executive Director, Board of Law Examiners, P.O.

Box 13486, Tom C. Clark Building, Suite 500, Austin, Texas 78711-3486, or via facsimile to (512) 463-5300.

The Board will meet on January 15-16, 1994, in Suite 500, Tom C. Clark Building, Austin, and will consider all comments and vote on a final recommendation to the Supreme Court concerning these amendments. It is anticipated that these amendments will be effective prior to the administration of the February 1994 Texas Bar Examination, and the amendments affecting the examination will apply to that administration.

PROPOSED AMENDMENTS TO *RULES GOVERNING ADMISSION TO THE BAR OF TEXAS*

Rule No.	Amended Language	Explanation
II(a)	(a) To be eligible for admission as a licensed attorney in Texas, the Applicant shall: * * * (5) qualify under one of the following categories: (A) be a United States citizen; (B) be a United States National; (C) be an alien lawfully admitted for permanent residence; (D) be an alien lawfully admitted for temporary residence under 8 USC Sec. 1255; (E) be admitted as a refugee under 8 USC Sec. 1157; or (F) be granted asylum under 8 USC Sec. 1158. * * * (9) pay the appropriate licensing fee to the Clerk of the Supreme Court of Texas; (10) enroll in the State Bar of Texas by filing an enrollment form and paying the appropriate fees and assessments due within the time specified in Article III, Sec. 2(A) of the State Bar Rules.	The amendment to Rule II(a)(5)(D) deletes references to erroneously included citations to particular sections of the United States Code. The new subsections (9) and (10) clearly specify that payment of licensing fees and membership in the State Bar are required before a law license will be issued.
IV(d)	(d) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or an Applicant who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Declarant or Applicant may be found lacking in present good moral character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.	Many applicants for admission have felony conviction histories, and, in the case of out-of-state attorneys, histories of disbarments in other jurisdictions. These new subsections set out the manner in which these matters will affect the admission of an applicant for a Texas law license, bringing the Board's rules into substantial conformity with attorney discipline under the *Texas Rules of Disciplinary Procedure*.

Rule No.	Amended Language	Explanation
IV(d) *continued*	(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt. (2) An individual guilty of a felony under this rule is conclusively deemed *not* to have present good moral character and fitness for a period of five years after the completion of the sentence and/or period of probation. (3) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the Declarant or Applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the Declarant or Applicant possesses present good moral character and fitness.	Under subsection (d), an applicant with a felony conviction is not eligible for admission to the Texas Bar for a period of five years after the completion of the sentence and/or period of probation assessed for the felony.
IV(e)	(e) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or Applicant who has been licensed to practice law in any jurisdiction and has been disciplined, or allowed to resign in lieu of discipline, in that jurisdiction. (1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the individual in question has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment. (2) An individual disciplined for professional misconduct in the course of practicing law in any jurisdiction, or an individual who resigned in lieu of disciplinary action is deemed *not* to have present good moral character and fitness during the course of such discipline imposed by such jurisdiction, and, in the case of disbarment or resignation in lieu of disciplinary action, during the period of ineligibility for re-licensure in the other jurisdiction. No individual whose disbarment or resignation in lieu of disciplinary action was based on conviction of a felony or probation with or without adjudication of guilt shall be found to have present good moral character and fitness until the expiration of five years from the completion of the sentence and/or period of probation assessed with or without an adjudication of guilt.	Subsections (e)(1) and (2) provide that an applicant previously admitted to the bar in another jurisdiction who has been disbarred or allowed to resign in lieu of disciplinary procedures there is not eligible for admission in Texas during the period of ineligibility for readmission in the disciplining jurisdiction. If the discipline in the other state was based on commission of a felony, the applicant would not be eligible for Texas admission, in any event, until the expiration of five years from completion of the sentence or period of probation for the underlying felony.
	(3) The only defenses available to an Applicant or Declarant under section (e) are outlined below and must be proved by clear and convincing	Subsection (e)(3) outlines the defenses available to an applicant who has been

Rule No.	Amended Language	Explanation
IV(e) *continued*	evidence: (A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. (B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction. (C) The deeming of lack of present good moral character and fitness by the Board during the period required under the provisions of section (e) would result in grave injustice. (D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas. (4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.	disbarred or allowed to resign in lieu of disciplinary proceedings.
IV(f)	(f) An individual who applies for admission to practice law in Texas or who files a petition for redetermination of present moral character and fitness after the expiration of the five-year period required under subsection (d)(2) above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (e) above shall be required to prove, by a preponderance of the evidence: (1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice law; (2) that (s)he is of present good moral character and fitness; and (3) that during the five years immediately preceding the present action, (s)he has been living a life of exemplary conduct.	Subsection (f) specifies that the burden of proof is on the applicant seeking a redetermination of character upon the expiration of 5 years after completion of felony sentence or probation to demonstrate his/her fitness for admission.
IV(g)	(g) An individual who files a petition for redetermination of present moral character and fitness after a negative determination based on a felony conviction, felony probation with or without adjudication of guilt, or professional misconduct or resignation in lieu of disciplinary action and whose petition is denied after a hearing, is not eligible to file another petition for redetermination until after the expiration of three years from the date of the Board's order denying the preceding petition for redetermination.	Under proposed subsection (g), an individual who files a petition for redetermination after denial of admission based on a felony conviction or disciplinary proceedings in other jurisdictions and whose petition is denied, cannot re-petition for another three years.

Rule No.	Amended Language	Explanation
V	(a) No Applicant for admission to the Texas Bar shall be issued a license to practice law in Texas until such person has furnished to the Board evidence that (s)he has passed the Multistate Professional Responsibility Examination (MPRE) with a scaled score of 85. (b) A passing MPRE score is valid for five years from the date the MPRE is taken. (c) If an Applicant has a valid, passing MPRE score on the date (s)he takes the Texas Bar Examination or Short Form Examination, the MPRE score is deemed to be valid for licensing purposes if the Applicant passes that particular Texas examination, even if the five year period set out in (b) above expires before the Texas grades are released.	This amendment merely re-formats the existing rule, creating three subsections, and re-words the provisions of subsection (c), to state more clearly the current policy of the Board as to the validity period of MPRE scores.
VI(a)	(a) Every person who is beginning law study in an approved law school in Texas for the first time (an "entrant") and who intends to apply for admission to the Bar of Texas shall file with the Board a Declaration of Intention to Study Law, on a form promulgated by the Board. (1) The Declaration shall show: * * * (C) the Declarant's criminal history; * * *	When the Board last proposed rule amendments for adoption by the Supreme Court, an error was made by inserting into this rule, which is applicable to *declarants*, statutory language which is applicable only to *applicants*. This amendment deletes from VI(a)(1)(C) the specific language which is applicable to applicants and replaces it with language providing, that at the declaration stage, the Board's inquiries include criminal history in general. The remainder of Rule VI(a) is unchanged.
IX(d)	(d) The Applicant shall furnish proof satisfactory to the Board of compliance with the law study requirements of Rule III, and no Applicant shall be admitted to the examination until the Board has determined that these requirements have been met, except as may be otherwise provided by these Rules.	This amendment eliminates a reference to the statutory exemption from the law study requirement for Garza School of Law students, since that statute has expired.

Rule No.	Amended Language	Explanation
IX(f)	(f) Any Applicant who fails a Texas Bar Examination may take a later examination upon filing a Re-Application and payment of the then required fees by January 15, for the February Examination, and by June 15, for the July Examination, unless another provision of these Rules requires the filing of a Supplemental Investigation Form, in which case the Applicant must comply with the regular Application deadlines. Late fees shall be waived for any Re-Applicant filing between the timely deadline and the Re-Application deadline, if such Re-Applicant took and failed the most recent examination given.	The amendment to subsection (f) clarifies existing existing language to set out more clearly the Board's present policy that late fees are waived for only those Re-applicants who apply late because they received their failing results after the absolute deadline for the next bar exam.
X(a)	(a) After completing its investigation on the Application, the Board shall determine whether, on all the documentation before it, the Board is satisfied that the Applicant possesses the requisite present good moral character and fitness and shall advise the Applicant accordingly, no later than the 150th day after the date the Application or Re-Application and fees were filed with the Board. If the determination is that the Applicant does not have the requisite present good moral character and fitness, such notice shall include: (1) a detailed analysis of the results of the investigation; and (2) an objective list of actions, if any, which the Declarant may take to correct the deficiencies and become qualified for admission to the bar after passing the bar examination.	This amendment merely makes some "housekeeping" changes by substituting the phrase "present good moral character" for other similar phrases, in order to achieve consistency throughout the rules.
XI(b)	(b) The Texas Bar Examination shall be given at such places as the Board may direct.	This subsection has been re-worded to eliminate listing the cities in which the bar exam will be given. Due to the increasing numbers of examinees, particularly in July, the Board has been having more and more difficulty finding sites in particular cities which will accommodate the number of those taking the exam. The rule change will give the board the authority and flexibility needed to efficiently administer the exam and consolidate exam sites, if necessary and less costly.

Rule No.	Amended Language	Explanation
XI(e)	(e) The provisions of this subsection (e) shall apply to each Applicant who takes all portions of the Texas Bar Examination in February 1994 or thereafter.[1] The Texas Bar Examination shall last two and one-half days and shall consist of the Multistate Bar Examination (MBE), given on Wednesday; Texas Essay Questions, given on Thursday; and Procedure and Evidence Questions, given on Friday morning. Answers to the Texas Essay Questions will be graded, and total scores will be scaled to the Multistate Bar Examination, using the equipercentile method. Likewise, answers to the Procedure and Evidence Questions will be graded, and total scores will be scaled to the Multistate Bar Examination, using the equipercentile method. Scores on the portions of the	This amendment replaces prior subsections (e) and (f) with a new subsection (e) and effects several major changes. It consolidates the scoring of what is currently called Part I and Part II of the exam into one score, so that an examinee will no longer be required to pass the Procedure and Evidence portion of the exam separately. This change to a compensatory exam model will put Texas into the mainstream with other jurisdictions. In addition, by requiring a minimum combined scaled score of 675 to pass, the amendment effectively increases the minimum passing MBE score from 132 to 135 and requires not only the Texas Essay scores to be scaled to the MBE (as has been done for some time), but also requires the Procedure and Evidence (formerly called Part II) scores to be scaled to the MBE, as well. This move is recommended on the advice of testing experts. Scaling the raw score to the MBE adjusts for variation in difficulty from one test to the next, since the MBE is equated and the Texas portions of the exam are not. By scaling to the MBE, we use the power of the MBE equating design to standardize scores on the Texas portion of the exam, thereby providing a more fairly designed examination.

[1] Through the administration and grade release of the July 1998 Texas Bar Examination, any Applicant who has previously taken and passed either Part I or Part II of any Texas Bar Examination given from February 1989 through July 1993 and whose score on such part is still valid (i.e, five years have not passed since the date of the examination in which the part was passed) shall irrevocably designate, at the time of filing his or her first Re-application for any examination given in February 1994 or thereafter, whether (s)he elects to take the complete Texas Bar Examination and have applied to him or her the provisions of this subsection (e), OR whether (s)he elects to carry forward the passing result from a prior examination, subject to the limitations of prior subsections (e) and (f) of this rule. If the latter option is elected, an Applicant opting take only the MBE and Texas Essay Questions will pass if (s)he earns on those portions scaled scores, which when added together, equal at least 2/5 of the combined scaled score necessary to pass the Texas Bar Examination at the time of the exam being taken. Likewise, an Applicant opting to take only the Procedure & Evidence Questions will pass if (s)he earns a scaled score equal to at least 1/5 of the combined scaled score necessary to pass the Texas Bar Examination at the time of the exam being taken. An Applicant opting to take only a portion of the examination under this clause shall pay the same fees as an Applicant taking the entire examination.

Rule No.	Amended Language	Explanation
XI(e) *continued*	examination will be weighted as follows: the scaled MBE score will be multiplied by 2; the scaled Texas Essay score will be multiplied by 2; and the scaled Procedure and Evidence score will be multiplied by 1. Applicants who earn a combined scaled score of 675 shall pass the examination.	This amendment also changes the way scores are reported to examinees. In the past, even though the Texas Essay score was scaled to the MBE and then combined with the MBE scaled score, resulting in a score on a 400-point scale, we used a mathematical formula to reduce that combined scaled score to a 100-point scale on which 75 is the minimum passing score. That process, required because the rules specified 75 to be the minimum passing grade, resulted in a great deal of misunderstanding about the reported scores. With this amendment, the Board will no longer report the score in terms of a 100-point scale, but will report a combined scaled score consisting of the composite scaled scores, weighted on a pro rata basis. Since the exam consists of five equal 1/2 day sessions, each 1/2 day session will account for 1/5 of the total score: the MBE scaled score will be multiplied by 2, because it is a full day exam; the Texas Essay scaled score will be multiplied by 2, because it is a full day exam; and the Procedure and Evidence scaled score will be multiplied by one, because it is only a 1/2 day exam. Because there are numerous people in our system who have passed either Part I or Part II under prior rules, which allowed them to be able to repeat only the failed

Rule No.	Amended Language	Explanation
		part, this new subsection (e) includes a grandfather clause, found in footnote 1. This clause allows such applicants to elect either to continue the old process and take and pass only the failed part, or to elect to re-take all of the examination in order to obtain the benefits of the compensatory model.
XI(f)	(f) An Applicant may take no more than five (5) examinations. However, for good cause shown, the Board at its discretion may waive this limitation upon such conditions as the Board may prescribe.	Due to the deletion of the previously existing subsection (f), former subsection (g) has been re-lettered as (f).
XI(g)	(g) Any Applicant who has failed the examination at least two times may submit a written request, within two weeks of the release of the examination results, for a Formal Review of the Applicant's performance on the immediately preceding examination (excluding the multistate portion). Such Formal Review shall take place in Austin, Texas at a time selected by the Board and shall consist of an individual oral review of such examination papers by the examining members of the Board. Regardless of the number of examinations taken, an Applicant may receive only one Formal Review under the provisions of this paragraph, provided, however, that no Applicant may obtain both a Formal Review and an Informal Review of the same examination.	Former subsection (h) has been re-lettered as subsection (g); in addition, newly re-lettered subsection (g) is amended by adding, at the end of the subsection, a provision specifying that an applicant cannot obtain both a Formal and an Informal Review of the same examination. This amendment also contains a correction of a grammatical error.
XI(h)	(h) Any Applicant who has failed the examination may submit a written request, within thirty (30) days of the release of the examination results, for an Informal Review of the Applicant's performance on his/her failed parts of the immediately preceding examination (excluding the multistate portion). The form of such Informal Review shall be either oral or written, at the discretion of the examining members of the Board. An Applicant may request an Informal Review each time (s)he fails all or part of an examination.	There has been no substantive change in the language of subsections (h), (i), and (j); they have merely been re-lettered from (i), (j), and (k), respectively.
XI(i)	(i) The Board shall keep, for one year from the date of every examination, all failing parts of such examination. The Board shall not be required to keep any passing parts of any examination.	

Rule No.	Amended Language	Explanation
XII(b) XII(c)	(b) Any Applicant who desires special testing accommodations based upon a disability shall submit a written request to the Board on forms designated by the Board, such request to be submitted at the same time as the Application is submitted. (c) A request for special testing accommodations must be accompanied by written proof evidencing the existence of the disability. Statements from licensed physicians or a professional specialist that specifically set forth the physical, mental or emotional handicap or disability, the treatment rendered, the prognosis, and the relationship between the disability and the inability to take the examination under standard conditions shall be required. The Board may require additional information or evidence from the Applicant and may, at its option, seek professional evaluation of such data. The Applicant will be responsible for the cost of obtaining documented medical evidence and other required information.	This subsection, dealing with requests for special testing accommodations due to disability, is amended with language clarifying that the required documentation supporting the request must be filed simultaneous with the application. Language is added to the end of subsection (c), specifying that the Board is authorized to require additional information and to seek professional evaluation of all data provided by an applicant seeking special testing accommodations due to disability.
XIII(a)	(a) An attorney holding a valid law license issued by another state shall meet the requirements imposed on any other Applicant under these rules, unless such attorney qualifies under one of the following exceptions: (1) Such attorney is eligible for admission without examination, if the attorney: (A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5); (B) satisfies the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require; (C) has been actively and substantially engaged in the lawful practice of law in any state as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application; (D) has a J.D. degree from an approved law school; and (E) has failed neither the last Texas Bar Examination taken in Texas, nor the last Short Form Examination taken in Texas. (2) An attorney who does not meet the criteria for admission without examination set out above is eligible for admission after passing the	This amendment to Rule XIII revises the circumstances under which "foreign attorneys"--those licensed in other U.S. jurisdictions [subsection (a)] and those licensed abroad [subsection (b)]--may be admitted to the Texas Bar. An attorney licensed in another state is eligible for *admission without examination* only if (s)he has a J.D. degree from an ABA-approved law school, 5 out of the prior 7 years of lawful practice, in any state, as a principal business or occupation, and has not failed the last bar exam or short form exam taken in Texas. An attorney licensed in another state who does not qualify for admission without

Rule No.	Amended Language	Explanation
XIII(a)	**Short Form Examination**[1], if the attorney: (A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5); (B) satisfies the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require; (C) has not failed the last Texas Bar Examination taken; (D) has not failed the last bar examination taken in any other state; (E) has not failed the last short form examination (sometimes known as attorneys' exam) in any other state; and (F) meets one of the following requirements: (i) has a J.D. degree from an approved law school and has been actively and substantially engaged in the lawful practice of law in any State as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application; or (ii) has a J.D. degree, which is not based on study by correspondence, from an unapproved law school and has been actively and substantially engaged in the lawful practice of law as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application. (3) An attorney who does not meet the criteria set out above for admission after passing the Short Form Examination is eligible for admission after passing the **Texas Bar Examination**, if the attorney: (A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5); (B) satisfies the Board of his/her good moral character and [1]The Short Form Examination shall cover the areas of Texas substantive law and procedure which the Board may determine advisable. Any Applicant who fails the Short Form Examination twice shall thereafter be required to pass the Texas Bar Examination as provided in Rule XI.	examination is eligible for admission after passing the ***Short Form Examination (SFX)*** if: 1) (s)he has a J.D. degree from an ABA-approved school and 3 out of the prior 5 years of lawful practice, etc.; or 2) (s)he has a J.D. degree from unapproved law school and 5 out of the prior 7 years of lawful practice. However, any attorney who has failed the last Texas Bar Exam taken or who has failed the last "attorney's exam" taken in any other state is not eligible to take the SFX. An attorney licensed in another state who does not qualify to take the SFX is eligible for admission after taking the Texas Bar Examination if (s)he has a J.D. degree from an unapproved law school and has 3 out of the prior 5 years of lawful practice, in any state, as a principal business or occupation. (Naturally, an out-of-state attorney holding a J.D. degree from an ABA-approved law school with less than 3 years of practice is eligible to take the Texas Bar Examination.) In all of the circumstances above, a law degree from a correspondence law school *does not* qualify one for Texas admission.

Rule No.	Amended Language	Explanation
XIII(a) *continued*	fitness after furnishing to the Board such evidence as the Board may require; (C) has a J.D. degree, which is not based on study by correspondence, from an unapproved law school; and (D) has been actively and substantially engaged in the lawful practice of law in any State as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application.	For some time the Board has been working with immigration attorneys, international practice attorneys, and representatives of the State Bar in order to effect some changes to the provisions applicable to the licensure of attorneys licensed in foreign jurisdictions. In devising these changes, it has been necessary to balance their treatment against that afforded to other applicants, particularly in regard to the law study requirement. The Board feels that the amendment proposed to subsection (b) represents a fair balance of equities between attorneys licensed by other U.S. jurisdictions and by foreign nations. Under this revised subsection (b), an attorney holding a valid foreign law license is eligible for admission after passing the Texas Bar Exam and meeting other requirements if: 1) (s)he is either a U.S. citizen, permanent or temporary resident alien, or has been granted refugee or asylum status by the INS; 2) has 5 of the prior 7 years of licensed, lawful practice in the nation where licensed; 3) holds the equivalent of a J.D. degree from a law school accredited in the jurisdiction where it exists, and 4) either proves that the law of the licensing nation is sufficiently comparable to that of Texas to allow practice without further legal
XIII(b)	(b) An Attorney holding a valid law license issued by a foreign nation is eligible for admission after passing the Texas Bar Examination and after meeting all other requirements for admission imposed on any other Applicant under these Rules, except that: (1) If the attorney does not qualify for a regular Texas law license due to an inability to meet the requirements of Rule II(a)(5), the attorney may be issued a Probationary License, upon meeting all other requirements of these Rules, if the attorney holds a valid INS H-1B visa and is legally entitled to work in the United States, provided that the Probationary License shall be valid concurrently with the H-1B visa and shall entitle the attorney to be employed only by the employer named in the H-1B visa. (2) The attorney is deemed to have fulfilled the law study requirement without the attorney holding a J.D. degree from an approved law school upon proof of active and substantial engagement in the lawful practice of law in such foreign nation as his/her principal business or occupation for at least *five of the last seven* years immediately preceding the filing of the Application, if such attorney: (A) has been licensed, for at least *five* years, to practice law in the highest court of the foreign nation; (B) holds the equivalent of a J.D. degree, which is not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study, which is the substantial equivalent of the legal education provided by an approved law school; and (C) meets *one* of the following criteria: (i) demonstrates to the Board that the law of such	

Rule No.	Amended Language	Explanation
XIII(b) *continued*	foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education, OR (ii) holds an L.L.M. from an approved law school. (3) The attorney is deemed to have fulfilled the law study requirement without the attorney holding a J.D. degree from an ABA-approved law school upon proof of active and substantial engagement in the lawful practice of law in such foreign nation as his/her principal business or occupation for at least *three of the last five years* immediately preceding the filing of the Application, if such attorney: (A) has been licensed, for at least *three* years to practice law in the highest court of the foreign nation; (B) holds the equivalent of a J.D. degree, which is not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by an approved law school; (C) demonstrates to the Board that the law of such foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education, **and** (D) holds an L.L.M. from an approved law school.	education *or* holds an L.L.M. from an ABA-approved law school. Subsection (b)(1) also provides for a Probationary License to be issued to a foreign nation licensed attorney who meets the other requirements but who is not currently a U.S. citizen, permanent or temporary resident alien, refugee, or a holder of asylum status, but who holds an H-1B visa which specifically authorizes him or her to work as a lawyer for a specific employer. Such a license would be valid for the same period as the H-1B visa. If an attorney licensed by a foreign nation does not have 5, but does have 3, years of practice in the licensing nation, (s)he is eligible to take the Texas Bar Exam if (s)he holds both the equivalent of a J.D. degree from a foreign jurisdiction accredited law school and an L.L.M. from an ABA-approved law school and proves that the law of the licensing nation is sufficiently comparable to that of Texas to allow practice without further legal education. In all of the circumstances above, the amendment specifies that a law degree from a correspondence law school does not qualify one for Texas admission.

Rule No.	Amended Language	Explanation
XIV(b)	(b) An Applicant for a Certificate of Registration as a Foreign Legal Consultant shall file an Application with the Board on a form furnished by the Board accompanied by the requisite fee. Such Application shall include, but not be limited to: * * * (3) such other evidence as to the Applicant's educational and professional qualifications, required practice, and good moral character and fitness; and (4) documentation in duly authenticated form evidencing that the Applicant is lawfully entitled to reside and be employed in the United States of America pursuant to the immigration laws thereof; and (5) a duly acknowledged instrument in writing setting forth the Applicant's address of actual residence in the State of Texas and designating an agent for service in Texas upon whom process may be served, with like effect as if served personally upon the Applicant, in any action or proceeding thereafter brought against the Applicant and arising out of or based upon any legal services rendered or offered to be rendered by the Applicant within or to residents of the State of Texas whenever, after due diligence, service cannot be made upon the Applicant at such address or at such new address as filed by a supplemental instrument; and (6) in such amount as the Board may prescribe, evidence of professional liability insurance or such other proof of financial responsibility as the Board may require, to assure the Applicant's proper professional conduct and responsibility; and (7) a duly acknowledged statement affirming that the Board will be immediately advised of any law suit brought against the Applicant which arises out of or is based upon any legal services rendered or offered to be rendered by the Applicant within Texas.	This amendment to the foreign legal consultant rule has eliminated subsection (b)(3) in response to a request by the United States Trade Representative; its deletion was intended, but overlooked, in the June 1992 rule revisions. In addition to the deletion of former subsection (b)(3), the subsequent subsections have been re-numbered.
XIV(c)	(c) The Board shall investigate the qualifications, moral character, and fitness of any Applicant for a certificate, and may require the Applicant to submit any additional proof or information which the Board deems appropriate. (1) The Applicant shall disclose all past charges of professional misconduct and shall show that the Applicant has never been disbarred or had	A grammatical error in subsection (c)(1) has been corrected.

Rule No.	Amended Language	Explanation
XIV(c) *continued*	his/her license suspended and that there are no charges of misconduct pending against Applicant, and so far as the Applicant knows none are being threatened. * * *	This amendment to subsection (g)(6) clarifies the original subsection to reflect the original intention that the prohibition of holding oneself out as an attorney in a U.S. jurisdiction is, of course, not applicable if the individual is so licensed. This amendment clearly states the intent of the original subsection so as to clarify that the prohibition of holding one's self out as an attorney is, of course, not applicable if the individual is so licensed.
XIV(g)	(g) A Foreign Legal Consultant may render legal services and give professional legal advice only on the law of the foreign country where the legal consultant is admitted to practice, subject, however, to the limitations that such person shall not: * * * (6) in any way hold himself out as an attorney licensed in Texas, as a member of the State Bar of Texas, or as an attorney licensed in any United States jurisdiction, unless actually so licensed; * * *	
XV(f)	(f) After the hearing, the Board may: * * * (4) determine that an Applicant or a Declarant does not possess the requisite present good moral character and fitness required for admission to the Texas Bar; or * * *	The amendment to subsection (f)(4) merely corrects a grammatical error. Under prior language, it appeared that subsection (h) provided that an applicant could not petition for a redetermination of character until after passing all parts of the bar exam and completing all other requirements, such as the MPRE. This amendment clarifies the language to eliminate that apparent requirement. A new subsection (k) has been added allowing for the assessment of costs against an individual who has been duly noticed, but does not appear, for a hearing.
XV(h)	(h) An individual who has been the subject of a Board order containing a negative character and fitness determination may petition the Board in writing for a re-determination hearing on the issue of character and fitness, as follows: * * *	
XV(k)	(k) The Board may assess costs against any Declarant or Applicant who has been sent reasonable notice of a hearing before the Board and who does not appear.	

Rule No.	Amended Language	Explanation
XVII(c) XVII(d)	(c) No license issued hereunder shall be valid unless the Applicant named therein has paid the required fees and has enrolled in the State Bar of Texas in compliance with the State Bar Rules. (d) The license certificate belongs to the Supreme Court of Texas and shall be surrendered to the Court upon proper demand.	These new subsections have been added, after consultation with the membership division of the State Bar and the Clerk of the Supreme Court, to clarify that a license is not valid unless the individual pays all required fees and joins the State Bar, and to further clarify that the license must be surrendered upon proper demand after revocation, etc.
XX(i)	(i) The Board shall have full power to contract for the performance of all of its functions, and any person dealing or contracting with the Board shall be conclusively entitled to rely upon the Board's written determination that the expense thus incurred or contracted is for a proper function of the Board.	This amendment deletes language in subsection (i) which originated when the Board's functions were carried out by two different entities--the Board and the Standards of Admissions committee, which was a part of the State Bar; this archaic language unnecessarily complicated the Board's accounting procedures and resulted in arbitrary "fictions" in keeping track of the Board's expenses and functions.
Appendix	**APPENDIX** TEXAS BAR EXAMINATION SUBJECTS *MULTISTATE SUBJECTS* 1. Constitutional law 2. Contracts 3. Criminal law 4. Evidence 5. Real property 6. Torts	This amendment conforms the headings of the parts of the bar exam to the terms used in the proposed amendments to Rule XI.

Rule No.	Amended Language	Explanation
Appendix *continued*	*TEXAS ESSAY SUBJECTS* 7. Oil & gas 8. Uniform Commercial Code 9. Business associations (including corporations, agency and partnerships) 10. Family law 11. Trusts (including resulting and constructive trusts) 12. Wills & administration *PROCEDURE AND EVIDENCE SUBJECTS* 1. Civil procedure (including federal and Texas court jurisdiction, pleading and practice) 2. Criminal procedure 3. Evidence	The headings have been conformed to the terms used in proposed amendments to Rule XI.

Issued in Austin, Texas, on November 16, 1993.

TRD-9332182 Rachael Martin
Executive Director
Board of Law Examiners

Filed: November 16, 1993

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Texas Natural Resource Conservation Commission

Notices of Application for Temporary Permits to Appropriate Public Waters of the State of Texas

Attached is a notice of application for a temporary permit to appropriate Public Waters of the State of Texas, which was issued on November 23, 1993.

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the temporary permit unless one or more persons file written protests and/or requests for hearing within ten days from the date these notices are published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the application 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 which would satisfy your concerns and cause you to withdraw your request for hearing.

If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after *Texas Register* publication of this notice, or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to Bill Ehret, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Craig Williams; Application Number 7194 for a temporary water use permit to divert and use for irrigation purposes 400 acre-feet of water within a three-year period from Johnson Draw, tributary of the Devils River, tributary of the Rio Grande, Rio Grande Basin. Water would be diverted at a maximum diversion rate of 1.56 cfs (700 gpm) from Johnson Draw at a point 3,000 feet west of SH 163, approximately 2-1/2 miles south of Ozona, Crockett County.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332581 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 23, 1993

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Notices of Application for Waste Disposal Permits

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of November 5-19, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

City of Austin; Seaholm Steam Electric Station; the plant site is at 800 West First Street in the City of Austin, Travis County; amendment; 01901.

Belvieu Environmental Fuels; a synthetic organic chemical manufacturing plant which produces methyl tertiary butyl ether; the plant site is in an area enclosed by Hatcherville Road on the west, Southern Pacific Railroad on the east, Enterprise Products Company on the south, and pasture land on the north, approximately 2,000 feet north of the intersection of Hatcherville Road and FM 1942 in the City of Mont Belvieu, Chambers County; new; 03499.

City of Buffalo; wastewater treatment facility; is adjacent to and east of Marion Boulevard, approximately 3/4 mile north-northeast of the intersection of U.S. Highways 75 and 79 in Leon County; renewal; 10022-01.

City of Brownsville, Public Utilities Board; the Southside Wastewater Treatment Facilities; the plant site is north of the 2800 block of East Avenue, approximately 1/2 mile west of East 30th Street in southeast Brownsville in Cameron County; renewal; 10397-03.

Chevron USA Products Company; a petroleum products terminal; the plant site is at 2525 Brennan Avenue in the City of Fort Worth, Tarrant County; new; 03605.

Chevron U.S.A., Inc. doing business as Chevron U.S.A. Products Company; a wholesale petroleum bulk station and terminal for refined petroleum products; the plant site is at 12523 American Petroleum Road in the City of Galena Park, Harris County; renewal; 01745.

City of China; the wastewater treatment facilities; are adjacent to South China Road and approximately 1.5 miles south of U.S. Highway 90 in Jefferson County; renewal; 12104-01.

Corrugated Services, Inc; a plant that produces a recycled paper product; the plant site and storage/evaporation ponds are on the south side of U.S. Highway 80, approximately one mile east of the City of Forney, Kaufman County; renewal; 02309.

Enterprise Products Company; a natural gas liquids fractionator; the plant site is at 10207 FM 1942 (approximately one mile west of Highway 146, bounded on the west side by Hatcherville Road, on the east side by the Southern Pacific Railroad, on the north by the CIWA Canal, and on the south by FM 1942) in the City of Mont Belvieu, Chambers County; amendment; 02940.

City of Garland; the Rowlett Water Reclamation Wastewater Treatment Facilities; the plant site is on Centerville Road, approximately 1/4 mile south of the intersection of State Highway 66, on the southeast corner where Missouri, Kansas, and Texas Railroad tracks cross Centerville Road in Dallas County; renewal; 10090-02.

City of Greenville; the Greenville Steam Electric Station, the plant site is approximately 500 yards east of the intersection of State Highway 69 and FM Road 1569 on the west shore of Greenville Reservoir #4, north of the City of Greenville, Hunt County; renewal, 02984.

Harris County Municipal Utility District Number 33; the Lincoln Green Central Wastewater Treatment Facilities; the plant site is approximately 700 feet east of the intersection of Greens Bayou with Veterans Memorial Drive on the north bank of Greens Bayou in northwest Harris County; renewal; 11904-01.

Houston Lighting and Power Company; Greenspoint Service Center; the plant site is 1/2 mile east of the intersection of Veterans Memorial Drive and Gears Road and on the south side of Gears Road north of the City of Houston, Harris County; renewal; 02596.

Houston Marine Services, Inc.; a bulk diesel storage and barge service facility; the plant site is on the east side of State Highway 87, approximately 2,000 feet south of the Intracoastal Waterway bridge in the City of Port Arthur, Jefferson County; new; 03615.

Lackland Air Force Base, Lackland Air Force Base; the Total Energy Plant; the power plant is approximately 1,000 feet northeast of Wilford Hall Hospital, which is at 2200 Berquist Drive, in the City of San Antonio, Bexar County; new; 03603.

Lyondell Polymers Corporation; a plant which manufactures polyethylene and polypropylene resins; the plant site is at 9802 Fairmont Parkway at the intersection of Underwood Road and Fairmont Parkway in the City of Pasadena, Harris County; renewal; 02600.

City of Mission; the Mission Wastewater Treatment Facilities; the plant site is south of the City of Mission, approximately 1,000 feet southwest of the intersection of FM Road 1016 and U.S. Highway 83 in Hidalgo County; amendment; 10484-01.

J. C. Moon; a dairy; the dairy is approximately seven miles northwest of the intersection of FM Roads 219 and 8 in Erath County; new; 03606.

New Horizons Ranch and Center, Inc.; the wastewater treatment facility and irrigation site; are approximately 4.3 miles west of the intersection of Goldthwaite Regency Road and Williams Ranch Road and approximately 1,750 feet north of Goldthwaite Regency Road in Mills County; renewal; 12759-01.

Northwest Harris County Municipal Utility District Number 24; the wastewater treatment facilities; are approximately 1.6 miles north of the intersection of FM Road 149 and Bammel-North Houston Road, 0.3 of a mile west of Bammel-North Houston Road, and 2.9 miles southeast of the intersection of FM Roads 149 and 1960 in Harris County; renewal, 12655-01.

Palm Valley Estates Utility District; the Palm Valley Estates Utility District wastewater treatment facility and irrigation site; are at 5400 Bougainvillea Drive in Harlingen, Cameron County; amendment; 10972-02.

Niranjan S. Patel; the Caraban Motor Motel Wastewater Treatment Facility; the plant site is approximately 250 feet north of FM Road 343 and 800 feet east of U.S. Highway 59, in Nacogdoches County; renewal; 11403-01.

Prideco, Inc.; a metal heat treating facility which manufactures oil field drilling tools; the plant site is on a ten-acre site on the west side of 6039 Thomas Road, approximately 0.3 of a mile north of Tanner Road in the City of Houston, Harris County; renewal; 03022.

Quanex Corporation; the Rosenbert Plant, a manufacturer of steel pipe and tubes; the plant site is adjacent to and on the west side of Scott Road at Spur 529, approximately one mile north of the U.S. Highway 59/Kroesene Road intersection, and approximately three miles west of the City of Rosenberg, Fort Bend County; renewal; 01237.

Quantum Chemical Corporation, USI Division; a plant manufacturing polyethylene; the plant site is on the north side of Taylor Bayou and approximately one mile south of the intersection of FM Road 823 with State Highway 73 near the City of Port Arthur, Jefferson County; renewal; 00765.

Sienna Plantation Fresh Water Supply District; the wastewater treatment facilities; are approximately 2.5 miles south-southwest of the intersection of State Highway 6 and State Highway 288, and approximately 4,200 feet west of the Missouri Pacific Railroad tracks in Fort Bend County; renewal; 12178-01.

Tex-Sun Parks; the Point West Subdivision Wastewater Treatment Facilities; the plant site is on the north side of Morton Road approximately 1/2 mile west of the intersection of Fry Road and Morton Road in Harris County; renewal; 12189-01.

Treetop, Inc. doing business as Coronar, Inc.; the wastewater treatment facilities; are at 15919 Jacintoport Boulevard, approximately 1,000 feet southeast of the intersection of Sheldon Road and Jacintoport Boulevard in Harris County; renewal; 12572-01.

United States Gypsum Company; the Galena Park Plant, a gypsum wallboard and wallboard paper manufacturing facility; the plant site is at 1201 Gulf Compress Road (Mayo Shell Road) in the City of Galena Park, Harris County; renewal; 00353.

Western Recycling, Inc.; a meat rendering facility; the plant site is approximately 4,000 feet east southeast of the intersection of State Highway 20 and Hemley Road, near the termination of Kelly Road, El Paso County; renewal; 01243.

Kelvin and Sherwyn Wood; a dairy; the dairy is o.. the south side of FM Road 913, approximately three miles east of the intersection of FM Road 913 and U.S. Highway 281, east of the Community of Selden in Erath County; new; 03602.

Safety-Kleen Corporation; an underground storage tank area at its Missouri City facility; the facility stores and processes off-site and on-site generated Class I industrial solid waste which is destined for recycling/reprocessing at a Safety-Kleen facility at a different address; the facility is located at 1580 Industrial Road at Gessner, Missouri City, Fort Bend County; amendment; HW50236; 45 days.

Shell Oil Company-Odessa Refinery; the facility is located at South Grandview Street in Odessa, Ector County; amendment; CP50152; 45 days.

Issued in Austin, Texas, on November 19, 1993.

TRD-9332523 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 22, 1993

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Attached are Notices of Application for waste disposal permits. These notices were issued during the period of November 15-24, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations, and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Citgo Petroleum Corporation; the Center Terminal, a bulk petroleum storage and handling facility; on Highway 87 South, 1,200 feet south of the city limits of Center, Shelby County; new; 03616.

City of Frisco; the Cottonwood Branch Wastewater Treatment Facilities; approximately 2,500 feet north FM Road 720 and immediately east of St. Louis-San Francisco Railroad in Collin County; renewal; 10172-02.

City of Hamilton; wastewater treatment plant; immediately south of Pecan Creek at a point 2,800 feet north State Highway 36 and 1,900 feet east of U.S. Highway 281 in the City of Hamilton in Hamilton County; renewal; 10492-02.

Harris County Metropolitan Utility District, Limited; wastewater treatment facility; on the west side of Fairbanks North Houston Road, 400 feet north of Breen Road and 1,100 feet west of Fairbanks North Houston Road in Harris County; new; 13673-01.

City of Kenedy; wastewater treatment facilities; approximately 500 feet east of FM Road 792 and 600 feet north Main Street in the City of Kenedy in Karnes County; amendment; 10746-01.

Military Highway Water Supply Corporation; wastewater treatment facility; approximately 2.5 miles northeast of the intersection of FM Road 1015 and U.S. Highway 281 in Hidalgo County; amendment; 13462-01.

Bill O'Dowd; a dairy; on the north side of County Road 913, approximately two and one-half miles north of the Community of Godley in Johnson County; new; 03612.

Participation Development Corporation (Texas), Inc.; the Arrowhead Wastewater Treatment Facility; approximately seven miles south of the City of Eustace on the north shoreline of Cedar Creek Reservoir, at a point approximately two miles west of State Highway 198 and five miles north of State Highway 31 in Henderson County; renewal; 11506-01.

Rexene Corporation, Odessa Facility; the facility stores and processes on-site generated Class I industrial hazardous wastes resulting from the production of petrochemicals and polymer resins, on a 900-acre tract of land approximately one-half mile south of the intersection of Interstate 20 and the Grandview Avenue exit in Odessa, Ector County; new; hw0290; 45-day.

U.S. Army-Fort Hood; the waste managed at this facility are Class I hazardous wastes which are generally described as spent paints, solvents and cleaners; on a 217,000 acre tract of land adjacent to the City of Killeen, west of Interstate 35 in Bell and Coryell Counties; new; hw50323; 45-day.

Issued in Austin, Texas, on November 24, 1993.

TRD-9332650 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 24, 1993

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Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice, or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application by Kirby Forest Industries, Inc., for a minor amendment to Permit Number 00547 to authorize the discharge of only stormwater runoff at a volume variable with rainfall. All wastewaters, including process wastewaters, utility wastewater and truck washwater are no longer discharged and are instead routed to the City of Silsbee sewage treatment plant. The applicant operates a lumber mill and wood treatment facility. The plant site is on the northwest corner of the intersection of FM Roads 92 and 418 in the northern sector of the City of Silsbee, Hardin County.

Application by City of Caddo Mills, for a minor amendment to Permit Number 10425-01 to authorize an increase in the discharge of treated domestic wastewater effluent in the interim phase from a volume not to exceed an average flow of 150,000 gallons per day to a volume not to exceed an average flow of 174,000 gallons per day. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed 200,000 gallons per day in the final phase, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment facilities are approximately 0.7 mile south of the intersection of State Highway 60 and FM Road 36 in Hunt County.

Application by United States Department of the Interior, for a minor amendment to Permit Number 03456 to route treated domestic wastewater through the oil/water separator and discharged through Outfall 001. The treated domestic wastewater can also be discharged through Outfall 002. The permit currently authorizes the disposal of industrial wastewater effluent at a volume not to exceed 18,000 gallons per day average via Outfall 001 and the disposal of treated domestic wastewater effluent at a volume not to exceed 1, 500 gallons per day via Outfall 002, which shall remain the same. All effluent is disposed of by evaporation. No discharge of pollutants into the waters of the State is authorized by this permit. The wastewater treatment facility is on the south side of the unnamed county road located approximately one mile west of the intersection of U.S. Highway 87 and west of the City of Masterson, Moore County.

Application Number 23-464B by Joel Lopez for an amendment to Certificate of Adjudication Number 23-464, as amended, pursuant to TW 11.122. For Executive Director's Consideration. Applicant seek designate a point of diversion and a place of use for his Class portion of Certificate Number 23-464, as amended, to be from the Rio Basin to irrigate two tracts of land totalling 22.76 acres of land west of Rio Grande City, Starr County.

Issued in Austin, Texas, on November 19, 1993.

TRD-9332522 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 22, 1993

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Notices of Receipt of Applications and Declaration for Administrative Completeness for Sludge Registrations

Attached are Notices of Receipt of Applications and Declaration of Administrative Completeness for sludge registrations issued during the period of November 22-24, 1993.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that these applications are subject to change based on evaluations of the proposed treatment levels, treatment processes and site specific conditions as they relate to the protection of the environment and public health.

Persons desiring a public meeting regarding these applications should submit a written request to the Chief Clerk of the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711. The request should contain the name, mailing address, and phone number of the person making the request; and the reason a public meeting is desired. The deadline for submitting this request is 30 days from the date which the application was posted for public review.

Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation

Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Agronomic Management Group/Oscar Renda Contracting, Inc.; located approximately 3.5 miles northwest on FM Road 1173 from the City of Krum, Denton County; then 0.75 mile west, the site is on the south side of the road; new beneficial sludge use site; 710660.

West Cedar Creek Municipal Utility District; located on State Highway 274 on the south side of the road; approximately 7.7 miles north of the City of Trinidad, Henderson County; new beneficial sludge use site; 710669.

Issued in Austin, Texas, on November 24, 1993.

TRD-9332651 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: November 24, 1993

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Public Notices

The Texas Natural Resource Conservation Commission (TNRCC) announces its intent to procure a remedial action contractor for the Texarkana Wood Preserving Company Superfund Site (TWPC) to perform the work as detailed in the Remedial Action Contract Documents via two-step Formal Advertising. As Step 1 of this process, TNRCC is requesting qualifications to qualify prospective bidders.

This project will be 90% federally funded with 10% state matched. The project will be conducted by the TNRCC through Cooperative Agreement V-996096-01-0 with the Environmental Protection Agency (EPA) and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1985 (SARA), and the Texas Water Code, Chapter 26, Subchapter H.

This project involves the remediation of contaminated soil, sludge, equipment, structures, and miscellaneous debris at the Texarkana Wood Preserving Company (TWPC) Superfund site located in Texarkana. Contaminated materials will be excavated and treated using an on-site rotary kiln incinerator, and the residual ash will be used to backfill excavated areas. Contaminated surface water, stormwater, and groundwater produced during dewatering operations will be treated prior to discharge. In addition, this project involves the construction, installation and commission of the permanent Groundwater Remediation System which is separate and independent from any used in the Contractor's remediation work, and shall become the property of TNRCC. The Groundwater Remediation System includes the carbon adsorption units, pumps, building, tanks, foundations, piping, electrical, and controls for the Ground Water Treatment Plant and trenches and transferring piping for the extraction and injection system.

The Request for Qualification package (RFQ) may be examined without charge at the Texas Natural Resource Conservation Commission, Room 190, Building D, Park 35, 12118 North IH-35, Austin. Copies of the RFQ package will be available on or after November 22, 1993, for the non-refundable purchase price of $160 at the following location: Roy F. Weston, 5599 San Felipe, Suite 700, Houston, Texas 77056, Attention: David Miller, (713) 621-1620.

Cashiers checks and money orders should be made payable to Roy F. Weston, Inc. Company and personal checks are not acceptable. The RFQ package may be sent to the Offeror by regular mail or it may be picked up at Weston's office. Offerors who wish to have the RFQ package sent by express mail should include the account number of their preferred express mail delivery service.

Each offeror may submit one Qualification package. This Qualification package shall conform to the instructions contained in the RFQ and shall include all information as necessary to enable the TNRCC to determine conformance with these criteria as described in the RFQ. Offerors are advised to submit Qualification package which is clear, complete, acceptable and requires no additional explanation or information. Six copies of the Qualification must be received at TNRCC before 4:00 p.m. on December 22, 1993.

Prospective Offerors must attend the site tour and the prequalification conference in accordance with the instructions contained in the RFQ.

Inquiries concerning the Request for Qualification should be addressed to Mary Dunn, P.E., Superfund Engineering Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2442.

Upon completion of the Step 1 process, an Invitation for Bid (IFB) will be issued only to those Offerors whose Qualifications were determined as "Acceptable" by the TNRCC. Bids from offerors considered "Unacceptable" under STEP 1 will not be considered for award. Should an award be made, it will be made to the lowest responsive, responsible bidder.

Issued in Austin, Texas, on November 22, 1993.

TRD-9332541 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 22, 1993

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The Texas Natural Resource Conservation Commission (TNRCC) announces its intent to procure a remedial action contractor for the Texarkana Wood Preserving Company Superfund Site (TWPC) to perform the work as detailed in the Remedial Action Contract Documents via two-step Formal Advertising. As Step 1 of this process, TNRCC is requesting qualifications to qualify prospective bidders.

This project will be 90% federally funded with 10% state matched. The project will be conducted by the TNRCC through Cooperative Agreement V-996096-01-0 with the Environmental Protection Agency (EPA) and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1985 (SARA), and the Texas Water Code, Chapter 26, Subchapter H.

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operations will be treated prior to discharge. In addition, this project involves the construction, installation and commission of the permanent Groundwater Remediation System which is separate and independent from any used in the Contractor's remediation work, and shall become the property of TNRCC. The Groundwater Remediation System includes the carbon adsorption units, pumps, building, tanks, foundations, piping, electrical, and controls for the Ground Water Treatment Plant and trenches and transferring piping for the extraction and injection system.

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Each offeror may submit one Qualification package. This Qualification package shall conform to the instructions contained in the RFQ and shall include all information as necessary to enable the TNRCC to determine conformance with these criteria as described in the RFQ. Offerors are advised to submit Qualification package which is clear, complete, acceptable and requires no additional explanation or information. Six copies of the Qualification must be received at TNRCC before 4:00 p.m. on January 21, 1994.

Prospective Offerors must attend the site tour and the prequalification conference in accordance with the instructions contained in the RFQ.

Inquiries concerning the Request for Qualification should be addressed to Mary Dunn, P.E., Superfund Engineering Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2442.

Upon completion of the Step 1 process, an Invitation for Bid (IFB) will be issued only to those Offerors whose Qualifications were determined as "Acceptable" by the TNRCC. Bids from offerors considered "Unacceptable" under STEP 1 will not be considered for award. Should an award be made, it will be made to the lowest responsive, responsible bidder.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332746 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 29, 1993

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Request for Proposals

Notice of Request for Proposals (RFP). The Texas Natural Resource Conservation Commission (TNRCC) solicits qualified consultants and consultant firms to submit proposals describing the procedure and methodology they would utilize if awarded a contract under this request to advise TNRCC in developing and establishing a Master Composter Outreach training program in Texas communities.

Project Objective. As the state's lead agency for the management of waste and the protection of the state's environment and natural resources, TNRCC is charged with developing programs to divert recyclable materials from Texas landfills. Currently comprising up to 30% of the solid waste in some communities, yard trimmings, with proper management and processing, have the potential to be a valuable resource rather than a waste. Trained "Master Composters" will play a key role in informing, inspiring, and teaching people in their communities to change their yard trimmings disposal habits, resulting in a diversion of yard trimmings from landfills and into a system in which compost is available as a beneficial resource rather than a waste The objective of this project is to provide a model for training coordinators and volunteers as "Master Composters" in Texas communities.

Proposal Content Requirements. Prior to submitting proposals, proposers are encouraged to call Ann Smith with TNRCC's Recycling and Waste Minimization Section, at (512) 908-6216, and request a Master Composter Training Consultant Project Information Packet that contains details concerning TNRCC's intended scope of work for this project as well as the consultant selection procedure that will be followed. All proposers must describe the experience and professional qualifications they would bring to the proposed project and must set forth clearly and specifically the procedure and methodology they would use in achieving the program elements set forth in the scope of work for this project.

Submittal Procedures and Response Deadline Persons responding to this request shall provide five copies of their proposal to Kitty Coley, Recycling and Waste Minimization Section, Office of Pollution Prevention and Recycling, Texas Natural Resource Conservation Commission, P.O. Box 10387, Austin, Texas 78711-3087. If hand-delivered rather than mailed, proposals will be received during normal business hours in the Recycling and Waste Minimization Section (Colonnade Building, Room 1927), 12015 Park 35 Circle, Austin. Proposals must be received no later than 5:00 p.m., January 5, 1994. Late proposals will not be accepted. TNRCC reserves the right to reject any and all proposals that do not meet the requirements of the RFP.

Upon submittal, the proposals shall become the property of the State of Texas. The contents of all proposals shall be considered public record unless deemed otherwise by law. The submittal of information claimed to be confidential or proprietary should be under separate cover and received by Kitty Coley at the office address previously described on or before noon on January 5, 1994. TNRCC reserves the right to reject the designation of any information as confidential.

Type of Contract and Anticipated Cost of Project The contract established under this RFP will provide for reimbursement for costs plus a fixed fee, on the basis of invoices submitted monthly by the Consultant, up to the amount contracted for this project TNRCC anticipates a cost range for the requested project of between $20,000 and $26,000.

Procedure for Selecting Proposer Proposers will be screened and ranked based on their experience in the areas covered under this RFP and on other verifiable profes-

sional qualifications described in the proposals. Proposers will also be evaluated on the merit of their proposals and on whether the work that is proposed to be conducted will best enable TNRCC to meet its objectives. TNRCC will conduct such ranking using a point system, which is available in the RFP project information packet.

Preferred proposers will be those with consulting experience in backyard composting, backyard composting education, volunteer coordination and recruitment, and public education and outreach. Listings of previous projects and experience relevant to the indicated needs of this RFP shall be provided as part of the proposal. References from past or present clients, particularly those involved in similar projects, should be included; however, the proposer shall limit the number of references to not more than five. Each proposal should contain a listing by name of the individual or individuals who will work on the proposed project; including a description of the particular training and experience of those individuals.

Following the screening and ranking of proposers, TNRCC will begin the second phase of the selection process. This phase will include negotiations between TNRCC and the proposer holding the highest ranking from the proposal evaluation. The ability to complete the proposed work within the time frames established for this project and the overall cost of the project will be important areas of negotiation during the consultant selection process. If TNRCC is unable to negotiate a satisfactory contract with the highest ranked proposer, TNRCC will formally end negotiations with that proposer and begin negotiations with the second highest ranked proposer. Negotiations will continue in this sequence until a satisfactory contract is secured or the request for proposals is terminated.

Issued in Austin, Texas, on November 29, 1993.

TRD-9332747 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: November 29, 1993

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Request for Qualifications

Objective. The objective of this Request For Qualifications (RFQ) is to develop a list of qualified consultants in the areas of Transportation Demand Management (TDM) and Training to provide qualified instructors for the training of Employee Transportation Coordinators (ETCs) in the Employer Trip Reduction (ETR) program as required under the Texas Natural Resource Conservation Commission (TNRCC) 30 TAC §114.21, concerning Control of Air Pollution From Motor Vehicles.

Project Area. The project area is the Houston/Galveston ozone nonattainment area, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. The ozone nonattainment status is classified as "severe" under the 1990 Federal Clean Air Act (FCAA) Amendments

Background. ETR programs are required for all nonattainment areas classified as "severe" or "extreme" for ozone by the FCAA. In Texas, the Houston/Galveston region is the only area classified in either category Employers in the eight county nonattainment area must achieve one of two target Average Passenger Occupancies (APO), depending upon their worksite location. If employers do not achieve their APO targets by 1996, they will be in violation of TNRCC 30 TAC §114.21, and subject to fines ranging from $10, 000-$25,000 per day until the target is achieved. TNRCC is the state agency responsible for the implementation of the ETR program within the Houston/Galveston nonattainment area A training program has been developed to train employer designated ETCs within this area. The ETR rule, adopted in 1992, required the TNRCC to approve Training Organizations.

Scope of Work. Each worksite required to participate with the ETR program must have a designated ETC to develop and administer its worksite specific ETR plan. The ETC must be trained by a TNRCC certified instructor through a TNRCC approved course. This project requires providing the qualified instructors and specified materials necessary to administer the approved training course to ETCs. Training Organizations will be required to develop, subject to TNRCC approval, a training plan for conducting ETC courses based on an ETC handbook and core syllabus provided by TNRCC. Course length will be a minimum of 20 hours and a maximum of 24 hours. Course fees will be established by the individual Training Organizations.

Schedule/Timeframe First classes should be made available shortly after the approval/certification process is complete. This is anticipated to be in the February/March 1994 timeframe.

Minimum Requirements (Training Organizations). The following are minimum requirements: employ at least one individual with a minimum of one year of experience in Transportation Demand Management; demonstrate a minimum of one year experience organizing and conducting training courses/workshops; provide a minimum of one fully-certified instructor who meets TNRCC qualifications as outlined following; provide a method to ensure that Houston/Galveston area employers have local access to the Training Organization for the purpose of scheduling classes, answering questions, etc.

The minimum instructor qualifications are as follows: a bachelor's degree from an accredited college or university; a minimum of two year's experience (with no specialty required) in training/teaching; at least one year training and/or experience in TDM; successful completion of initial ETC training in the State of Texas.

Minimum Required Elements in Response. Individuals or firms responding to this RFQ must address each of the minimum qualifications and provide proof of qualifications for proposed instructor(s). Responses must include six copies, typewritten and signed. Please submit responses to TNRCC, Mobile Source Section-ETR Training Coordinator, P.O Box 13087, Austin, Texas 78711-3087. The closing date is December 11, 1993.

Criteria for Evaluation. Consultants will be evaluated based on the previously addressed criteria.

Selection Procedures. TNRCC will review responses to the RFQ on the basis of the respondent's documented competence, technical qualifications, educational experience, and ability to provide qualified instructors. Responses must be received by the designated closing date to be considered.

TNRCC reserves the right to contact respondents for clarification of information submitted.

Consortiums, joint ventures, or teams submitting qualifications statements will not be considered responsive to this

RFQ unless they have demonstrated in a "management plan" that all program responsibility rests solely with one "head" consultant or legal entity of the "team."

Selection Notification. Notification will be accomplished via letter from TNRCC.

Utilization of Historically Underutilized Business Enterprises Although all qualified applicants will be accepted, it should be noted that the TNRCC places high emphasis on participation in this program by qualified historically underutilized business enterprises. Approved Training Organizations entering subcontracts under the context of this training program must provide these enterprises maximum practical opportunity to participate.

TNRCC Responsibilities. TNRCC is responsible for: approval/disapproval of Training Organizations; certification/decertification of Instructors (Training Providers); review and approval of ETC training plans and materials; monitoring and evaluating ETC training programs and the performance of Training Organizations and Instructors; and overall ETR training program administration.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332644 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Filed November 24, 1993

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Public Utility Commission of Texas

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for billing and collection services with Southwestern Bell Messaging Services, Inc (SMSI).

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with SMSI Pursuant to Public Utility Substantive Rule 23. 27. Tariff Control Number 12527.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for billing and collection services with SMSI. The geographic service market for this specific service is anywhere within the state of Texas where SMSI provides services to Southwestern Bell end user customers.

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) 458-0256, or (512) 458-0221 for teletypewriter for the deaf

Issued in Austin, Texas, on November 24, 1993

TRD 3332701 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed November 24, 1993

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Texas Natural Resource Conservation Commission, Austin.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Texas Natural Resource Conservation Commission pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12506.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Texas Natural Resource Conservation Commission. The geographic service market for this specific service is the Austin 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) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 22, 1993.

TRD-9332578 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 23, 1993

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Datapoint Corporation, San Antonio.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Datapoint Corporation pursuant to Public Utility Commission Substantive rule 23 27(k). Docket Number 12496

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Datapoint Corporation. The geographic service market for this specific service is the San Antonio 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) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 22, 1993.

TRD-9332577 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed. November 23, 1993

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Notices of Proceeding For Approval of Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on November 9, 1993, seeking approval of extended area service

(EAS) pursuant to §23 49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition

Project Title and Number. Joint Petition of GTE Southwest, Incorporated, Contel of Texas, Inc., and Southwestern Bell Telephone Company to Provide Extended Area Service Between the Floresville, La Vernia, and Sutherland Springs Exchanges and the San Antonio Metropolitan Exchange, Project Number 11161, before the Public Utility Commission of Texas.

The Joint Petition. In Project Number 11161, GTE Southwest Incorporated (GTESW), Contel of Texas, Inc (Contel), and Southwestern Bell Telephone Company (SWB) have requested optional extended area service (EAS) between the Floresville, La Vernia, and Sutherland Springs exchanges and the San Antonio Metropolitan Exchange

Customers choosing to subscribe to the optional EAS will be able to choose from three types of EAS one way, discounted, measured EAS (the Community Calling Plan), one-way, flat-rate EAS (the Premium Calling Plan), or two-way, flat-rate EAS (the Premium Plus Calling Plan)

Customers subscribing to the Community Calling Plan will pay a $1 00 monthly subscription fee, in addition to usage rates as follows

Rate Band	Miles	First Minute	Each Additional Minute
A	0-7	.030	.015
B	8-14	.042	.021
C	15-21	.060	.030
D	22-28	.084	.042
E	29+	.093	.054

The above-referenced rates for the Community Calling Plan shall be discounted as follows:

Discounted Time Period	Amount of Discount
5:00 p.m. to 11:00 p.m. (Monday through Friday and Sunday)	25%
11:00 p.m. to 8:00 a.m. (Daily)	40%
8:00 a.m. to 5:00 p.m. (Sunday)	40%
All day on Saturday and on the following holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas Day	40%

Customers choosing to subscribe to the Premium and Premium Plus Calling Plans will pay a flat-rate monthly additive in addition to the basic local exchange charges, as follows

Class of Service	One-Way PCP Rate Additive	Two-Way Premium Plus Rate Additive
One-Party Residence	$ 15.20	$ 30.40
One-Party Business	33.35	66.65
Key	39.00	78.00
PBX	54.50	108.95

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility

Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office (512) 458-0256 by February 1, 1994. The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

Issued in Austin, Texas, on November 24, 1993.

TRD-9332702 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 24, 1993

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Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on November 12, 1993, seeking approval of extended area service (EAS) pursuant to §23.49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition.

Project Title and Number. Joint Petition of Southwestern Bell Telephone Company (SWB), GTE Southwest Incorporated (GTESW), and SWB's Celina Exchange to Provide Extended Area Service from the Celina Exchange to the Dallas, Allen, Aubrey, and Frisco Exchanges, Project Number 12489, before the Public Utility Commission of Texas.

The Joint Petition. In Project Number 12489, SWB, GTESW, and SWB's Celina Exchange have requested optional flat-rate, one-way extended area service (EAS) from the Celina Exchange to the Dallas, Allen, Aubrey, and Frisco exchanges. Customers choosing to subscribe to the optional EAS will pay a flat-rate monthly additive in addition to the basic local exchange charges, as follows: Residence-$15.; Business-$30.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256 by February 1, 1994. The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332576 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed. November 23, 1993

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Sul Ross State University

Consultant Proposal Request

Pursuant to the Texas Government Code, Article 2254, Sul Ross State University, a Member of the Texas State University System, announces the solicitation for consultant services in the undertaking of an educational needs assessment to determine how best to introduce new academic programs in the vast Texas border region between Laredo and El Paso. The University, the only regional comprehensive university along this section of the border, is committed to serving the needs of the citizens in this region. We seek a professional consultant to assist in achieving four goals related to the future of the University and its educational and service mission.

The goals are as follows.

(1) Assess the educational needs of the service region for the main campus of the University in Alpine and the Sul Ross Uvalde Center. The service region of the Alpine campus includes 18 counties in far west Texas. The Sul Ross Uvalde Center, an upper level center teaching courses in Del Rio, Eagle Pass, and Uvalde, serves 13 counties in the Middle Rio Grande Region.

(2) Measure the market demand throughout the service region for specific programs and majors, including both the existing and potential programs.

(3) Assess the image of the University throughout its service region, for both the main campus and the center locations, and evaluate its visibility.

(4) Utilize the assessment results to provide and support recommendations for action steps to be initiated to enhance market penetration, to expand enrollment in targeted programs, to enhance the University's image, and to more effectively meet the educational and career needs of the residents of the two service regions.

Response should be sent to Dr. R. Vic Morgan, President, Sul Ross State University, Alpine, Texas 79832, (915) 837-8032, along with a client list for any past consulting services in higher education. An information packet including copies of the University's current catalogs, recruiting brochures, and fiscal year 1993 financial statement, enrollment information by program, and inquiries from prospective students by program is available on request. Other information may be available if needed.

Responses are to be received no later than December 31, 1993, and should address in detail the various goals set forth above. An evaluation team consisting of a panel of administrative staff from the University and others who may be designated by Sul Ross will evaluate and score the responses based on the following considerations: proposed budget; method of procedure, time line for completion; ability to meet goals; other relevant factors necessary to complete the study.

Issued in Austin, Texas, on November 19, 1993.

TRD-9332521 David C. Wilson
Purchasing Director
Sul Ross State University

Filed: November 22, 1993

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Texas Department of Transportation

Notice of Contract Award

In accordance with the Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award. The consultant proposal request originally appeared in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7208). The consultant will assist the department in developing a position paper on the likely impact of the North American Free Trade Agreement (NAFTA) and increased trade with Mexico on infrastructure requirements along the United States Border with Mexico in Texas with emphasis on transportation and trade flows, environmental, education, worker retraining, worker care, and housing.

The contractor selected to perform this service is Shiner Moseley and Associates, Inc., 2820 South Padre Island Drive, Suite 210, Corpus Christi, Texas 78415-1818. The total value of the contract is $84,000. The contract began on November 23, 1993, and will terminate on March 31, 1994. A final report will be due on or before March 31, 1994.

Issued in Austin, Texas on November 23, 1993.

TRD-9332567 Diane L Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: November 23, 1993

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